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Anglo-American Legal Citation: Historical Development and Library Implications

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ANGLO-AMERICAN LEGAL CITATION: HISTORICAL DEVELOPMENT AND LIBRARY IMPLICATIONS

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I. INTRODUCTION

Legal citation methods constitute a superb system of bibliographic references that maximize the information given while minimizing the space required. Such methods are demanded by a legal system that recognizes certain written sources as authoritative and are facilitated by having those sources in forms that are uniformly paginated or divided by paragraph or section.

Miles Price provided the classic definition of the purpose of legal citation: "A legal citation has only one purpose: to lead its reader to the work cited, and this without enforced recourse to any other source of information, for data which should have been given in the citation itself."[1] Although this definition has been echoed by other writers[2] and recently called "undisputed,"[3] it does seem to require at least some qualification. The adequacy of a citation depends to some extent on the background of the reader. After all, the meaning of "407 U.S. 225" is not self-evident, even to those with extensive bibliographic expertise.[4] The adequacy of a citation also depends on the resources to which the reader has access. A citation to "Gouldsb. 13" will suffice without conversion at only a few academic law libraries, even though nearly all have the same case in another form. Finally, in the twentieth century an expectation has grown that a legal citation should do more than merely lead the reader to the sources cited; it should also provide information useful to understanding the material to which it is appended.[5]

A citation has three parts: bibliographic description, location designation, and parenthetical information (whether or not it is enclosed within parentheses). Price's criterion then would appear to mean that once a reader understands the bibliographic description and has access to the source, the location designation should suffice without further conversion.

Criteria for evaluating a system of bibliographic citations should include not

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1. M. PRICE, A PRACTICAL MANUAL OF STANDARD LEGAL CITATIONS at iii (2d ed. 1958).

2. E. RE, BRIEF WRITING AND ORAL ARGUMENT 216 (4th ed. rev. and enlarged 1974); Williamson, *A Proposal for Achieving Uniformity in the Citation of International Documents*, 9 INT'L J.L. LIBR. 47, 47 (1981).

3. Williamson, *supra* note 2, at 47.

4. "I can attest (having tried it) that walking into a law library and asking for an English translation of '30 Ala. 49 (1847)' or '9 Mo. 690 (1846)' is a rattling experience." M. VAN LEUNEN, A HANDBOOK FOR SCHOLARS 214 (1978).

5. Jacobson, Book Review, 43 BROOKLYN L. REV. 826, 826 (1977) (citations to cases should indicate who is bound by them); Bowler, Book Review, 44 U. CHI. L. REV. 695, 709 n.99 (1977) (citations to the *Federal Register* should assist in understanding the article in which they appear).

only its functional utility, but also its social policy implications. The cost of citing authority for legal propositions can be substantial.[6] Wherever possible, such costs should be minimized to avoid restricting the delivery of legal services by indirectly raising their cost. The requirement of parallel citations, for example, should serve goals substantial enough to justify the costs of maintaining duplicate materials in law libraries.

Another consideration is that lay citizens should have access to their laws. A unique, highly abbreviated system of documentation restricts that access,[7] but it also reduces the length and cost of publications and ultimately the cost of legal services.

Current citation practices, however, are explained less by logic and social analysis than by historical evolution. To find the origins of those practices, it is necessary to go back almost to the beginning of English law.

II. ENGLISH ORIGINS

In 1066 when Duke William of Normandy crossed the Channel and crowned himself King of England, he joined anew the history of England to that of Europe. At the time, the Normans were among the most cosmopolitan people on the Continent.[8] They would have been intimately aware of major legal developments throughout Europe. Within ten years after the Conquest, the rediscovery in northern Italy of a copy of Justinian's *Digest* would lead to an immense revival there of the study of Roman law and to a revision of citation practices.

A thousand years earlier, the ancient Romans had at times employed a citation format that is almost startlingly modern, using abbreviations and numbers to designate locations by descending bibliographic units. An inscription by Vespasian in A.D. 71, for example, refers to bronze tablet "quae fixa est Romae in Capitolio ad aram gentis Iuliae, de foras podio sinisteriore, tab. I pag. II loc. XXXXIIII."[9] After Justinian's *Corpus Juris Civilis* was compiled in the sixth century, one of the earliest practices was to cite sections by number from the larger to the smaller unit, much like the modern practice.[10]

Although Justinian's *Institutes* and *Code* continued to be known in Western Europe through the Middle Ages, the *Digest* was generally neglected and almost forgotten.[11] After its rediscovery in the eleventh century, the law school at Bologna led by Irnerius tried to make it more accessible by adding cross references and notes or glosses to the text. The Glossators, as the members of this school are called, found it expedient to develop a new citation system.

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6. Merryman, *Toward a Theory of Citations: An Empirical Study of the Citation Practice of the California Supreme Court in 1950, 1960, and 1970*, 50 S. CAL. L. REV. 381, 423-27 (1977).

7. "One might almost entertain the uncharitable thought that lawyers don't want other people to look at court cases." M. VAN LEUNEN, *supra* note 4, at 214 (referring to *A Uniform System of Citation*).

8. Lanfranc, who was one of William's closest advisers, was a renowned theologian, Prime Minister, and Archbishop of Canterbury. Early in his career, he probably also taught law in northern Italy. Wigmore, *Lanfranc, the Prime Minister of William the Conqueror: Was He Once an Italian Professor of Law? A Study in Historical Evidence*, 58 LAW Q. REV. 61 (1942).

9. C. BRUNS, FONTES IURIS ROMANI ANTIQUI 233, 235 (T. Mommsen ed. 1887).

10. "Die älteste Anführungsart ist die natürliche nach dem Werk Dig., Pars, Buchzahl, Titel und Stelle; so zitieren die Juristen Justinians, die späteren Byzantiner (z. B. ὡς βιβ. ιβ'. τιτ. β'. διγ. ίζ = Dig. 12, 2, 16 . . .), die abendländischen Juristen vor den Glossatoren." L. WENGER, DIE QUELLEN DES RÖMISCHEN RECHTS 599 n.208 (1953).

11. P. WINFIELD, THE CHIEF SOURCES OF ENGLISH LEGAL HISTORY 58 (1925).

The earliest methods of citation among the Glossators have been a source of much controversy, especially among German legal scholars and historians, because of the attempt to date documents by the citation format.[12] Although at first the Glossators' practices varied, a fairly consistent and uniform system soon developed. The Glossators apparently believed that numbers were too hard to remember and not suitable for the oral disputations in which they frequently engaged.[13] The accuracy of this belief might be doubted by modern tax lawyers, but Latin ordinal numbers can be extremely long and cumbersome.

Although the order of Roman law citations was later reversed, the earliest uniform practice of the Glossators was to give first a siglum representing the work: *ff.* for the *Digest*, C. for the *Code*, and I., In., or Inst. for the *Institutes*.[14] After the siglum, the first few words of the rubric (a subject heading usually written in red ink) of the title were given, followed by the initium (the opening words) of the lex and, if necessary, of the paragraph. Numbers were only occasionally used. A citation, for example, to "*ff.* de ver. si. 1. fam. app." indicates title 16 of book 50 of the *Digest*, which has the rubric "de verborum significatione," and lex 196, which begins "Familiae appellatione & ipse Princeps . . . ." A modern citation would simply be "DIGEST 50.16.196."[15] This early method, though with greater use of numbers, was also adopted by canon lawyers, especially after the compilation of the decretals by Gratian around 1140.

Undoubtedly, English judges and lawyers were well acquainted with this system of citation.[16] It is not surprising then to find that one of the earliest methods used by

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12. *See, e.g.*, H. KANTOROWICZ & W. BUCKLAND, STUDIES IN THE GLOSSATORS OF THE ROMAN LAW 196-97 (1938).

13. L. CUSHING, AN INTRODUCTION TO THE STUDY OF THE ROMAN LAW 150 (Boston 1854).

14. The origin of *ff.* has been variously explained. Hermann Kantorowicz, probably following Savigny, states that it evolved from a *D* with a line drawn through it. H. KANTOROWICZ, *Die Allegationen im späteren Mittelalter*, in RECHTSHISTORISCHE SCHRIFTEN 81, 85 (1970) (translated in W. BRYSON, DICTIONARY OF SIGLA AND ABBREVIATIONS TO AND IN LAW BOOKS BEFORE 1607, at 3, 7 (1975)). Another explanation, perhaps older, is that it developed from a Π with a circumflex accent, representing Πανδέκται or *Pandects*, the Greek name for the *Digest*. I. CALVINUS, LEXICON IURIDICUM, IURIS CAESAREI SIMUL, ET CANONICI, col. 852 (Frankfurt 1600) (under "Digestoram [*sic*]").

15. A UNIFORM SYSTEM OF CITATION 168 (12th ed. 1976). For a useful guide to converting Roman law citations, see INDICES CORPORIS IURIS CIVILIS IUXTA VETUSTIORES EDITIONES CUM CRITICIS COLLATAS (IUS ROMANUM MEDII AEVI, Subsidia I, H. Nicolini & F. Sinatti D'Amico ed. 1964-1970). For a current guide to citation practice, see Feenstra & Rossi, *De Modo Citandi Fontes per Partes, Leges, Capitula, etc.*, in IUS ROMANUM MEDII AEVI, Pars I, 1 a-d, at 109 (1961) (translated in W. BRYSON, DICTIONARY OF SIGLA AND ABBREVIATIONS TO AND IN LAW BOOKS BEFORE 1607, at 17 (1975)). The purpose of Feenstra and Rossi is slightly concealed by Bryson's translation of the opening sentence, which criticizes practices "apud nostrae aetatis scriptores." Bryson translates this as "by our old authors," when it appears to mean "among writers of our own time"; i.e., they are urging reform in current practices.

16. Most of the earliest royal judges were churchmen who would have been aware of civil and canon law practices. J. DAWSON, THE ORACLES OF THE LAW 5 (1968). Vacarius, an early master of Roman law, taught in England and in his book *Liber Pauperum* employed citations in the style of the Glossators. Liebermann, *Magister Vacarius*, 11 ENG. HIST. REV. 305, 310-12 (1896); de Zulueta, *Introduction* to THE LIBER PAUPERUM OF VACARIUS at xli-xlii (Selden Society Vol. 44, 1927). Becket studied law at Bologna. Senior, *Roman Law in England Before Vacarius*, 46 LAW Q. REV. 191, 203 (1930). Glanvil was certainly familiar with Roman law. W. HOLDSWORTH, SOME MAKERS OF ENGLISH LAW 14 (1966). *See also* Senior, *Roman Law MSS. in England*, 47 LAW Q. REV. 337 (1931); Mitchell, *English Law Students at Bologna in the Fifteenth Century*, 51 ENG. HIST. REV. 282 (1936). The authorship of the treatise traditionally attributed to Bracton has been questioned. Thorne, *Translator's Introduction* to 3 H. BRACTON, ON THE LAWS AND CUSTOMS OF ENGLAND at xiii (1977). But at least some of the contributors to this treatise knew

English lawyers to refer to a legal document was to quote the opening words or incipit, much as the Glossators used the initia. Writs often took names from their opening words,[17] and this was one of the earliest methods of referring to statutes.[18] T. F. T. Plucknett said that this seems, in fact, to have been the most common means of statutory reference.[19] For example, we find a lawyer in 1302 stating: "Nous prioms seisine par le statut, cum quis, &c. . . ." ("We pray seisin by virtue of the statute, when anyone, etc. . . .").[20] Accordingly, chapter 40 of the Statute of Westminster II begins: "Cum quis alienat ius uxoris suae . . . ." ("When anyone alienates the right of his wife . . .").[21] Undoubtedly the most famous statute known by its incipit was *Quia Emptores* ("Because the purchasers").[22]

There were two other methods of citing statutes as well. One was to refer to the place where Parliament met, such as Marlborough (1267), Westminster I, II, and III (1275, 1285, and 1290), and Winchester (1285). So in 1378 a lawyer would state that "auxi lestatut de W ij° voet quod postquam aliquis . . ." ("also the statute of Westminster II provides that after anyone . . ").[23] Abbreviations, so useful in an age when all books were in manuscript, were naturally extended to citations, where they have remained to the present day. The other method of referring to a statute was by its subject or title, such as *De Donis Conditionalibus, De Praerogativa Regis*, or *De Mercatoribus*.

For the most part, however, judges and lawyers employed vague references to statutes, if the records of proceedings found in the *Year Books* are indicative. For example, in the *Year Books* of 1 and 2 Edward II (1307-1309), statutes are mentioned on seventeen occasions; of these, thirteen are vague (e.g., "par statut" or "la cause de estatut"), three name the place where the statute was made, and one quotes words from the statute. In the *Year Book* of 2 Richard II (1378-1379), there are eleven references to statutes, of which seven are vague, three give quotations, and one refers to the place. Sometimes, the texts of statutes were available in court. In 1290 the chief clerk of the common bench had a hamper that contained, among other things, the statutes of the King.[24] For the most part, however, medieval lawyers apparently relied on their well-trained memories.

Gradually, it became apparent that such citation methods were inadequate. Parliament would meet in the same place more than once. Several statutes might deal with the same subject. The same words might be used to begin different statutes: certainly, a general phrase like "cum quis" was likely to be used more than

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the citations of the Glossators. *See, e.g.*, 2 H. BRACTON, DE LEGIBUS ET CONSUETUDINIBUS ANGLIAE 320 (G. Woodbine ed. 1915-1942) (citing *Digest* 48.6.5.1 as "ff. ad l. iul. de vi publica, l. si de vi").

17. A. HOGUE, ORIGINS OF THE COMMON LAW 13 (1966).

18. What constituted a statute is a complex question, frequently discussed. *See, e.g.*, J. BAKER, AN INTRODUCTION TO ENGLISH LEGAL HISTORY 178-79 (2d ed. 1979); W. HOLDSWORTH, SOURCES AND LITERATURE OF ENGLISH LAW 15, 55-58 (1925); Richardson & Sayles, *The Early Statutes* (pt. 1), 50 LAW Q. REV. 201, 201-04 (1934).

19. T. PLUCKNETT, STATUTES & THEIR INTERPRETATION IN THE FIRST HALF OF THE FOURTEENTH CENTURY 11 (1922).

20. Y.B. 30 & 31 Edw. 1, at 247 (A. Horwood ed. 1863).

21. 13 Edw. 1, ch. 40 (1285).

22. Statute of Westminster III, 18 Edw. 1, ch. 1 (1290).

23. Denham v. Anon., Y.B. Trin. 2 Rich. 2, pl. 3 (1378), *reprinted in* 1 AMES FOUNDATION 8, 9 (1975).

24. "Vnum hanaparium in quo continentur statuta regis et littere episcopales." *Quoted in* Richardson & Sayles, *The Early Statutes* (pt. 2), 50 LAW Q. REV. 540, 547 n.35 (1934).

once. The system used for citations in Roman law was not adequate for English law. The primary sources in Roman law were monographic, while those of the common law were ever changing. What was needed was some form of serial reference.

Ever since Anglo-Saxon times, the two chief methods of dating documents had been the Christian year[25] or the year of the monarch's reign.[26] Since the final important step in enacting a statute was the royal assent, dating statutes by the regnal year was natural. "Anno quinto Edwardi tercii" (in the fifth year of Edward the third) might become "An. 5to Ed.^{i} 3^{i}" or simply "5.E.3." Early statutes were made up of *items*, but by the end of the fourteenth century, it was customary to number the chapters of longer statutes, and a reference might then include a chapter number such as "5.E.3.c.2."[27]

The citation of cases followed much the same development as that of statutes. Initially, citations of court decisions resembled recollections of events more than references to documents in a series. Citations, however, were not used frequently. Medieval judges did not recognize the doctrine of *stare decisis*. Although they desired judicial consistency, they did not consider previous decisions binding and apparently felt free to disregard them.[28]

In the Middle Ages there were both records and reports of English cases. In Maitland's words, the object of the record is "a decent finality."[29] To prevent relitigation of the same case, courts found it necessary to have a record giving the names of the litigants and their decisions. On the other hand, the purpose of the report was, from the beginning, educational, to enable students or lawyers to improve their skills in litigation. Consequently, the reports frequently did not contain the names of the parties or the outcome of the case. What was important was to show how to present a case in court.

The official records were kept by the clerks of each court in the form of plea rolls. As early as the 1220s, lawyers were extracting interesting cases from them.[30] But there were several difficulties which limited their use, and consequently, the plea rolls were only infrequently cited. They were physically difficult to handle and poorly indexed. Above all, however, access to them was very restricted.[31] Upon an exception of res judicata, plea rolls could be produced in court, but they were very

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25. E.g.: "Facta est autem haec cartula anno dominicae incarnationis DCC.LXXVII." 1 CODEX DIPLOMATICUS AEVI SAXONICI 158 (J. Kemble ed. London 1839).

26. See, e.g., the decree of Wihtraed in 695, dated in the prologue by the "fiftan wintra his rices," in 1 DIE GESETZE DER ANGELSACHSEN 12 (F. Liebermann ed. 1903); or the charter of Aethilbald of 734 dated "Actum mense Septembrio die indic. II. anno regni nri. [nostri] XVII," in 1 CODEX DIPLOMATICUS AEVI SAXONICI, *supra* note 25, at 94.

27. An attempt is made here to avoid the controversy regarding the composition of statutes. *Compare* P. WINFIELD, *supra* note 11, at 77 (the whole of the Statute of Westminster II constituted a single statute) *with* T. PLUCKNETT, *supra* note 19, at 11-12 (the Statute of Westminster II was a long series of separate units, each regarded as a statute). In the *Year Books* both singulars and plurals are used to refer to these statutes.

28. This is another much debated question. *See, e.g.*, C. ALLEN, LAW IN THE MAKING 161-235 (7th ed. 1964); J. BAKER, *supra* note 18, at 171; Gray, *Judicial Precedents—A Short Study in Comparative Jurisprudence*, 9 HARV. L. REV. 27 (1895); Lewis, *The History of Judicial Precedent* (pts. 1-3), 46 LAW Q. REV. 207, 341 (1930), 47 LAW Q. REV. 411 (1931).

29. Maitland, *Introduction* to 1 YEAR BOOKS OF EDWARD II at x (Selden Society Vol. 17, 1903).

30. J. BAKER, *supra* note 18, at 151.

31. Sayles, *Introduction* to 1 SELECT CASES IN THE COURT OF KING'S BENCH at cxvi-cxxvii (Selden Society Vol. 55, 1936).

carefully controlled. In 1258 even Bracton was ordered to return plea rolls that he may have been using to prepare or revise the treatise attributed to him.[32]

Nevertheless, citations to the plea rolls, when they occur, are remarkably precise. In the *Casus et Judicia*, a series of notes taken from the plea rolls of 1252 to 1257, citations indicate the plea roll by stating the term and the regnal year, accompanied by a marginal annotation giving the county and the first name of the party with which the record on the roll usually begins, such as "ut de mense Pasche anno xxxviii. Suff. Rob."[33] In the treatise attributed to Bracton, some five hundred cases were cited from the plea rolls. As outlined by Maitland, the method of citation is very orderly.[34] Citations to the De Banco Rolls contain the term and regnal year, the county, and the names of the parties (e.g., "de termino Paschae anno Regis Henrici XV° in comitatu Essexiae de Geruasio de Aldermanbury"). Citations to the Coram Rege Rolls contain the regnal year and the names of the parties and state that the case is among the pleas that follow the King ("placita quae sequuntur Regem"). Citations to Eyre Rolls include the phrase "de Itinere" or "in Itinere," followed by the names of the judge and county, and contain the regnal year only if the judge visited a particular county more than once.

Reports of the oral proceedings in court are contained in the *Year Books*. After the *Year Books* were collected and printed, the standard canon consisted of the reports for the years 1292 through 1535, although there were reports as much as twenty years earlier. When the *Year Books* began and ended is really a matter of definition.[35]

When cases were cited in the *Year Books*, usually only a single item of information is provided: the name of the judge, the names of the parties, the subject of the suit, or the place where the case was tried. Seldom before the fifteenth century is the date given. A citation might be made to "le play bastard" (the case of the Bastard)[36] or the "casum la dame de Gild" (the case of the lady of Gild).[37]

Such a method of citation required reliance on memory, and it is remarkable how frequently all of the parties appear to understand the reference immediately. But, then, in the Middle Ages a well-trained memory was highly valued, as illustrated by Chaucer's description of his "Sergeant of the Lawe":

> In termes hadde he caas and doomes alle
> That from the tyme of kyng William were falle.
> . . .
> And every statut koude he pleyn by rote.[38]

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32. For the text of the order, see *id.* at cliv.

33. Dunham, *Introduction* to CASUS PLACITORUM AND REPORTS OF CASES IN THE KING'S COURTS 1272-1278, at xxvi (Selden Society Vol. 69, 1950).

34. Maitland, *Introduction* to 1 BRACTON'S NOTE BOOK 53-54 (F. Maitland ed. 1887).

35. Baker, Book Review, 33 CAMBRIDGE L.J. 156, 156 (1974). On the origins and changing nature of the *Year Books*, see, e.g., Dunham, *supra* note 33; Ives, *The Purpose and Making of the Later Year Books*, 89 LAW Q. REV. 64 (1973); Maitland, *Introduction* to 3 YEAR BOOKS OF EDWARD II at x (Selden Society Vol. 20, 1905); Simpson, *The Circulation of Yearbooks in the Fifteenth Century*, 73 LAW Q. REV. 492 (1957); Simpson, *The Source and Function of the Later Year Books*, 87 LAW Q. REV. 94 (1971); Winfield, *Early Attempts at Reporting Cases*, 40 LAW Q. REV. 316 (1924).

36. Y.B. 2 Edw. 2, pl. 63 (1308-1309), *reprinted in* 17 SELDEN SOC'Y 130 (1903).

37. Maxstoke v. Martyn, Y.B. Trin. 2 Rich. 2, pl. 6 (1378), *reprinted in* 1 AMES FOUNDATION 20, 22 (1975).

38. "He could recite all cases and judgments that had been decided from the time of King William. . . . And he knew every statute completely by heart." G. CHAUCER, *General Prologue* to THE CANTER-

In the fifteenth century, citations to cases by reference to the regnal year and the term became more common. From the middle of the century there is, for example, a reference to "un liver de termes anno 34 Ed. 3."[39] In 1495 Robert Constable states: "Cest loppinion Trin. xj. H. 4."[40] For the most part, however, the citations remained vague.[41]

It was difficult to be more precise. Before the introduction of the printing press, manuscript versions of the *Year Books* varied greatly in their foliation. It was not impossible to cite a work by folio, but it was virtually useless. There were, however, two instances when a citation by folio could be useful: cross references within the same manuscript[42] and references to the plea rolls, for which there was a recognized authoritative version.[43]

At the advent of the printing press, specific citations to cases commonly took the form "T.3.H.4." and citations to statutes, the form "1.E.4.c.7" with varying degrees of abbreviation. It is interesting to note that there is no bibliographic description. The *American National Standard for Bibliographic References* maintains that "[r]eferences to works at the analytic level must always include bibliographic elements that describe the next higher bibliographic level of which it forms a part (monographic or collective level)."[44] Here we have citations that consist of nothing more than chronological and location designations, and yet the collective bibliographic level is perfectly clear, being implicit in the composition and order of the elements in the citation.

The introduction of printing to England ultimately permitted greater precision in citations to treatises and court reports. The printer who had the greatest effect on citation practice was undoubtedly the much maligned, but indefatigable Richard Tottell, who truly had a profound sense of bibliographic control. Tottell, who "[h]ad his name spelt as different as possible,"[45] had a legal monopoly on

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BURY TALES Book I, Lines 323-24, 327. On the identity of Chaucer's serjeant, see J. MANLY, SOME NEW LIGHT ON CHAUCER 147-57 (1926). On the possibility that Chaucer himself had legal training, see Rickert, *Was Chaucer a Student at the Inner Temple?*, in THE MANLY ANNIVERSARY STUDIES IN LANGUAGE AND LITERATURE 20 (1923).

39. Y.B. Hil. 33 Hen. 6, f. 5b, pl. 16 (1455).

40. R. CONSTABLE, PREROGATIVA REGIS 34 (S. Thorne ed. 1949).

41. Hemmant, *Introduction* to SELECT CASES IN THE EXCHEQUER CHAMBER BEFORE ALL THE JUSTICES OF ENGLAND 1377-1461, at lxxxi (Selden Society Vol. 51, 1933); Lewis, *The History of Judicial Precedent* (pt. 3), 47 LAW Q. REV. 411, 411 (1931).

42. For cross references by folio that became part of the case headings, see Richardson, Book Review, 52 LAW Q. REV. 277 (1936). See also Carrell's cross references noted by Professor Baker, *Introduction* to 2 THE REPORTS OF SIR JOHN SPELMAN 23, 166 n.7 (Selden Society Vol. 94, 1977).

43. For example, in *Casus et Judicia* the annotator cites the number of the membrane of the roll: "in secundo folio sancti Hyllarii, anno xxxviii. Suff." CASUS PLACITORUM AND REPORTS OF CASES IN THE KING'S COURTS 1272-1278, at lxxx (Selden Society Vol. 69, 1950).

44. AMERICAN NATIONAL STANDARDS INSTITUTE, ANSI Z39.29-1977, AMERICAN NATIONAL STANDARD FOR BIBLIOGRAPHIC REFERENCES § 4.2 (1977).

45. 2 J. AMES, TYPOGRAPHICAL ANTIQUITIES 806 (W. Herbert ed. London 1786). Not counting misprints and Latinized forms, there are at least four versions of his first name (Richard, Richarde, Rychard, Rycharde) and twelve of his surname (Tathill, Tathille, Tathyll, Totell, Tothill, Tottel, Tottell, Tottil, Tottill, Tottle, Tottyl, Tottyll) in his imprints and licenses. "The spelling of this printer's name is so Protean that we take it as we find it." P. WINFIELD, *supra* note 11, at 228 n.2. His family usually spelled the name "Tothill." Byrom, *Richard Tottell—His Life and Work*, 8 LIBRARY, 4th series, 199, 199 (1928). The varied spellings of his name have proved helpful in identifying different editions of the *Year Books*. Soule, *Year-Book Bibliography*, 14 HARV. L. REV. 557, 562 (1901). It has been speculated that Tottell used some system, but apparently no one has determined what it was.

nonstatutory law printing from 1553 until his death in 1593. He has in recent years been given credit for several practices that he did not in fact originate. He did, however, consolidate, adapt, and integrate earlier practices that had facilitated access and citation, as well as introduce some innovations of his own.

Tottell clearly recognized the difficulty of citing the cases in the *Year Books*. A citation only to the regnal year and the term, without more, required searching all of the cases in that term. So Tottell introduced the practice of numbering the cases or placita within each term.[46] A citation to, say, "H.42.E.3.pl.8" was then very easy to find. It was the eighth case of the Hilary term of 42 Edward III. Tottell even tried to go further. If the citation omitted the term, a reference to the number of the placitum alone required searching all terms of the cited year. So in all of his *Year Books* published in 1584, Tottell tried the experiment of numbering the placita through an entire year. This innovation, however, was apparently not welcomed by the legal profession and was discontinued.[47]

Citations were also facilitated by Tottell's practice of standardizing the foliation[48] of the *Year Books*. He is generally credited with having originated this practice,[49] but it seems clear that its value had been recognized earlier, at least by a few printers. In the *Year Book* of 3 Henry VI, for example, Pynson's two editions do not have the same foliation, but Redman's 1527 edition is consistent with Pynson's 1510 edition.[50] The value of this must not have been generally recognized, for Smyth's edition of around 1546[51] agrees with no previous version, nor does Tottell's first edition.[52] But all of Tottell's editions are consistent with each other.

The decision to maintain consistent foliation probably was not easy to implement. Printing by sections from previously printed versions would be advantageous since each compositor could work on different sections simultaneously. Leaving entire works in standing type for new issues was generally not feasible since the type was more expensive than the labor.[53] Considerable effort must have been required to achieve uniformity. In the editions of the *Year Book* of 3 Henry VI that are consistently foliated, for example, there is only page for page uniformity; word for word and line for line, there are great differences. Spellings differ substantially, spacing is not uniform, and contractions in one version appear fully written out in another. Yet the corresponding folio in each edition begins with the same words. Redman and other printers seem to have previously recognized the value of consistent foliation for citation purposes, but perhaps book buyers failed to see the advantages of it, at least during the first half of the sixteenth century.

In the case of treatises, Tottell also generally maintained consistent foliation. For this he has been severely condemned by B. H. Putnam, who found Tottell's

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46. Plucknett, *Bibliography and Legal History*, 26 PAPERS BIBLIOG. SOC'Y AM. 128, 139 (1932).

47. Soule, *supra* note 45, at 569.

48. A folio is a leaf that may be printed on both sides but is numbered only on the recto. The verso is cited by adding a "b" or a "v" to the number of the recto.

49. Soule, *supra* note 45, at 567; T. PLUCKNETT, EARLY ENGLISH LEGAL LITERATURE 112 (1958).

50. STC 9631, 9631a, 9632. These numbers are from A. POLLARD & G. REDGRAVE, A SHORT-TITLE CATALOGUE OF BOOKS PRINTED IN ENGLAND, SCOTLAND AND IRELAND . . . 1475-1640 (1926).

51. STC 9633.

52. STC 9634.

53. *See* Bowers, *Notes on Standing Type in Elizabethan Printing*, 40 PAPERS BIBLIOG. SOC'Y AM. 205 (1946).

"unintelligent, mechanical method" very offensive and possibly a deceptive trade practice.[54]

> In spite . . . of the reiterated 'newly corrected' on each title-page [of Fitzherbert's *Newe Boke of Justices of the Peas*] from 1543 on, perhaps designed to tempt an unwary purchaser, the later editions are such exact reproductions of the earlier that the same words nearly always reappear on the corresponding portions of the page.[55]

On *The Boke of Justices of Peas*:

> The likenesses between the various Tottell editions are in fact so complete that, as in the case of the various editions of the "Newe Boke," the same words regularly appear on corresponding portions of the pages.[56]

The editions of *The Boke of Justices of Peas* published by Redman (1538?), Berthelet (1539?), Middleton (1544?), Toye (1546), and Waley (1546) are all consistent with the foliation of the 1534 edition by Berthelet, although word for word and line for line there are many differences. Clearly Tottell cannot be given the credit or blame for originating the idea of consistent foliation.

But was it an attempt to deceive the public? As Putnam herself notes, Tottell's editions of the *Newe Boke* published in 1554, 1561, and 1566 all carried on the title page the date 1554, along with the offending phrase "newly corrected."[57] She almost suggests that this was another example of Tottell's inertia. Yet Tottell in each case did change the date (and the spelling of his name) in the colophon at the end of the book. If an effort was being made to deceive potential purchasers of the 1566 edition, why keep 1554 on the title page?

Putnam is disappointed chiefly because Tottell and the other publishers of books for justices of the peace failed to update their works to include new legislation. But perhaps these books were by then considered classics, like *Littleton's Tenures*.[58] When the author was available to revise his own work or when a new edition was clearly identified as such, Tottell did not hesitate to disregard the previous foliation and update the work substantially. The claim in the 1584 edition of *L'Office et Aucthoritie de Justices de Peace* that the work was revised, corrected, and augmented was fully justified.[59]

Tottell's bibliographic awareness is also shown by his integration of the *Year Books* with his new edition of Fitzherbert's *La Graunde Abridgement*, published in 1565. His system is very similar to the West Key Numbers linking the *National Reporters* and the *American Digest*. For example, a lawyer reading placitum 31 of the Easter Term in the *Year Book* 40 Edward III beginning on folio 25b would find, on folio 26, a note in the margin "Triall 43." If he wished to find other cases on the same point, he could turn to Fitzherbert's *Abridgement* to the topic "Triall" in volume 3 at folio 153b. Under "Triall" at casenote or paragraph 43 is a note of "P.40.E.3.25." Under the same topic are notes of other cases, which can easily be

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54. B. PUTNAM, EARLY TREATISES ON THE PRACTICE OF THE JUSTICES OF THE PEACE IN THE FIFTEENTH AND SIXTEENTH CENTURIES 17, 31 n.7 (1924).

55. *Id.* at 17 (footnotes omitted).

56. *Id.* at 31 (footnotes omitted).

57. *Id.* at 17.

58. In 1557 Tottell printed an edition of Littleton's *Tenures* with spurious passages removed. This work was so poorly received that in later editions the spurious passages were reinserted. Wambaugh, *Introduction* to T. LITTLETON, LITTLETON'S TENURES at lxxiv-lxxv (E. Wambaugh ed. 1903).

59. Glazebrook, *Introduction* to A. FITZHERBERT & R. CROMPTON, L'OFFICE ET AUCTHORITIE DE JUSTICES DE PEACE at ix (P. Glazebrook ed. 1972).

found through the citations. After the publication of Brooke's *La Graunde Abridgement* in 1573, references appear in the *Year Books* not only to Fitzherbert and the older Statham, but also to Brooke, with Fitzherbert cited anonymously. Thus a marginal citation to "Issue 145. St. 3 Tryall B.8" indicates that the same point will be found in Fitzherbert under the topic "Issue" at casenote 145, in Statham under "Issue" at casenote 3, and in Brooke under "Tryall" at casenote 8. It is a system that works well when there are no misprints.

Tottell has been given credit for creating this system,[60] but most of it existed before Tottell began printing. The casenotes in Fitzherbert's *Abridgement* had been numbered in the edition of 1514-1516.[61] It has been said that after publishing his edition of Fitzherbert, Tottell then reprinted many *Year Books* with cross references to his Fitzherbert.[62] In fact, such references had been given in *Year Books* many years before Tottell's editions. The 1527 Redman edition of 3 Henry VI, for example, has marginal topics from Fitzherbert, and the Smyth edition of around 1546 has both topics and casenote numbers from Fitzherbert. Tottell did, however, do much to make the system workable by standardizing references and by making the reports and abridgments available in uniform editions.

In 1571 the publication of the nominate reports began with Tottell's edition of Edmund Plowden's *Les Comentaries, ou les Reportes*. T. F. T. Plucknett states: "It is significant that Plowden's book, although actually consisting of reports, is entitled Commentaries."[63] But Plowden, in his prologue, explained why he called his reports *Commentaries*. Some of the reported cases, he wrote, extended over several terms, so he could not make "a dependancye of time" as in the *Year Books*. But a nameless book could not be cited, so he called it his "Commentaries or Reportes, which woorde (Commentarie) in one of his significations hath the sence of a Register, or memorial of acts and sayinges."[64]

So here is apparently the reason why the reports from 1571 to 1865 are cited by the name of the reporter. One set of reports might include cases from several years, with some years not represented at all. The years covered by different series of reports might overlap. The method used for citing the *Year Books* was not workable for citing Plowden and his successors. So ten years later, for example, we find Lambard in his *Eirenarcha* citing "Coment. Plowd. 37" and "Commentar. Plowd. 263" and "Plowd. Com. 475," with occasional references that include the regnal year, such as "18. El. Plow. Com. 474."[65] Sometimes, these reports were cited simply as "Comment' 474."[66]

In 1585 the second important set of nominate reports was published by Tottell—*Cy ensount ascuns nouel cases, Collectes per le iades tresreuerend Iudge, mounsier Iasques Dyer*. J. H. Baker states:

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60. Plucknett, *supra* note 46, at 139.

61. For the history of Fitzherbert's *Abridgement*, see F. BOERSMA, AN INTRODUCTION TO FITZHERBERT'S "ABRIDGEMENT" (1981); Graham & Heckel, *The Book That "Made" the Common Law: The First Printing of Fitzherbert's "La Graunde Abridgement," 1514-1516*, 51 LAW LIBR. J. 100 (1958). *See also* L. ABBOTT, LAW REPORTING IN ENGLAND, 1485-1585, at 20 (1973).

62. T. PLUCKNETT, *supra* note 49, at 112.

63. T. PLUCKNETT, A CONCISE HISTORY OF THE COMMON LAW 280 (5th ed. 1956).

64. Plowd. Comm. prol. (1578). Prologues and prefaces were not reprinted in the *English Reports*.

65. W. LAMBARD, EIRENARCHA: OR THE OFFICE OF THE IUSTICES OF PEACE, IN TWO BOOKS 100, 144, 222, 218 (London 1581). The numbers in the citations to Plowden indicate the folio.

66. *See, e.g.*, A. FITZHERBERT & R. CROMPTON, *supra* note 59, fol. 18.

> The earliest named reports were at first cited in the same way [as *Year Books*], so that 13 Eliz. 300 would be a reference to Dyer. After 1600, Coke's reports acquired the accolade of being cited anonymously (1 Rep., 2 Rep., etc.), so that Dyer had to be distinguished by 'D.' or by a fuller reference.[67]

Almost from the beginning, however, Dyer was often cited in the same manner as Plowden. Swinburne in 1590 cited "Dyer.fol.160."[68] In the 1593 edition of *Loffice & Aucthority de Iustices de Peace* there are citations to "Dier 275" and "Dyer 168."[69] In 1598 Manwood cited "Dyer fol. 169" and "An. 1. & 2. Eliz. Dyer fol. 169.b. placito 1."[70] When Manwood failed to give the regnal year in the citation, he sometimes provided it in the text, but not always.[71] In 1600 Fulbecke cited "4.E.6.68.Dyer" and "19 Eliz. 258. Dyer."[72] In fact, even Coke himself in his first reports published in 1600 cited "P. 3. & 4. Phil. & Mar̄ Dyer fol. 146."[73] Since the years covered by Plowden and Dyer overlapped, the wisdom of indicating the reporter was probably apparent from the beginning.

Wallace maintained that Sir James Dyer's work was the first book regularly called "Reports,"[74] and others have followed him.[75] Since the citations to Dyer seldom include an indication of the title, this assertion is difficult to test. But Plowden commonly referred to his own work as "reports"[76] and, as early as the 1580s, Dalison's reports in manuscript were referred to as "Dalizons reportes" and "Dalison Report."[77] In the catalog of Sir Edward Coke's library, not prepared but closely supervised by him,[78] the word "called" is commonly used to introduce either a citation title or the translation of a title in a foreign language. Among the manuscripts in his library were "Serieant Bendloes reports," "Thurstons 3 books of reports in fol:," and "Bendloes reports in fol:" while among his printed works were "A booke called Plodens Commentaries," "Three volumes of the reports of S^{r} Edward Coke," and "A booke called Kelweyes reports."[79] Coke owned both Dyer's own manuscript and the printed edition of *Cy ensount ascuns nouel cases*, and they are entered as "Foure bookes of the Collection of cases by the lord Dier in fol:" and

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67. Baker, *Sources of English Legal History*, 11 LAW LIBR. 6, 6 (1980). *See also* Baker, *Extract from Notes on English Legal Abbreviations (1971)*, in W. BRYSON, DICTIONARY OF SIGLA AND ABBREVIATIONS TO AND IN LAW BOOKS BEFORE 1607, at 22, 23 (1975).

68. H. SWINBURN, A BRIEFE TREATISE OF TESTAMENTS AND LAST WILLES fol. 216 n.o (London 1590). The author's name is now commonly spelled "Swinburne."

69. A. FITZHERBERT & R. CROMPTON, LOFFICE & AUCTHORITY DE IUSTICES DE PEACE fols. 9, 11 (4th ed. London 1593) (1st ed. London 1583).

70. J. MANWOOD, A TREATISE AND DISCOURSE OF THE LAWES OF THE FORREST fols. 18, 20 (London 1598).

71. *Compare id.* fol. 19b *with id.* fol. 58b.

72. W. FULBECKE, A DIRECTION OR PREPARATIVE TO THE STUDY OF THE LAWE fols. 46b n.h, 50b n.a (London 1600).

73. 1 Co. Rep. 176 (London 1600).

74. J. WALLACE, THE REPORTERS 131-32 (4th ed. rev. and enlarged 1882).

75. *See, e.g.*, M. RADIN, HANDBOOK OF ANGLO-AMERICAN LEGAL HISTORY § 183 (1936); O. WINFIELD, *supra* note 11, at 187.

76. *See* Plowd. Comm. prol. (1578).

77. *See* W. LAMBARD, *supra* note 65, at 217; A. FITZHERBERT & R. CROMPTON, *supra* note 59, at fol. 17b; 3 E. COKE, THE INSTITUTES OF THE LAWS OF ENGLAND 61 (London 1644).

78. Hassall, *Introduction* to A CATALOGUE OF THE LIBRARY OF SIR EDWARD COKE at xi (Yale Law Library Publications No. 12, 1950).

79. *Id.* nos. 330, 347, 349, 394, 397, 412.

"A booke called the Collections of S[r] James Dier."[80] Apparently, in Coke's time Dyer's collection was less likely to be called reports than were the reports of Benloe, Dalison, or Keilwey. And if anyone was knowledgeable about citation practice, it was surely Sir Edward Coke.

Coke lamented that "now in so long arguments with such farrago of authorities, it cannot be but there is much refuse, which ever doth weaken or lessen the weight of the argument."[81] Yet Coke was himself given to excessive citation. In Coke's report of *Calvin's Case*, for example, T. E. Lewis counted 140 case citations, 43 statutory citations, 30 citations of treatises, and sundry other citations to the Bible, Roman writers, registers of writs, and maxims.[82]

Coke cited his own reports as, for example, "Lib. 7. fo. 6.b. Calvins Case."[83] According to Blackstone, these reports were so highly esteemed that they were generally cited without the author's name,[84] usually in the form "7 Rep. 6," although throughout the seventeenth and eighteenth centuries there were citations in the form "7 Co. Rep. 6."[85]

During this period, there was almost none of the modern emphasis on exact transcriptions of title-page titles in citations of reports or treatises. Title-page titles were generally quite lengthy and unsuitable for citation. A work was often cited only by the name of the author or supposed author, if known, and by the first significant words in the title. At times running titles appear to have been a common source for treatise citations, but practices were so unsystematic that it is difficult to generalize.[86]

During the seventeenth century, the practice of placing volume or part (usually "Liber") numbers before the title or the name of the author gradually evolved, although it is impossible to state any date on which the practice became uniform. Placing a numerical designation first was a familiar practice in citations to *Year Books* and statutes by regnal years. It is particularly striking in citations to the *Liber Assisarum*, a collection of cases from the entire reign of Edward III. It was commonly cited by giving the year of Edward III before the title, as "26 Ass. 57" or "26 Lib. Ass. 57." Printers were known for omitting marks of punctuation and transposing numbers,[87] and eventually it probably seemed wiser to separate the volume or part number from the page numbers rather than juxtaposing them

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80. *Id.* nos. 302, 396.

81. 10 Co. Rep. pref. (G. Wilson ed. 1792).

82. Lewis, *The History of Judicial Precedent* (pt. 4), 48 LAW Q. REV. 230, 236 (1932).

83. 3 E. COKE, *supra* note 77, at 11.

84. 1 W. BLACKSTONE, COMMENTARIES *72.

85. Charles Seymour stated that Coke was sometimes cited as "Coo." to avoid confusion with "etc." He had apparently found examples of "et cetera" abbreviated "& co." Seymour, *The Citation of Coke's Reports*, 10 LAW LIBR. J. 66 (1917). This explanation seems unlikely. The common abbreviation for "et cetera" was "&c." using early forms of the ampersand. Authors who use "Coo." also use "Cook." *See, e.g.*, J. COWEL, THE INSTITUTES OF THE LAWES OF ENGLAND 143, 159 (London 1651). This is probably only another example of the variable spellings common in the seventeenth century, such as Dyer, Diar, Dier and Plowden, Ploden. The pronunciation of Coke's name undoubtedly led to this variant.

86. Spine titles may also have been used, but they were very fluid. Unlike most books, law books were commonly sold bound during this period. P. GASKELL, A NEW INTRODUCTION TO BIBLIOGRAPHY 147 (1972). Yet it was very common for owners to have the books rebound to match their other bindings or to display their own coats of arms.

87. J. BISHOP, THE FIRST BOOK OF THE LAW § 507 (Boston 1868); *Citation of the Roman Law*, 15 AM. JURIST & L. MAG. 63, 65 (1836).

separated only by periods, commas, or colons. This practice has, nevertheless, created difficulties in recent efforts to standardize bibliographic references.[88]

One practice that has fortunately not survived, however, was the use of condensed citations, such as "Co. 4, 125a, 8, 42b, 44" or "6. 8. 10. Co. 8. 3. 38," found in the seventeenth century editions of Dyer's reports. The first means 4 Co. 125a, 8 Co. 42b, and 8 Co. 44, and the second 6 Co. 8, 8 Co. 3, and 10 Co. 38. The older use of *ibidem* and *eodem loco* proved more durable.

Coke's great enemy, Sir Francis Bacon, once suggested the appointment of official reporters. Dyer's reports, he said, are "but a kind of note book, and those of my Lord Coke hold too much *de proprio* [of himself]."[89] James I did appoint two reporters, Hetley and Writington, but there is no record of their work, and their appointments were not renewed. Consequently, the number of private reports grew profusely and, in their wake, brought many citation problems.

Determining who the author of a set of reports actually was can be a considerable problem. Professor Baker has estimated that at least half of the pre-1660 *English Reports* are wrongly attributed.[90] Keilwey's reports were first printed in 1602 under the editorship of John Croke and were often cited as "Croke" until Sir George Croke's reports were published a half century later. Then they were cited as "Keilwey's Reports." Recently, it has been discovered that they were probably written by John Carrell.[91]

Sir George Croke's reports themselves presented quite a citation challenge. Between 1657 and 1661, they were published in reverse chronological order, the first volume covering the reign of Charles I, the second James I, and the third Elizabeth. So "1 Cro." was taken to mean the last published volume of reports covering the reign of Elizabeth. Within this volume itself, however, a reference to the first volume naturally meant reports from the reign of Charles. Confusion from the order of publication and from Keilwey's Croke became so great that George Croke's reports came to be cited as "Cro. Eliz.," "Cro. Jac.," and "Cro. Car."[92] Another chronological anomaly is the fact that "Old Benloe" was published twenty-eight years *after* "New Benloe." The reason for the names is apparently that "Old Benloe" circulated in manuscript before "New Benloe" was printed.[93]

Durnford and East's *Term Reports*, published in 1785, marked a new departure for English law reporting. The citation of these reports as "Term Reports" is somewhat mysterious, inasmuch as the authors were known and the words "Term Reports" appeared nowhere on the title page.[94] But these reports were the first effort to report cases in a regular series with each volume published immediately after the end of a term. When East continued the series as "East's Reports" he referred to the preceding series as "Term Reports," and they are still so cited.

From about 1785 to about 1832, certain reports apparently had the privilege of exclusive citation.[95] Judges were simply unwilling to listen to citations to any others.

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88. *See, e.g.*, AMERICAN NATIONAL STANDARDS INSTITUTE, *supra* note 44, § A7.

89. *Quoted in* C. BOWEN, FRANCIS BACON 148 (1963).

90. J. BAKER, *supra* note 18, at 156.

91. Simpson, *Keilwey's Reports, Temp. Henry VII and Henry VIII*, 73 LAW Q. REV. 89, 95 (1957).

92. J. WORRALL, BIBLIOTHECA LEGUM 153 (London 1782) (1st ed. London 1732); J. BISHOP, *supra* note 87, § 498.

93. L. ABBOTT, *supra* note 61, at 84.

94. J. BISHOP, *supra* note 87, § 496.

95. W. HOLDSWORTH, *supra* note 18, at 101-02. *But see* P. WINFIELD, *supra* note 11, at 191.

But the acceptable reports gradually became unreliable and their reporters engaged in monopoly pricing, and so the judges relented in 1832. From 1785 to 1865 certain reporters were also "authorized" in the sense that judges were willing to assist them in preparing reports and in supplying copies of written opinions.[96] Law reporting continued to be unsatisfactory. The authorized reports were expensive, slow, and indiscriminate in their coverage because of a fear that any omissions would increase the popularity of unauthorized reports.[97] So the Incorporated Council of Law Reporting in 1865 undertook the publication of the *Law Reports* as a cooperative and self-supporting enterprise. Because of an earnest belief in free trade, the appointment of official reporters paid by the state was rejected.[98] Despite efforts to the contrary, the principle of exclusive citation was also rejected.[99] The *Law Reports* continue to this day, with substantial competition and not without citation problems.[100]

The *Manual of Legal Citations* of the Institute of Advanced Legal Studies is probably the best general guide to the modern practices of citing cases in the United Kingdom.[101] Published in 1959, it is somewhat dated, but it is recommended in the *Manual of Law Librarianship*, edited by Elizabeth Moys, which is itself a useful guide to current case citation form.[102]

As for statutes, problems had developed with the citation of acts by the regnal year of the parliamentary session in which they received the royal assent. Perhaps borrowing from the bibliographic reference, some attorneys encountered problems because they would declare that a statute had been enacted in, for example, "2 and 3 E. 6." The courts held that an act cannot be passed in two years, and consequently the variance was fatal.[103] On the other hand, one lawyer, perhaps aware of some of these cases, tried to cite an act as 4 Philip and Mary. But Mary had been queen regnant for a year before she married King Philip of Spain, who was made titular King of England. So the first year of Philip was the second year of Mary, and there could be no fourth year of Philip and Mary. The act should have been cited as 4 and 5 Philip and Mary. No less a judge than Lord Mansfield held the citation a fatal variance, although he was apologetic.[104]

Though reform had long been urged,[105] not until 1962 did Parliament enact legislation requiring that its acts be dated in their published form by the calendar year.[106] Parliament has since 1850 also made great efforts to facilitate citation by suggesting formats, by supplying short titles for new acts, and by assigning short

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96. P. WINFIELD, *supra* note 11, at 192. Lewis regards Burrow as the first authorized reporter. Lewis, *supra* note 82, at 230.

97. W. DANIEL, THE HISTORY AND ORIGIN OF THE LAW REPORTS 37 (1884).

98. J. DAWSON, *supra* note 16, at 82.

99. Lindley, *The History of the Law Reports*, 1 LAW Q. REV. 137, 142-43 (1885).

100. Kavanaugh, *The Citation of Reports*, 21 N.Z.L.J. 174 (1945).

101. INSTITUTE OF ADVANCED LEGAL STUDIES, UNIVERSITY OF LONDON, MANUAL OF LEGAL CITATIONS (1959).

102. MANUAL OF LAW LIBRARIANSHIP 161 (E. Moys ed. 1976).

103. Gibbs v. Pike, 151 Eng. Rep. 1019 (Ex. 1841); The King v. Biers, 110 Eng. Rep. 1230 (K.B. 1834); Nutt v. Stedman, 92 Eng. Rep. 897 (K.B. 1735); Langley v. Haynes, 72 Eng. Rep. 594 (Ex. 1591); Partridge v. Strange, 75 Eng. Rep. 123, 125, 133 (C.P. 1553).

104. Rann v. Green, 98 Eng. Rep. 1194 (K.B. 1776).

105. See the delightful article by C. T. Carr, *Citation of Statutes: The Mansfield Park Standard*, in CAMBRIDGE LEGAL ESSAYS 71 (1926).

106. Acts of Parliament Numbering and Citation Act, 1962, 10 & 11 Eliz. 2, ch. 34, § 1.

titles retrospectively.[107] The forms suggested for statutes are entirely discretionary, as are those for Statutory Instruments.[108]

III. AMERICAN PRACTICES

From the beginning the American colonists followed English citation practices. The colonists were familiar with English practice, not only from their own experiences in England, but also from imported English legal works. As early as November 11, 1647, the Massachusetts General Court voted to procure for its use the following twelve books: "Two of Sir Edward Cooke upon Littleton; two of the Books of Entryes; two of Sir Edward Cooke upon Magna Charta; two of the Newe Tearmes of the Law; two Daltons Iustice of Peace; two of Sir Edward Cooks Reports."[109] Few available works would have provided as thorough an introduction to English citation methods as those of Sir Edward Coke.

Although colonial laws were usually organized by the English regnal year, American statutes cited by the regnal year alone might have been mistaken for English statutes, which were also frequently cited. So the practice developed of citing colonial statutes in a simple form giving the name of the colony and the page in the printed work, such as "Laws of Virginia pag. 437."[110] With a few scattered exceptions, American court reporting did not begin until after the American Revolution.[111]

The first regular reports to be published in America were either Kirby's reports for Connecticut or Hopkinson's admiralty judgments of Pennsylvania, both published in 1789.[112] Kirby's work, the first volume of regular state reports, was not published by official sanction, although the state legislature did purchase 350 copies.[113] Reports for other states—Massachusetts, New York, Pennsylvania, North Carolina, South Carolina, and Virginia—soon followed. The preference for citation of these reports by the name of the reporter was very pronounced; any personal name seemed preferable to the title. When the *Constitutional Reports* were published in South Carolina, no reporter's name was provided on the title page, so they were cited by the names of the publishers, W. R. H. Treadway (1812-1816) and John Mill (1817-1818).

From the beginning, however, there were significant divergences from English court reporting. Early statutes in some states required that judges put their opinions in writing,[114] and in Kentucky such a provision was even part of the state constitu-

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107. *See* Statute Law Revision Act, 1948, 11 & 12 Geo. 6, ch. 62; Short Titles Act, 1896, 59 & 60 Vict., ch. 14; Short Titles Act, 1892, 55 Vict., ch. 10; Interpretation Act, 1889, 52 & 53 Vict., ch. 63; An Act for Shortening the Language used in Acts of Parliament, 1850, 13 & 14 Vict., ch. 21.

108. Statutory Instruments Act, 1946, 9 & 10 Geo. 6, ch. 36, § 2(2).

109. 2 RECORDS OF THE GOVERNOR AND COMPANY OF THE MASSACHUSETTS BAY IN NEW ENGLAND 212 (N. Shurtleff ed. Boston 1853) (abbreviations expanded).

110. G. WEBB, THE OFFICE AND AUTHORITY OF A JUSTICE OF PEACE 37 (Williamsburg 1736).

111. L. FRIEDMAN, A HISTORY OF AMERICAN LAW 282 (1973).

112. J. WALLACE, *supra* note 74, at 571 n.2. Hopkinson reported federal questions heard in the state courts, and his reports are sometimes classified as state reports, sometimes as federal. It is now generally thought that Hopkinson's reports were published before Kirby's. *See* Ritz, *The Francis Hopkinson Law Reports: The Originals and The Reprints*, 74 LAW LIBR. J. 298, 299 (1981).

113. C. SOULE, THE LAWYER'S REFERENCE MANUAL OF LAW BOOKS AND CITATIONS 18 (1883).

114. *E.g.*, An Act for constituting and regulating Courts and appointing the Times and Places for holding the same, CONN. ACTS AND LAWS ¶ 41, at 129 (1796); An act to provide for reporting the decisions of the supreme court of judicature, and for other purposes, ch. 4, 1827 Vt. Acts 6.

tion.[115] In such jurisdictions, the demands on the court reporter were considerably less than in English courts.

An even more significant innovation began in 1804, when Massachusetts provided for an official reporter to be appointed by the Governor.[116] Other states made similar provisions.[117] As a rule, the reporter was compensated partly by salary and partly by the profits from the sales of reports. American lawyers immediately recognized the value of their new official reports.[118]

Even after the status of the reporter became official, reports usually continued to be cited by the name of the reporter. Before 1830, only the reports of Connecticut, Massachusetts, Missouri, New Hampshire, Ohio, and Vermont (with some variations) were cited by title. In the 1830s, the reports of Arkansas and Maine began to be cited by title. The pace of change accelerated in the 1840s, when seven more states joined the list, with eight more in the 1850s.[119]

The change to citing reports by title is not easy to explain. Frederick Hicks noted the effects on court reporters of the 1834 United States Supreme Court decision in *Wheaton v. Peters*,[120] in which the Court held that reporters could have no copyright in the written opinions of a court.[121] Reporters, previously compensated at least partly by the sales of their reports, now had to be fully compensated by salary because competing reports were reducing their profits. Reporters became full-fledged state officers, and courts began to insist on citation only to official reports, in order to encourage their sales.

Finding any correlation between the status of reporters, their salaries, the *Wheaton* decision, and the adoption of the title as the preferred form of citation is, however, difficult. The sequence of these elements varied greatly from state to state, probably depending on local conditions such as the profitability of alternative court reports. The change to titles that included the name of the state was in some cases mandated by the state legislature.[122] In other cases the change was adopted by the judges of the state supreme courts or by the court reporter.[123]

Probably an important factor in the decision to change the name of a series of reports from that of the reporter to that of the state was the multiplicity of reports. Complaints about the number of law books have been common ever since at least

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115. Dietzman, *The Kentucky Law Reports and Reporters*, 16 KY. L.J. 16, 16 (1927).

116. An Act Providing for the Appointment of a Reporter of Decisions in the Supreme Judicial Court, ch. 133, 1803 Mass. Acts 735.

117. *E.g.*, An Act establishing a Supreme Judicial Court within this State, ch. 17, § 9, 1820 Me. Laws 18; An Act, to provide for reporting the decisions of the Supreme Court of judicature, ch. 12, 1823 Vt. Acts 9. *See also* Dietzman, *supra* note 115, at 17-23.

118. *See, e.g.*, Book Review, 7 AM. JURIST & L. MAG. 261, 266 (1832).

119. It is difficult to assign exact dates to these changes. Unofficial and official practices and in-state and out-of-state practices often did not coincide. Some reports, cited by title, later reverted to citation by the name of the reporter.

120. Wheaton v. Peters, 33 U.S. (8 Pet.) 591 (1834). The Court's remarks were reaffirmed in Banks v. Manchester, 128 U.S. 244 (1888). There was no doubt that reporters held copyrights in their headnotes. *E.g.*, Little v. Gould, 15 F. Cas. 612 (C.C.N.D.N.Y. 1852) (No. 8,395).

121. F. HICKS, MATERIALS AND METHODS OF LEGAL RESEARCH 139 (3d rev. ed. 1942).

122. *See, e.g.*, Resolve . . . establishing the title of said Reports, ch. 72, 1836 Me. Acts 83, 84; An Act in Relation to the Reports of the Decisions of the Supreme Judicial Court, ch. 239, 1867 Mass. Acts 630.

123. *See Advertisement*, 4 Ga. at v (1848); *Memorandum*, 11 Ill. at iii (1850); *Preface*, 23 Miss. at v (1851); *Preface* 63 N.C. 12 (1869).

the time of Sir Edward Coke. In his report of *Twyne's Case* in 1601, Coke had quoted a couplet:

> Quaeritur, ut crescunt tot magna volumina legis?
> In promptu causa est, crescit in orbe dolus.[124]

But in the middle of the nineteenth century, the problem did seem acute. In 1829 the reviewer of Day's *Connecticut Reports* noted the frequency of complaints about the number of legal works and the fact that there were now fifteen to twenty reporters in the United States "indefatigably making law books."[125] Citation by the reporters' names probably seemed inadequate. Even so knowledgeable an authority as Wallace could mistake a citation to a treatise for a reference to a report.[126] Announcements of official changes in the titles of reports emphasized the need to maintain a continuous title despite a change in reporter.[127] A consistent title would make control of the growing number of reports much easier.

Among the later reports to be cited by title were those of the United States Supreme Court. It is difficult to ascertain how Dallas and Cranch were appointed, but they were apparently paid no salary.[128] After the poor sales of Wheaton's first volume, Congress decided in 1817 to establish the office of Supreme Court Reporter with an annual salary of $1000.[129] Nevertheless, these reports continued to be cited by the name of the reporter until 1875. In that year, a label with "United States Reports" was added above the volume number on the spine, where the reporter's name had been. Writing eight years later, Charles Soule stated that changing the method of citation was the obvious intention of the labeling change.[130] Force of habit, however, induced many writers to cite the new reports as "1 Otto," but, according to Soule, "the best writers and the courts are citing them as '91 U. S.'"[131]

An interesting question, not irrelevant in some discussions of library cataloging, is what it is we are citing when we cite reports as "U.S." or "Ga.," for example. Do these abbreviations represent the title, or the court as corporate emanator, or the jurisdiction as the subject of the reports? All three views can be found,[132] and there is probably no certain answer. It seems, however, that historically these abbreviations evolved from the title. Writing in 1868, Joel Prentiss Bishop said that in citing nominate reports, "some writers always add *R.* or *Rep.* to signify the word Reports; but this is clearly unnecessary, while it is not customary among those who are par-

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124. Twyne's Case, 76 Eng. Rep. 809, 815 (Star Ch. 1601). Unpoetically: "It is asked, why do the great volumes of the law increase so much? Obviously, the reason is the growth of deception in the world."

125. Book Review, 2 AM. JURIST & L. MAG. 232, 232 (1829). *See also* 2 D. HOFFMAN, A COURSE OF LEGAL STUDY 657 (2d ed. Baltimore 1836) (1st ed. Baltimore 1817) ("More than four hundred and fifty volumes of American law reports now load our shelves!"); Story, *An Address Delivered Before the Members of the Suffolk Bar . . .*, 1 AM. JURIST & L. MAG. 1, 31 (1829) ("The mass of the law is, to be sure, accumulating with an almost incredible rapidity . . . .").

126. J. WALLACE, *supra* note 74, at 17 n.1.

127. See references, *supra* note 123.

128. J. MARKE, VIGNETTES OF LEGAL HISTORY 56 (1965).

129. An Act to provide for reports of the decisions of the Supreme Court, ch. 63, 3 Stat. 376 (1817).

130. C. SOULE, *supra* note 113, at 4.

131. *Id.*

132. *See, e.g., id.* at 33 ("citing . . . by the name of the state"); M. PRICE & H. BITNER, EFFECTIVE LEGAL RESEARCH 116 (1st ed. 1953) ("cited by a title"); F. HICKS, *supra* note 121, at 140 ("cited by the title"); Marion & Kwan, *The Anglo-American Cataloging Rules 2d Edition*, 71 LAW LIBR. J. 598, 605 (1978) ("cited by the name of the court").

ticular about things of the sort."[133] It seems likely, therefore, that this practice carried over to the later reports, and that "Ga." would otherwise have been abbreviated "Ga. Rep.," understood to be the title. Books of abbreviations would expand the abbreviation to "Georgia Reports," not "Georgia Supreme Court" or "Georgia's Reports."

As for statutes, American legislatures have been somewhat less interested in facilitating citation than the British Parliament. Nevertheless, over five hundred sections of the *United States Code* have recommended citation titles, and state legislatures frequently provide short titles for the citation of statutes. Such forms appear to be discretionary for the most part. It is odd, however, that in most states of the United States a writer may cite the *Uniform Commercial Code* by any method, but anyone who knows it by another name is violating the law.[134]

Legislatures sometimes enact codified versions of statutes into positive law, making the code authoritative for the language of the law for the purpose of citation.[135] But the effect of such enactments is not at all clear. Where the language of the codified version of Title 28 of the *United States Code* enacted into positive law differed from earlier versions, the Supreme Court held that the earlier versions were authoritative unless Congress clearly intended to change the law.[136]

Courts frequently insist on citation to certain reporters and to particular versions of statutes, usually those published by the court or the government.[137] At least historically, the intention probably was to encourage the sales of official reports and codes. A violation, even flagrant, of these citation rules in briefs has generally not prevented the court from considering the arguments in the brief.[138] The most serious penalty is usually to consider such defects a factor in the attorney's compensation or to refuse to grant costs to the party represented by the offending attorney.[139]

IV. CITATION MANUALS

A uniform method of citation is facilitated by the general availability of manuals that outline accepted practices. The earliest such manual may have been the *Modus Legendi Abbreviaturas in Utroque Iure*,[140] an apparently very popular guide to citations in civil and canon law published in many editions in the fifteenth and sixteenth centuries.

Legal citation manuals, however, were rare before the twentieth century. A simple one consisting of only nineteen short rules was published by the Reporter of the

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133. J. BISHOP, *supra* note 87, § 512.

134. U.C.C. § 1-101 (1972) ("This Act shall be known and may be cited as the Uniform Commercial Code.") This formula has been widely used. *See, e.g.*, California Desert Native Plants Act, ch. 443, 1979 Cal. Stats. 1575, 1576 ("This division shall be known and may be cited as the California Desert Native Plants Act."); Water and Sewer System Regulatory Law, ch. 71-278, 1971 Fla. Laws 1415, 1416 ("This law shall be known and may be cited as the 'Water and Sewer System Regulatory Law.' ").

135. A UNIFORM SYSTEM OF CITATION rule 12:3:1 (12th ed. 1976).

136. Fourco Glass Co. v. Transmirra Prods. Corp., 353 U.S. 222, 227 (1957).

137. See list in Gjerdingen, Book Review, 4 WM. MITCHELL L. REV. 499, 499 n.2 (1978).

138. Frith v. State, 263 Ind. 100, 104, 325 N.E.2d 186, 189 (1975).

139. *See, e.g., id.*; Mooney v. Rosenberg, 226 App. Div. 767, 767, 235 N.Y.S. 840, 840-41 (1929).

140. MODUS LEGENDI ABBREVIATURAS IN UTROQUE IURE (n.p. 1475?) (Library of Congress copy bound with T. AQUINAS, QUAESTIONES DE POTENTIA DEI).

Nebraska Supreme Court in the 1890s.[141] In the early twentieth century, the Judge Advocate General's office also compiled a citation manual.[142]

A Uniform System of Citation, first published in 1926,[143] has been called the "pioneer" manual,[144] the "Bible,"[145] the "final arbiter,"[146] even the "Kama Sutra"[147] of legal citation. It codified practices previously in general use, but with some modifications that had been developed by the editors of the *Harvard Law Review*. For example, the use of large and small capital letters had developed shortly before World War I. At first the editors of the *Harvard Law Review* used them only in referring to their journal; gradually the practice was extended to titles of books and journals in editorial notes and, finally, by 1915, to such citations in all articles. During the same period, the use of abbreviations in citations to monographs was greatly reduced, with such citations as "Gray, Rule Perp." being eliminated.

After *A Uniform System* was first published, it was not by any means adopted immediately by other academic law journals. In fact, much evidence suggests that the manual was not widely adopted until the 1930s. The first copy owned by the Library of Congress was the fourth edition, published in 1934 and acquired in 1936.[148] The sixth edition of 1939, the first to have blue covers,[149] was also the first to be generally recommended in legal bibliography texts.[150] Published by the Harvard Law Review Association on behalf of the law reviews at Harvard, Yale, Columbia, and Pennyslvania (a relationship that has not always been harmonious[151]), it is now commonly called the "Blue Book" or the "Harvard Citator," and is used by nearly all academic law reviews. Its forms have also been adopted by at least four state courts,[152] although its use is not usually mandatory.

Publishers of law books generally do not use the "Harvard Citator" and prefer instead to employ citation formats that facilitate the use of their other publications. The bar has not always been happy with the "Harvard Citator." Justice Frankfurter refused to comply with it for an article published in the *Harvard Law Review* in 1955.[153] In particular he insisted on citing early *United States Reports* solely by the

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141. *Rules for Citations*, 30 AM. L. REV. 107 (1896). There were several guides to citation format, mostly enumerative, such as J. BISHOP, *supra* note 87, §§ 557-608.

142. Ruppenthal, *Methods of Citing Statute Law*, 12 LAW LIBR. J. 1 (1919).

143. A UNIFORM SYSTEM OF CITATION (1st ed. 1926). A related publication of the Harvard Law Review Association was the guide to citing American statutes, published at least from the 1950s to 1976, when the twelfth edition of the "Blue Book" made it unnecessary. The title varied somewhat: *Citations to Current American Statutory Compilations, Citations to American Statutory Compilations, State Statutory Codifications.*

144. M. PRICE, A PRACTICAL MANUAL OF STANDARD LEGAL CITATIONS at iv (1st ed. 1950).

145. Jacobson, Book Review, 43 BROOKLYN L. REV. 826, 826 (1977).

146. Strasser, Book Review, 12 HARV. C.R.-C.L. L. REV. 507, 507 (1977).

147. Lushing, Book Review, 67 COLUM. L. REV. 599, 599 (1967).

148. According to internal serials records at the Library of Congress.

149. Strasser, *supra* note 146, at 508.

150. R. NOTZ, LEGAL BIBLIOGRAPHY AND LEGAL RESEARCH 12 (2d ed. 1947). In fact, the N.Y.U. Law Library catalog states: "Published originally in 1939 by Harvard Law Review Association, it is now in its eighth edition." A CATALOGUE OF THE LAW COLLECTION AT NEW YORK UNIVERSITY WITH SELECTED ANNOTATIONS 1198 (J. Marke ed. 1953).

151. *See* Crock, *Blue Book Turns Crimson Green*, Colum. L. Sch. News, Oct. 28, 1974, at 1, col. 1.

152. DEL. SUP. CT. R. 14(g); FLA. R. APP. P. 9.800(m); IND. R. APP. P. 8.2(B)(2); ORE. R. APP. P. 7.22, app. G.

153. F. WIENER, BRIEFING AND ARGUING FEDERAL APPEALS 229 (1967).

name of the reporter.[154] Frederick Bernays Wiener wrote that, with the 1954 edition of *A Uniform System*, "the law reviews in important respects turned their backs on professional tradition, and marched off in a different direction all their own."[155] Like Justice Frankfurter, he particularly objected to the "thoroughly abominable" practice of providing parenthetical parallel citations to the nominate *United States Reports*.

The "Harvard Citator" is generally recommended by non-law citation manuals for legal citations,[156] but there are some exceptions. In *A Handbook for Scholars*, Mary-Claire van Leunen says that "[t]he forms described in *A Uniform System* are slick, sophisticated, clean as a whistle—and utterly unsuited to lay use."[157]

A common problem in legal citations appearing in non-legal works is determining what is a "legal publication" and what is a "government publication" or some other kind of "non-legal" publication to be cited in non-legal format.[158] In the absence of any other indications, the general practice seems to be to regard statutes, codes, court and administrative decisions, and administrative rules and regulations as "legal publications" for the purpose of citation.[159] Practices with regard to other types of publications vary considerably. Another problem with the "Harvard Citator" is the absence of a form for legal works to be listed in bibliographies. Suggested forms for legal publications are occasionally provided in general style manuals, although they are sometimes not very satisfactory for alphabetically arranged lists of legal works.[160]

One consequence of the widespread acceptance of the "Harvard Citator" has been the creation of a system, in effect, of exclusive citation, in which the citation practice of the *Harvard Law Review* staff strongly influences the sales of law books. Uniformity of citation and ease of access no doubt require that certain publications be generally preferred, but the effects are very pronounced. The demise of *Indiana Decisions*, for example, can be attributed at least in part to the inability of anyone using the "Blue Book" to cite it.

There have been few other general legal citation manuals. The chief alternative has been Miles Price's *Practical Manual of Standard Legal Citations*. In the late 1940s, complaints about the "Harvard Citator" were frequent, especially among practitioners and beginning law students. In the course of preparing *Effective Legal Research* along with Harry Bitner, Price developed a citation manual, which was separately published in 1950, with a second edition in 1958. He based it primarily on citation practices found in briefs.[161] His manual is notable for its clarity and its emphasis on explanations and analysis of court practices. According to Price, it was widely adopted in legal writing courses and by the bar.[162] The manual in an abridged

154. *See* Frankfurter, *John Marshall and the Judicial Function*, 69 HARV. L. REV. 217 (1955).

155. F. WIENER, *supra* note 153, at 223.

156. *See* MLA HANDBOOK § 32s (1977); K. TURABIAN, A MANUAL FOR WRITERS ¶ 6.122 (4th ed. 1973); UNIVERSITY OF CHICAGO PRESS, A MANUAL OF STYLE ¶ 15.140 (12th ed. rev. 1969). The latter only recommends the use of *A Uniform System* "in a predominantly legal work" without specifying a form for use in non-legal works.

157. M. VAN LEUNEN, *supra* note 4, at 214.

158. *See, e.g.*, Gallagher & Oliver, *Questions and Answers*, 51 LAW LIBR. J. 144, 146-47 (1958).

159. *See, e.g.*, G. BRIGHTBILL & W. MAXSON, CITATION MANUAL FOR UNITED STATES GOVERNMENT PUBLICATIONS at iv (1974).

160. *See, e.g.*, MLA HANDBOOK § 42s (1977).

161. M. PRICE, *supra* note 144, at iv.

162. Letter from M. Price to Legal Bibliography Teachers (July 12, 1956) (available from author).

form is still included in the latest edition of *Effective Legal Research*.[163]

Other citation manuals have been prepared for typewritten work,[164] for briefs,[165] and for educational purposes.[166] Several have been published that address citation problems in particular jurisdictions.[167] Manuals have also been developed for citations to international law materials[168] and government publications.[169] Nevertheless, the "Harvard Citator" remains the primary citation manual for general use, as is often recognized in other manuals.[170]

V. TABLES OF ABBREVIATIONS

Before the invention of the printing press, abbreviations were used extensively by writers and copyists. Abbreviations were extended to bibliographic references, where they have remained ever since. According to Charles Soule, "[t]he very idea of abbreviation implies a certain amount of intelligence and information in both writer and reader."[171] Abbreviation saves the labor of writers and printers and the expenses of buyers of books,[172] but the use of abbreviations is a barrier to the uninitiated[173] and has been criticized by some writers.[174]

The difficulties created by abbreviated citations are somewhat mitigated by the availability of lists of abbreviations intended to aid readers. Such lists are by definition not prescriptive: they include multiple entries for each title where necessary. A list of abbreviations with only one entry for each title in fact should be regarded as a citation guide rather than a reader aid, though such a list can occasionally be useful to readers.[175]

Although *Modus Legendi Abbreviaturas* was perhaps the first reader's aid to

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163. M. PRICE, H. BITNER & S. BYSIEWICZ, EFFECTIVE LEGAL RESEARCH 469 (4th ed. 1979). The abridgment has been reworked and improved in the latest edition, but it is still based on the 1958 manual and is somewhat dated, as in references to British session laws at § 32.9(2)(a).

164. J. JACOBSTEIN & R. MERSKY, FUNDAMENTALS OF LEGAL RESEARCH 507 (1977). Although relatively brief, this guide covers some points omitted from the "Harvard Citator."

165. E. RE, *supra* note 2, at 215; TEXAS ATTORNEY GENERAL'S OFFICE, UNIFORM CITATIONS FOR OPINIONS AND BRIEFS (1967).

166. E. RE, CITATION OF AUTHORITIES IN LEGAL WRITING (2d rev. 1956).

167. R. FORMICHI, CALIFORNIA STYLE MANUAL (2d rev. ed. 1977); B. GIRTMAN, COURTS, REPORTS, AND DIGESTS (1979) (for Florida); ST. JOHN'S LAW REVIEW, NEW YORK RULES OF CITATION (1978); TEXAS LAW REVIEW, TEXAS RULES OF FORM (4th ed. 1977).

168. *International and Foreign Law Citator*, 6 VA. J. INT'L L. app. (1966); *Draft Selections: A.S.I.L.S. International Law Citation Manual*, 2 ASILS INT'L L.J. 53 (1978). For the United Nations, see DAG HAMMERSKJOLD LIBRARY, UNITED NATIONS, BIBLIOGRAPHICAL STYLE MANUAL, U.N. Doc. ST/LIB/SER.B/8 (1963); U.N. SECRETARIAT, EDITORIAL DIRECTIVE, FOOTNOTES AND OTHER REFERENCES, U.N. Doc. ST/CS/SER.A/14 (1973); P. HAJNAL, GUIDE TO UNITED NATIONS ORGANIZATION, DOCUMENTATION & PUBLISHING 187-200 (1978); M. ROTHMAN, CITATION RULES AND FORMS FOR UNITED NATIONS DOCUMENTS AND PUBLICATIONS (1971).

169. G. BRIGHTBILL & W. MAXSON, *supra* note 159.

170. *See, e.g.*, TEXAS LAW REVIEW, *supra* note 167, at 4; J. JACOBSTEIN & R. MERSKY, *supra* note 164, at 508.

171. C. SOULE, *supra* note 113, at 2.

172. J. BISHOP, *supra* note 87, § 502.

173. M. KINNEY, BIBLIOGRAPHICAL STYLE MANUALS 1 (ACRL Monographs No. 8, 1953).

174. G. BRIGHTBILL & W. MAXSON, *supra* note 159, at iii.

175. It is said of the lists of abbreviations cited in the *Manual of Law Librarianship*, *supra* note 102, at 162, that "none has attempted to give more than one form of an abbreviation for a specific report." But several of the lists cited there do have multiple entries.

deciphering legal citations,[176] the first list of English legal citation abbreviations intended for general use was not published until the eighteenth century. Some earlier works did contain guides to the abbreviations found in them. The introduction to the 1688 edition of Dyer's reports, for example, contained a page of abbreviations found in the reports.[177] Apparently, the first list of abbreviations intended for general reference purposes was that added to the 1763 edition of John Worrall's *Bibliotheca Legum*.[178] Worrall's list has one characteristic that has continued to the present: the definitions of the abbreviations provide, not the title-page title of the work, but what might be called its citation title, the title by which the work was popularly known. "Stamf. Pr." is, for example, expanded to "Stamforde Prerog." although the title is *An Exposicion of the Kinges Prerogatiue collected out of the Great Abridgement of Justice Fitzherbert and Other Olde Writers of the Lawes of England*. With the added complication that the author's name is now generally spelled "Stanford," a search for this work is an automated library catalog could be difficult if the reader's only information is the citation.

The second list of abbreviations for general use was probably that of William Reed, who clearly used Worrall's list, but added much new information.[179] The third was included in John Clarke's catalog of law books published in 1810.[180] Clarke used the works of Worrall and Reed very extensively and added little. Many lists of abbreviations have been published in the United Kingdom since then,[181] including a separately published list compiled by Arthur Cane for the Incorporated Council of Law Reporting in 1895.[182]

In America, John Marvin included a guide to abbreviations in his 1847 list of American and British law books.[183] In 1879, Henry Bischoff published the first work devoted entirely to abbreviations.[184] Charles Soule, who had included a very extensive table of abbreviations in *The Lawyer's Reference Manual*, published in 1883,[185] issued the abbreviations separately in 1897 because the revision of the *Manual* for a second edition (which was never published) was going slowly and the list of abbreviations constituted "that portion of the manual which is most constantly need-

176. MODUS LEGENDI ABBREVIATURAS IN UTROQUE IURE, *supra* note 140.

177. Dy. Rep. pref. (G. Treby ed. London 1688).

178. J. WORRALL, BIBLIOTHECA LEGUM (London 1763) (1st ed. London 1732). William Friend wrote that the first edition of Worrall to include a list of abbreviations was the twelfth edition published in 1768. Friend, *A Survey of Anglo-American Legal Bibliography*, 33 LAW LIBR. J. 1, 4 (1940); W. FRIEND, ANGLO-AMERICAN LEGAL BIBLIOGRAPHIES 13 (1944). There is, however, a four-page list in the 1763 edition, expanded to five and six pages in later editions. The preface to the 1763 edition oddly does not mention the abbreviations, but the preface to the 1768 edition states: "I have also made some Improvements in this Edition, and explained many Abbreviations cited for Authors Names . . . ."

179. W. REED, BIBLIOTHECA NOVA LEGUM ANGLIAE (London 1809) (1st ed. London 1808). The 1808 edition had no table of abbreviations.

180. J. CLARKE, CLARKE'S BIBLIOTHECA LEGUM (London [1810]).

181. See the works recommended in MANUAL OF LAW LIBRARIANSHIP, *supra* note 102, at 161.

182. Cane, *Citation Table*, in TABLES, ALPHABETICAL AND CHRONOLOGICAL, OF ALL REPORTS 32-45 (1895). The latest British dictionary of legal abbreviations is D. RAISTRICK, INDEX TO LEGAL CITATIONS AND ABBREVIATIONS (1981).

183. J. MARVIN, LEGAL BIBLIOGRAPHY 1-46 (Philadelphia 1847).

184. H. BISCHOFF, ABBREVIATIONS AND CITATIONS OF AUTHORITIES TO ALL THE AMERICAN REPORTS, REPORTERS AND TEXT BOOKS (New York 1879). Bischoff clearly used earlier works but added some findings of his own.

185. C. SOULE, *supra* note 113, at 345-497.

ed."[186] In 1911, W. T. Rogers reissued Soule's work with additions to the date of publication.[187]

Almost as soon as it is published, a list of abbreviations is out-of-date. In 1918, Lawrence Schmehl, who was to compile the list of abbreviations included in Hicks' *Materials and Methods of Legal Research*,[188] proposed that the *Law Library Journal* publish occasional lists of newly developed abbreviations in an attempt to fix the forms,[189] but nothing came of his suggestion. The absence of a generally recognized citation style manual probably deprived the *Journal* or any other publication of the authority necessary to establish abbreviation forms.

Among recent American publications listing legal abbreviations, the table in the first edition of Price and Bitner's *Effective Legal Research* is very useful,[190] and most of the current legal bibliography books contain lists of abbreviations.[191] The latest separately published American work devoted entirely to abbreviations is Doris Bieber's *Dictionary of Legal Abbreviations*, a useful work consolidating several earlier lists.[192]

The Legal Citation Directory by Marion Powers is unique.[193] It covers only federal and state reports and attorney general opinions published in the United States. For those who can decipher its sometimes complex format, it provides not only a list of abbreviations, but also a guide to the forms used by law reviews and by courts in the jurisdictions for which the reports are published. It is, in other words, an aid for both readers and writers. Powers includes many abbreviations defined nowhere else.

Another useful list is that included in *Black's Law Dictionary*, which was incorporated by reference into the twelfth edition of *A Uniform System of Citation* for state reports. The criterion was to use the "shortest unambiguous form" found in *Black's* for state court reports.[194]

Among general guides to periodical abbreviations, *Periodical Title Abbreviations* has limited usefulness because its abbreviations for legal publications are taken from those used by the *Index to Legal Periodicals*.[195] The *Index to Legal Periodicals*, along with *Black's Law Dictionary, Effective Legal Research*, and the "Harvard Citator," is recommended as a source of abbreviations in Mary Kinney's *Abbreviated Citation*, but she notes that "no work examined has adopted the abbreviated periodical titles used in this index."[196]

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186. C. SOULE, ABBREVIATIONS USED IN LAW BOOKS at iii (1897). Abbreviations current after 1883 are listed separately at v-vii.

187. C. SOULE, LEGAL ABBREVIATIONS (W. Rogers ed. 1911).

188. F. HICKS, MATERIALS AND METHODS OF LEGAL RESEARCH 424-532 (1st ed. 1923).

189. Schmehl, *Citations of Current Legal Periodicals and Reports*, 11 LAW LIBR. J. 60 (1918).

190. M. PRICE & H. BITNER, EFFECTIVE LEGAL RESEARCH 511-620 (1953).

191. J. JACOBSTEIN & R. MERSKY, *supra* note 164, at 584-649; M. PRICE, H. BITNER & S. BYSIEWICZ, *supra* note 163, at 525-617.

192. D. BIEBER, DICTIONARY OF LEGAL ABBREVIATIONS USED IN AMERICAN LAW BOOKS (1979). This should not be confused with the *Dictionary of Current American Legal Citations* (1981) by the same author. The latter work is a very useful guide to "Harvard Citator" practice with citation forms provided for each title listed.

193. M. POWERS, THE LEGAL CITATION DIRECTORY (1971).

194. A UNIFORM SYSTEM OF CITATION rule 10:3:1 (12th ed. 1976).

195. 1 PERIODICAL TITLE ABBREVIATIONS at xviii (L. Alkire 3d ed. 1981).

196. M. KINNEY, THE ABBREVIATED CITATION—A BIBLIOGRAPHICAL PROBLEM 28 (ACRL Monographs No. 28, 1967).

Modern lists of abbreviations reflect changing patterns of citation, even though such lists are usually derived in part from earlier lists. Standardized spelling has led most compilers of current lists to omit variants that were common earlier, such as "Coo." and "Di." for Coke and Dyer. During the mid-nineteenth century, the tendency to reduce the use of abbreviations was lamented by Joel Prentiss Bishop, who noted that new citation forms would never displace the forms found in older books that continue to be used.[197] In the 1890s, the Reporter of the Nebraska Supreme Court required that citations to monographs avoid abbreviations,[198] a policy adopted by the *Harvard Law Review* staff before the end of World War I. Consequently, current lists of abbreviations include fewer abbreviations for monographs. But the problem noted by Bishop in 1868 remains true today: our older citations we shall always have with us.

Even newer citations can cause problems, despite all the citation dictionaries now available. Some, like "MULL," create difficulties because they are commonly omitted from abbreviations lists; others, like "PBC," are difficult because they fail to follow accepted standards of abbreviation.

The choice of abbreviations has not been completely random. In 1868 Joel Prentiss Bishop outlined some of the principles commonly involved.[199] The form should be the shortest unambiguous abbreviation possible. Thus "M. & S." sufficed for Maule and Selwyn until Moore and Scott appeared. An abbreviation consisting of the first syllable of a name was usually considered adequate, unless that syllable itself was a common name. The tendency of printers to omit punctuation might cause "Black." to be printed as "Black" and lead the reader to the wrong books. Some abbreviations developed because of the tendency of printers to misread manuscripts and, for example, read California for "Col." (hence "Colo.") and Indiana for "Ired." (hence "Ire."). Aesthetics were also important. Regarding "Met." versus "Metc.," Bishop wrote:

> Indeed, the latter of these forms is in very bad taste. A small, low letter, like the letter *c*, should not end an abbreviation, unless there is some special reason for it; and in particular it should not do so when the preceding letter is a tall one, like *t*. The reason is simply that it is not in good taste.[200]

This appears to be the reason then why Hurlstone, for example, is abbreviated "Hurl." or "Hurlst." and not "Hurls.," even though the last form would not have been ambiguous.

Abbreviation is an important aspect of legal citation practice. Often the result of autonomous decisions by writers and publishers, the abbreviation for a particular name or work usually becomes uniform with the passage of time, unless a provision in a style manual overrides it.

VI. LEGAL CITATIONS AND THE LIBRARY CATALOG

An efficient system of bibliographic reference requires correlation between citation forms and library catalog entries. In American libraries, however, there has been remarkably little correlation. In the past, the form of citation for a primary

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197. J. BISHOP, *supra* note 87, § 502.
198. *Rules for Citations*, *supra* note 141, at 107.
199. J. BISHOP, *supra* note 87, §§ 505-13.
200. *Id.*, § 505.

legal work and its cataloging main entry have almost always differed, and frequently there is no catalog entry—main or added—that coincides with the standard citation for a primary source. Anglo-American cataloging practices have generally included special rules for legal materials that have created many of the discrepancies between citation form and catalog entry. It is no exaggeration to say that these discrepancies would have been fewer if legal materials had been cataloged according to general rules without special treatment.

Almost from the beginning of Anglo-American cataloging, rules have reflected a desire to group entries for primary legal materials by form or type and to disregard editors, compilers, reporters, and titles for the purpose of main entries. During the twentieth century, the chief concern became the subarrangement of these large groups of entries collected under form headings or corporate bodies. Not only were the cataloger-generated entry elements artificial and difficult for patrons to predict, but at some point they meant that the entries would be subarranged by title. It has frequently been stated that author entry is inadequate for legal works.[201] Less often has it been pointed out that titles are also usually unsatisfactory. Such titles as "An Act to Amend the Act Relating to . . ." or "A Full and True Account of the Cases Heard and Determined Before the . . ." do not facilitate filing arrangements. Not infrequently, the words that are important for access occur thirty or forty words into the body of the description.

The response of the various cataloging committees of the American Association of Law Libraries to these questions was to advocate a greater use of form subheadings and other artificial entry elements that would facilitate filing.[202] Orderly files and consistent entries for similar works became the chief objectives. It was argued that authorship of legal works is too complex and that entry by title would scatter similar works throughout the catalog. Special rules had to be constructed so that catalog users would find similar works entered consistently.[203]

At least for catalog users with citations, it seems unlikely that consistency of entry is significant. Most users do not know how similar works are entered. For someone with a citation to "Coke's Reports," the goal is to find the entry for the work, and the most likely place to begin would be the citation form.

For legislation, the practice has been to provide a main entry under the name of the jurisdiction governed, followed by a form subheading.[204] Werner Ellinger argued persuasively that these two elements together constitute a form heading rather than a corporate author followed by a form subheading.[205] After all, the jurisdiction governed is the domain of the legislation, not necessarily the author.

Despite the comprehensive files created by form headings, catalog users having only citations to particular codes or statutes probably found these headings nearly

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201. Ellinger, *Remarks*, in *Panel Discussion of Cataloging Problems Relating to Legal Materials*, 43 LAW LIBR. J. 279, 284 (1950); Koel, *The Corporate Complex*, in THE MAKING OF A CODE 164, 167 (D. Clack ed. 1980); *Revision of the A. L. A. Cataloging Rules of Entry for Legal Materials and Related Rules*, 48 LAW LIBR. J. 3, 33 (1955) [hereinafter cited as *Revision*].

202. *See* Keller, *What Changes Shall Be Proposed to the ALA Committee Pending Publication of the Catalog Rules in Final Form?*, 35 LAW LIBR. J. 165 (1942); *Revision*, *supra* note 201, at 33.

203. Ellinger, *supra* note 201, at 281, 284.

204. For the development of form headings, see J. Tokarz, The Form Heading in American Cataloging 17-47 (Mar. 1974) (unpublished M.A. dissertation in the University of Chicago Library).

205. Ellinger, *Non-Author Headings*, 10 J. CATALOGING & CLASSIFICATION 61 (1954). *But see* Lubetzky, *Non-Author Headings: A Negative Theory*, 10 J. CATALOGING & CLASSIFICATION 147 (1954).

useless. There has been little empirical evidence regarding the utility of form headings for laws, but a recent study of form subheadings in a theological library found them to be more a hindrance than an aid to catalog users.[206] For users having citations to legal works, such headings are barriers that are almost impossible to surmount without explicit instruction.

Another divergence from citation practices has been the cataloging rule requiring entry of statutes under the jurisdiction governed even though they are cited by the jurisdiction promulgating them. The great librarian and former lawyer Antonio Panizzi had required that statutes in the British Museum be entered in its catalog under the jurisdiction promulgating them,[207] but the compilers of American cataloging rules rejected that principle. The British North America Act of 1867, for example, is never cited as "CAN. CONST.," but always as "30 & 31 Vict., c. 3"[208] with "(Imp.)" sometimes added to designate an Imperial Parliament.[209] Surely, the first instinct of someone with this citation would be to try to find an entry either for the short title of the Act or for the British statutes.

For court reports the practice has been to "[e]nter reports of a single court under its name with added entry under the name of the reporter, editor, or collector, as the case may be."[210] This approach answered the problem of determining who is responsible for the intellectual content of the reports, but created a new one in gathering under the heading for the court large numbers of entries subarranged by title. Such files were very difficult to use to answer the most common questions, such as "Do you have *Dyer's Reports*?" and "Do you have King's Bench reports for 1563?" Various methods were used in an effort to subarrange these files in some useful manner. In older law book catalogs, the compilers usually arranged reports by the name of the reporter; the title page would be transcribed in roman with the name of the reporter printed in black letter.[211] Catalogers faced with lengthy files under a court name sometimes adopted a similar approach by underlining or typing in red the name of the reporter or the dates of the reports.[212] In some libraries "corner marks" were used, and the "best known citation name [was] given in the upper right hand corner of the card. . . ."[213] Entries under court names were subfiled by the corner mark and then the title. One of the most elaborate systems of corner marks was that developed by the Library of Congress for its own files, but not reflected in the *National Union Catalog*. Corner marks at the Library of Congress provided the word "Reports" followed by the reporter or title and the date of

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206. K. O'Malley, An Investigation of Corporate Headings With Form Subheadings and Entries Without Form Subheadings 87-90 (1979) (unpublished Ph. D. dissertation in the University of Illinois Library).

207. *Rules for the Compilation of the Catalogue* rule XLVII, in 1 CATALOGUE OF PRINTED BOOKS IN THE BRITISH MUSEUM at vii (London 1841).

208. *See, e.g.*, Swinton, *Challenging the Validity of an Act of Parliament*, 14 OSGOODE HALL L.J. 345, 364 n.73 (1976); Stein, *An Opinion on the Constitutional Validity of the Proposed Canada Water Act*, 28 U. TORONTO FACULTY L. REV. 74, 78 n.23 (1970).

209. J. SAMUELS, LEGAL CITATION FOR CANADIAN LAWYERS 21 (1968).

210. AMERICAN LIBRARY ASSOCIATION & (BRITISH) LIBRARY ASSOCIATION, CATALOG RULES rule 64 (American ed. 1908).

211. See, e.g., entries in T. BASSETT, A CATALOGUE OF THE COMMON AND STATUTE LAW-BOOKS OF THIS REALM (London 1671).

212. E. BASSET, A CATALOGING MANUEL FOR LAW LIBRARIES 143 (1942).

213. Dabagh, *The Law Library Catalog: Systematizing Entries Where Standard Headings Are Inadequate*, 23 LAW LIBR. J. 27, 28 (1930). *See also* E. BASSET, *supra* note 212, at 74, 140.

publication, such as "[Reports] Carthew 1743," "[Reports] Cases of practice. 1778," and "[Reports. Coke. 1680]."

The response of the AALL to this problem was to advocate the extension of form subheadings to court reports, with an additional indication of the reporter, as "U. S. Law reports. Supreme Court (Wallace)."[214] For most American reports this would have meant that the newer reports would have been filed first, followed by the older nominate reports for the same court, an arrangement that might have troubled users. But the AALL proposals were not adopted.

The result has been that trying to locate, say, "Dyer's Reports" in a large research library or in the *National Union Catalog* is very time-consuming. It can be disheartening to learn how many people named Dyer have written books. On the other hand, using the main entry is extremely difficult if the user does not know the court for which the cases were reported. Even if the court is known, the user must read through each card—some of them quite lengthy—under that court to reach the name of the reporter. With even slight title variations, different editions of the same reports will often be widely scattered.

Most of the early English reports contained reports for more than one court. Coke, for example, included reports for the Common Pleas, the King's Bench, the Exchequer, the Chancery, the Star Chamber, and the Court of Wards. In older library catalogs, in booksellers' catalogs, and in the *English Reports*, these reports are arranged according to the court represented by the preponderance of the reports.[215] So Coke, for example, is classed under King's Bench reports. The same practice is followed in most lists of abbreviations, so that "Co." is defined as "Coke's King Bench Reports."[216] But the predominant cataloging practice has been to enter such reports either under the "first named court" (although many early reports did not name the courts on the title page) or under the subheading "Courts."[217] This was another divergence from citation practice that caused difficulties for users. It would probably have been preferable to devote less attention to organizing the files and more effort to correlating citation practices and cataloging rules.

The second edition of the *Anglo-American Cataloguing Rules* (AACR2) recognizes citation practice to a much greater extent than previous rules.[218] Statutes are still entered under the jurisdiction governed, but a uniform title has replaced the

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214. *Revision*, *supra* note 201, at 31.

215. SOULE, *supra* note 113, at 91 n.10.

216. *E.g.*, M. PRICE & H. BITNER, *supra* note 132, at 534; D. BIEBER, DICTIONARY OF LEGAL ABBREVIATIONS USED IN AMERICAN LAW BOOKS 72 (1979).

217. A.L.A. CATALOG RULES rules 91F-91G (prelim. American 2d ed. 1941); A.L.A. CATALOGING RULES FOR AUTHOR AND TITLE ENTRIES rules 89F-89G (2d ed. 1949); ANGLO-AMERICAN CATALOGING RULES rule 26A2 (North American Text 1967). The 1949 rules did permit entry of reports for several courts under one court if the reports were "mainly" of that court "and usually so cited." The 1967 rules specified that reports of more than three courts be entered under title, so that the reports of Coke would have been entered under title. The use of the artificial term "Courts" as a subheading was criticized by Seymour Lubetzky. M. CARPENTER, CORPORATE AUTHORSHIP 30 (1981).

218. Probably this recognition was due in part to the efforts of the British and Irish Association of Law Librarians and to the elimination of form subheadings and corporate authorship. *See Memorandum to the Library Association Cataloguing Rules Committee on the revision of the AACR, 1967*, 5 LAW LIBR. 9 (1974); *Supplementary memorandum on the revision of the AACR, 1967*, 7 LAW LIBR. 7 (1976). On the demise of corporate authorship, see Spalding, *The Life and Death (?) of Corporate Authorship*, 24 LIBR. RESOURCES & TECHNICAL SERVICES 195 (1980).

form subheading. For subject compilations and single acts the uniform title will often be the citation title.[219]

AACR2 rules for court reports also show a greater recognition of citation practice. The rule specifies:

> Enter law reports of one court that are not ascribed to a reporter or reporters by name under:
>
> a) the heading for the court if the reports are issued by or under the authority of the court
>
> *or* b) title if they are not. . . .
>
> Enter reports of one court that are ascribed to a reporter or to reporters by name under the heading for the court or under the heading for the reporter or first named reporter according to whichever is used as the basis for accepted legal citation practice in the country where the court is located. If that practice is unknown or cannot be determined, enter under:
>
> a) the heading for the court if the reports are issued by or under the authority of the court
>
> *or* b) the heading for the reporter or first named reporter if they are not.[220]

The new rule does present some difficulties. There is a logical gap, for example, for reports such as the *Term Reports*, which are ascribed to reporters but cited by title. And are Wallace's reports, cited as, for example, "68 U.S. (1 Wall.)," cited by the name of the reporter or by the "court"? Determining whether reports "are issued by or under the authority of the court" will also present some difficulties.[221]

Now that citation practice is to be a guide to catalog entry, the question that must be addressed is, what citation practice? Accepted by whom? The bar, the courts, the law reviews, the publishers? One approach to determining the "accepted legal citation practice" that has been suggested is to refer to bibliographies of law reports and to legal bibliography texts.[222] But bibliographies do not necessarily indicate citation practices for the reports listed. In addition, predicting future citation methods from bibliographies is somewhat like trying to deduce AACR2 rule 21.1B2 by reading the *National Union Catalog*. Perhaps the place to begin for citation practice may be the most widely accepted citation manual in the country where the court is located. For the United States this must be *A Uniform System of Citation*. Such a manual is more likely to provide general guidelines for the citation of future reports and to establish preferred citation forms for reports cited by more than one method. Yet *A Uniform System of Citation* is not without problems as a guide to citation and can only be a starting point.[223] But it seems preferable to determine citation practice from a code of principles rather than a list of examples. Certainly any analysis of ac-

219. ANGLO-AMERICAN CATALOGUING RULES rules 21.31, 25.15A1-.15A2 (2d ed. 1978).

220. *Id.* rule 21.36A1. For reports of more than one court, see *id.* rule 21.36A2.

221. From the examples, the interpretation of "issued by or under the authority of the court" appears to be limited to those reports where no outside agency acts in an editorial capacity. See the example of the reports of the Arizona Court of Appeals. *Id.* rule 21.36A1, at 337. By this criterion, many reports commonly regarded as "authorized" or "official" must be entered under title or the name of the reporter.

222. Marion, *Sources for Determining Citation Practice for Court Reports Throughout the World*, 25 LIBR. RESOURCES & TECHNICAL SERVICES 139, 142-43 (1981).

223. An example of a difficult case is Gilfillan's *Minnesota Reports*, which need to be distinguished from the official *Minnesota Reports* because, while the volume numbers are the same, the pagination differs. Within Minnesota, the citation practice for Gilfillan's reports varies considerably. The Minnesota Supreme Court employs a condensed citation form, giving first the page number in Gilfillan and then,

cepted legal citation practices in the United States must be based at least in part on the "Harvard Citator."

The trend is for citation practices and cataloging rules to coalesce. Probably in response to the traditional principles of Anglo-American cataloging, modern citations provide much more thorough information, including a greater emphasis on title-page titles. Cataloging rules now emphasize citation practices to a far greater extent. Since decisions about cataloging rules and citation forms are made independently, difficulties and discrepancies are inevitable. But each step toward substantial correlation will benefit law book users and library patrons.

VII. THE FUTURE OF LEGAL CITATION PRACTICE

Several competing interests will shape the citation practices of the future. On the one hand, an innate conservatism favors the retention of present practices even if they are not completely satisfactory. Any changes mean that a new system must be

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parenthetically, the page number in the official *Minnesota Reports*. *See, e.g.*, First Nat'l Bank v. Department of Commerce, 310 Minn. 127, 131-32 (1976) (citing Vogle v. Grace as "5 Minn. 232 (294) (1861)"). When the West Publishing Company reprints the case in the *North Western Reporter*, the citation is rearranged and expanded. *See, e.g.*, First Nat'l Bank v. Department of Commerce, 245 N.W.2d 861, 864 (1976) (citing Vogle v. Grace as "5 Minn. 294 (Gil. 232) (1861)"). The *William Mitchell Law Review* gives a full parallel citation. *See, e.g.*, Halladay, *Minnesota Does Not Need an Intermediate Appellate Court*, 7 WM. MITCHELL L. REV. 131, 142 n.61 (1981) (citing Holmes v. Campbell as "12 Minn. 221, 12 Gil. 141 (1867)"). The difficulties are illustrated by citations in the *Minnesota Law Review*, which gives page citations only for Gilfillan, but uses the name of the official series to indicate the reporter. *See, e.g.*, Risinger, *Honesty in Pleading and Its Enforcement: Some "Striking" Problems with Federal Rule of Civil Procedure 11*, 61 MINN. L. REV. 1, 29 n.92 (1976) (citing Hayward v. Grant as "13 Minn. 154 (1868)," which is a citation to Gilfillan for a case that appears at 13 Minn. 165 (1868)); Samaha, *A Case of Murder: Criminal Justice in Early Minnesota*, 60 MINN. L. REV. 1219, 1220 n.2 (1976) (citing State v. Dumphey, 4 Minn. 438 (1860), as "4 Minn. 340 (1860)").

For catalogers, the threshold question is whether Gilfillan is a reporter or an editor. If Gilfillan, whose reports were published later than the official series, was an editor, then his reports were "not ascribed to a reporter" and are entered according to the first part of AACR2 rule 21.36A1, with an added entry for "an openly named editor." If, on the other hand, Gilfillan was the reporter, then his reports are entered according to the second part of AACR2 rule 21.36A1. It is difficult to distinguish between a reporter and an editor, at least for American court reports. The authors of the "Harvard Citator" apparently regard all early reporters as editors. *See* A UNIFORM SYSTEM OF CITATION rule 10:3:2 (12th ed. 1976) ("Early American reports, even official reports, were often named after their editors rather than after the courts whose cases they reported. . . . [F]or United States Supreme Court reports through 90 U.S. (23 Wall.) . . . and a few early state reports . . . , it is necessary to give the name of the report editor and the volume of his series as well.").

If it is determined that Gilfillan is the reporter, then the "accepted legal citation practice" for his reports must also be determined. Beginning with the bibliography in Price and Bitner's textbook, the cataloger would find under Minnesota only an entry for "Minnesota Reports (Supreme Court)," which might suggest that Gilfillan is cited only as "Minnesota Reports." M. PRICE & H. BITNER, *supra* note 190, at 394. On the other hand, beginning with the "Harvard Citator," the cataloger would find that the accepted citation practice is not to cite Gilfillan. But for unlisted state reports, the twelfth edition of the "Harvard Citator" incorporates by reference the shortest unambiguous form of abbreviation in the fourth edition of *Black's Law Dictionary*, which proves to be "Gilfillan." A UNIFORM SYSTEM OF CITATION rule 10:3:1(d) (12th ed. 1976). So these reports, when specifically cited, should have been cited by the reporter's name in any publication following the twelfth edition of the "Harvard Citator." In the thirteenth edition of *A Uniform System of Citation*, however, the reference to *Black's Law Dictionary* is omitted, and the cataloger must make his or her own survey of citation practices, including not only bibliographies, but also tables of abbreviations and primary and secondary legal works.

learned, but the previous system must be relearned by anyone reading older decisions, briefs, periodical articles, or monographs.

On the other hand, there are pressures for change. Citations to non-law works in a legal publication present a continuing challenge. General publishers have not shown the same interest in consistent pagination that has characterized legal publishers ever since Richard Tottell. References to non-legal works have generally required indications of editions, places of publication, and the names of publishers to a much fuller extent. With the "Brandeis Brief" and the growing need to cite non-legal works on sociology, economics, history, political science, and so forth in legal publications, the need to provide title-page titles and full publication data is much greater.[224] The explosion in publishing by governments, regional organizations, and the United Nations has likewise led to growing demands for fuller information in citations to official publications.[225]

A second, less compelling pressure for change is the need to accommodate citations to legal works occurring in non-legal publications and the general trend toward standardization of bibliographic references. To facilitate the national and international transfer of information, several organizations are promoting standardization of citations.[226] Even when special forms are developed for legal materials, the unique nature of legal citation still causes difficulties.[227]

Finally, another still remote factor likely to influence legal citation practice is the development of machine-readable data bases that include citations, whether formatted or not. The data entered in MARC field 210 in the serials format by the International Serials Data System in accordance with ISO Standard 4-1972(E) promises an even greater control over abbreviated citations.[228] Standardization and

224. Citation of some legal works by star paging without an indication of the edition has been criticized by William Stern. Stern, *Citations to Legal Classics*, 33 LAW LIBR. J. 27 (1940). Stern found the citation to Coke's *Institutes* by star pages inadequate and preferred citation either by section or by page number with the edition indicated. But a comparison of the London editions of 1628, 1719, and 1832 and the American editions of 1812 and 1853 shows that the star paging is consistent in all of these editions. The only problem is that occasionally the original edition had parallel columns of text and the page division is indicated in later editions only for one of the columns. A citation by section is not nearly as precise, since a section may cover several pages. As Stern recognizes, citations by pages or sections to the three-volume edition prepared by J. H. Thomas (A SYSTEMATIC ARRANGEMENT OF LORD COKE'S FIRST INSTITUTE (1st American ed. Philadelphia 1826-1827)) create problems, but such citations can readily be translated by reference to the table at the end of the second volume.

225. Williamson, *supra* note 2. Among many justified proposals, Williamson argues for greater use of document numbers, sales numbers, ISBNs, and ISSNs. *Id.* at 49-50. Such numbers would often facilitate document retrieval in an automated library catalog or through a bibliographic utility. But numbers are "the eternal stumbling-block of copyists and compositors." *Citation of the Roman Law*, *supra* note 87, at 65. Many ISBNs, ISSNs, and LC Card Numbers have been wrongly transcribed in cataloging data bases. A further problem is the criteria for the assignments of ISSNs and ISBNs, which have not been fully worked out. Citations to a loose-leaf service, for example, by ISBN or ISSN or USPS number would in many cases be difficult to establish and not infrequently diverge from the number attached to the record used by the library in cataloging a particular work or its updating service.

226. AMERICAN NATIONAL STANDARDS INSTITUTE, *supra* note 44; INTERNATIONAL ORGANIZATION FOR STANDARDIZATION, ISO STANDARDS HANDBOOK 1, INFORMATION TRANSFER (1977).

227. See, e.g., AMERICAN NATIONAL STANDARDS INSTITUTE, *supra* note 44, § A7.3.7, which treats the title numbers of the *United States Code* as "Volume-Identification Data." But there is a great difference between volume 4 and title 4 of the *United States Code*, which could create problems for inter-library loan requests.

228. ISO Standard 4-1972(E) is printed in INTERNATIONAL ORGANIZATION FOR STANDARDIZATION, *supra* note 226, at 1, and incorporates the list of abbreviations in ISO 833-1974, which is reprinted in *id.* at 76.

predictability are the keys to the success of such a system, but the discrepancies between Anglo-American legal citation forms and the internationally preferred abbreviations are substantial.

The history of legal citation practices has been a series of adjustments to changing circumstances. Legal doctrines, publication patterns, the practice of law, evolutions in the legal system, and library cataloging rules have all had substantial impact. In citation practice, as in many other areas of law librarianship, we are on the threshold of exciting opportunities for improved bibliographic control.