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THE GENESIS OF COKE'S REPORTS

THEODORE F. T. PLUCKNETT

It is not the object of this paper to describe the incomparable richness of Coke's Reports, nor to assess their profound influence upon the literature, and indeed the substance, of English law; still less is it concerned with estimating the place of their illustrious author in the political, constitutional, and judicial history of his country. Nor can it enter upon those teasing but recondite questions of the credibility of certain reports, serious though those questions certainly are. The sole concern of this essay is to inquire into the immediate origins of the reports—a much more modest field of investigation, but one which lacks neither interest nor difficulty.

These origins may be considered under several aspects. First, we may regard the long series of English law reports as a literary phenomenon, and study the work of Coke in the light of those who preceded him; since reporting did become eventually a vast co-operative enterprise between successive generations of authors, extending over several centuries, this approach is legitimate and significant.¹ But we must remember, secondly, that an author—even the humble author of a law-book—is something more than a mere point in the stream of literary history; and so we must ascertain, if possible, Coke's own thought upon the venture of publishing his reports. Thirdly, we must trace the sources he used, and the way in which he handled them.

There are quite a number of reports in print at the present day to which we are accustomed to look for cases of the Tudor age extending from Henry VII to Elizabeth. We naturally regard them as a chronological series, and consequently as being in some way earlier than Coke's Reports. In subject matter and in date of composition this is true enough; but in date of publication nearly all of them are later than Coke. Thus Keilway, whose matter is mainly from the years 1496 to 1531, was not printed until 1602. Likewise Brownlow and Gouldsbrough only appeared in 1651-2, Gouldsbrough in 1653, Popham in 1656, Leonard in 1658, Croke's Elizabeth in 1661, Benlow also in 1661, Moore in 1663, and Anderson in 1664—to name only the best known. The lawyer who bought the first edition of Part I of Coke's Reports in 1600 was not adding a new volume to a lengthening series such as these

¹For the general course of law-reporting see WALLACE, *THE REPORTERS ARRANGED AND CHARACTERIZED WITH INCIDENTAL REMARKS* (1843; 4th ed. 1882); Van Vechten Veeder, *The English Reports 1537-1865* (1901) 15 *HARV. L. REV.* 1, 109 [partly reprinted in 2 *SELECT ESSAYS IN ANGLO-AMERICAN LEGAL HISTORY* (1908) 123]; WINFIELD, *CHIEF SOURCES OF ENGLISH LEGAL HISTORY* (1925) 183; HOLDSWORTH, *HISTORY OF ENGLISH LAW* (3d ed. 1922) v. 355, 461.

names would suggest. In fact, his shelf of reports of every kind was still hardly full. Coke himself has given us a summary glance over it.² The series began with the year books, made-up sets of which were common enough, for the influence of Tottel had produced some measure of uniformity in size and foliation. Coke speaks of nine volumes being normal. To these add the abridgements, Plowden and Dyer, and the tale is complete. Apart from the year books and abridgements, therefore, Coke stands very early in the great procession of printed reports, occupying the third place in order of publication.³

Of Coke's predecessors, the nearest to him in date of publication was Sir James Dyer, who lived from 1512 to 1582. In 1557 he became a justice, and in 1559 the Chief Justice, of the Court of Common Pleas.⁴ His reports were not printed until 1585, after his death, and so their publication may not have been in accordance with his wish. It would seem that his nephews made public (at the desire of members of the profession) a selection from the abundant mass of reports which the Chief Justice had accumulated in the course of his career. If most of the cases were reported from the direct knowledge of Dyer, others certainly were not, for the book has cases as early as 1513. The reports are evidently in the year book tradition in language, mode of expression, and in method.

Much more original and significant is the work of Edmund Plowden.⁵ His reports were printed earlier than Dyer's, and were also the first to be printed in the author's lifetime. We must therefore recognize in him the first lawyer who deliberately put his reports before the public in print, under his name, and of set purpose. The reasons which led him to take this unheard-of steps are stated in his preface. It is impossible to read that preface without being impressed by the candor and sincerity of a singularly engaging personality. He tells us that he began at the age of twenty (that

²3 Rep., preface. The latest editions of all the reports mentioned in this article are reprinted in English Reports, complete Reprint. On the gallant part played by the publishers, see Anon., *The English Reports* (1931) 43 JURID. REV., 96; and for some necessary amendments to the chart accompanying the reprint, see Glanville L. Williams, *Addendum to the Table of English Reports* (1940) 7 CAMB. L. J. 261 clearing up several difficulties in the older form of citations. Most unfortunately the Reprint omits the prefaces, which often contain information necessary for assessing the value of a given reporter; the prefaces must therefore still be sought in the older editions. It is interesting to compare the English Reports Reprint with the prophetic scheme proposed by WALLACE, *op. cit. supra* note 1, at 40.

³In Wallace's work Coke appears as fifteenth in chronological order (of cases dealt with, that is to say).

⁴For his life, see the memoir prefixed to his REPORTS (Vaillant's ed. 1794); Foss, JUDGES OF ENGLAND (1870); and the DICTIONARY OF NATIONAL BIOGRAPHY.

⁵The only life is that in the DICTIONARY OF NATIONAL BIOGRAPHY. For appreciations of his reports, see WINFIELD, *op. cit. supra* note 1, at 187; 5 HOLDSWORTH, *op. cit. supra* note 1, at 364.

is to say, in 1538) to frequent the courts for the purpose of legal study. Since his memory was unreliable, he wrote down the notable things he heard. With the deepening of his legal knowledge, he realized that a special importance attached to arguments upon special verdicts and demurrers; thenceforward he abandoned his old and somewhat indiscriminate collection in order to concentrate upon that type of case. Upon such cases he lavished infinite care. He studied the pleadings before coming into court, so that he knew as much about the case as did the counsel engaged in it;⁶ he submitted his report to the judges and serjeants who had taken part in the debate, in order to clear up difficult or doubtful passages. Only then did he enter the case in his "book." At first his report tended to be verbatim, or something approaching it. But from *Throckmorton's Case*⁷ (1585-6) onward he eliminated much repetition by condensing all the arguments upon a particular point into one statement.

Such was the *modus operandi*. The result of so much diligent and intelligent labor could hardly fail to be remarkable. Surveying his work toward the end of his career, when the nature and implications of the collection had become apparent, its author described it as being, in the first place, a book of entries, "more sure and safe to be relied upon and followed than any other book of entries." This somewhat unexpected remark is nevertheless justifiable upon consideration of the development of pleading in Plowden's age. The mediaeval book report shows us in the majority of cases how serjeants and judges collaborated in settling the pleadings of difficult cases. Their task was to find pleadings which would embody the relevant facts of a case, and raise issues of law or fact which would fairly determine the rights of the parties. When the parties had agreed upon their respective pleadings, the result of the case was generally evident. Reports of such debates were useful enough while lawyers still practiced under such a system, but in Plowden's day the system was almost extinct. Instead, pleadings were prepared and exchanged by the parties' advisors before the case came before the court. If an issue of law had been reached, it was then argued and determined. If the issue was one of fact, then the roll was made up by entering the pleadings, so that there was a formal record upon which a verdict could be taken at *nisi prius*. The effect of all this upon the books of entries then current⁸ is shortly expressed by Plowden: such books, he

⁶He often states that a case was argued by certain named serjeants "and an apprentice at law"; the latter must mean himself.

⁷Plowd. 145.

⁸In Plowden's day there were already in print: INTRACIONES (published in 1510 by Pynson), a different book with the same title and likewise anonymous (published in 1546 by Smythe), and RASTELL'S ENTRIES (published in 1566 by Tottel). Any of these three works might be called "The Old Book of Entries." See WINFIELD, *op. cit. supra* note 1, at 305.

says, contain copies of records, often concluding to an issue of fact, the forms being settled by the parties without submitting them to the criticism of the court. The fact that both parties agreed to treat the pleadings as sufficient is no guarantee that in law they were proof against criticism. Such forms were therefore misleading guides, and one who followed them might find an opponent who could detect the flaws and take advantage of them. Clearly, this recent and topical problem greatly worried our author, until he was driven to the conclusion that no set of pleadings could be trusted as a precedent unless it had been fully considered and approved after argument in court. Such consideration was most generally had when demurrers were argued, or special verdicts returned; so it was that type of case which Plowden considered most worthy of his pains and the reader's study.

Although Plowden regarded his book as primarily a book of entries, each case supported by argument and decision, he admitted that it was also a collection of reports. From this point of view, too, his book was shaped by the new pleading. Under the old style, the year books often recount "sudden sayings of the judges upon motions" and other occasions when a matter might be imperfectly presented and hastily determined. Nothing of that sort was to appear in Plowden's book. Every case in it was a full-dress debate upon pleadings which judges and counsel had fully studied at leisure before the argument began. And so, he concludes, "In my humble apprehension, these reports excel any former book of reports in point of credit and authority." The tone of deep and unaffected modesty which pervades the preface lends greater emphasis than ever to these high claims for his entries and reports. Plowden was humble, as a genuine student must be; but he knew when he had done a really fine and solid piece of work, and was not embarrassed to say so.

Plowden began to report, like some other eager young lawyers of his day, as soon as he began the serious study of the law. Only slowly did he find a method and discover a sure rule for testing his material. Like all collectors, he made mistakes, and sometimes he was unlucky. After terms or years of argument a case might evaporate without ever reaching a decision, thus rendering the reporter's labor fruitless. In the cause of science he could be stern: in that precious book of his nothing should be entered which was not perfect.

We must believe him when he tells us that all this labor was for his own private satisfaction. He was in fact using the method constantly recommended to the students of his own generation, the only difference being that he pursued it more persistently, more conscientiously, and much more intelligently than his fellows. To print the work would change its meaning and

significance. To Plowden himself, the book was part of his arduous self-education in the law; to the casual purchaser of the printed volume, however, it represented something different and less personal. What had been the ripe fruit of one man's toil became instead a ready-made tool for office use. Such a perversion of his cherished book was undoubtedly shocking to the gentle Plowden. He had allowed a few selected friends a sight of it; their clerks surreptitiously copied it. Worst blow of all, they misunderstood its very nature, and tore the heart out of it by omitting the pleadings. In self-defense Plowden was forced to print an authorized version, presenting the book as he conceived it.

It is difficult now to realize the full significance of this, the first printed law report. Plowden was an innovator much against his will. Publication seemed to reverse the natural order of things. The traditional attitude was that one learned while reporting, and learned much more than one could get down on paper. To publish ready-made reports might seem not unlike the illicit circulation of lecture notes which occasionally disturbs academic authorities today. But were there ever such notes as Plowden's, so accurate, so clear, or so completely final in their thoroughness? So he faced the problems of printing—earnestly hoping that no professional reputation would suffer from his disclosures, just as Dyer's nephews expressed anxiety lest that worthy's reports should contain hidden slanders of title. A very curious passage of his preface impresses once again upon the reader how novel the volume was: Plowden was hard put to find a title for his book. The word "report" was hardly worthy, for it savored too much of the "sudden sayings" of the year books. So he decided to call it his "Commentaries or Reports" for (no doubt like Caesar's Commentaries) it recorded both deeds and words.⁹

Published on October 24, 1571, Plowden's Commentaries or Reports embarked upon a strange new life, as books sometimes do when they leave the hands of their authors. The legal profession slowly began to discover its worth, and in 1578 a new edition appeared.

At this point complications began to appear. Plowden's publisher was the great Tottel, whose "list" bears striking witness to his vast enterprise as well as to the liveliness of the market for law books.¹⁰ Tottel had printed both Fitzherbert's and Brooke's Abridgements, and was quick to learn the

⁹The full title is: "Les Comentaries, ou les Reportes de Edmunde Plowden un apprentice de le comen Ley, de dyuers cases esteantes matters en ley, & de les argumentes sur yceux, en les temps des Raygnes le Roye Edwarde le size, le Roigne Mary, le Roy & Roigue Phillipp & Mary, & le Roigne Elizabeth." BEALE, BIBLIOGRAPHY OF EARLY ENGLISH LAW BOOKS (Ames Foundation, 1926), 108 (R 484).

¹⁰His law publications are listed in BEALE, *op. cit. supra* note 9, at 199-206; he also had a large output of general literature.

public's opinion of those two ponderous works. Fitzherbert gave full texts of most of his cases; Brooke gave principally summaries, but much better arranged. One could thus find authority on a given point quicker in Brooke than in Fitzherbert; but having found the case, Brooke's text of it (often merely a summary might prove inadequate, and in order to see the case as a whole one had to turn to Fitzherbert or the year books. Tottel patiently set to work to disentangle the muddle. Both Fitzherbert and Brooke were fitted out with page references to Tottel's editions of the year books (and they are still precious time-savers);¹¹ Fitzherbert had long been provided with an index which was meant to make his book almost as handy as the later and more encyclopaedic Brooke—a hope not entirely fulfilled.¹² But there still remained one big problem. Fitzherbert was essential because of his full texts; but Brooke had yet another great advantage—he gave more recent material. Fitzherbert contained nothing later than Henry VII, but Brooke (appearing half a century later) contained many cases of Henry VIII, Edward VI and Mary—reigns in which fundamental legal developments had taken place. So Tottel had the bright thought of getting an obscure Irishman named Bellewe to comb out these more recent cases and put them together for him in a book chronologically arranged.¹³ This was the work commonly called Brooke's New Cases,¹⁴ and was published in 1578. The results of these operations become clearer when the successive editions of the books just mentioned (and their subsequent editions down to Coke's day) are listed in chronological order of publication, bearing in mind the range (in point of date) of the cases contained in them.¹⁵

¹¹Cf. Plucknett, *Bibliography and Legal History* (1932) 26 PAPERS OF THE BIBLIOG. Soc. of AM., 128 at 139.

¹²The only examination of this table is that by WINFIELD, *op. cit. supra* note 1, at 228.

¹³Bellewe did another similar piece of hack-work in preparing a volume of Richard II's cases collected out of the various abridgements. Bellewe was entered at Lincoln's Inn, but there is no record to show whether he was ever called to the bar.

¹⁴The original title was "Ascvn Nouell cases de les ans et temps le Roy H. 8, Ed. 6, et la Roygne Mary, Escrie ex la graund Abridgement, compose per Brooke." In 1651 this collection was translated and the cases restored to the original subject arrangement under the headings used by Brooke, and the whole published as MARCH'S NEW CASES. It is instructive to note that there was never a book of Fitzherbert's new cases, although his abridgement contains cases of Henry VII which were very new when the first edition appeared in 1516. Clearly, the reason is that numerous separate editions of the year books of Henry VII were appearing, and so fulfilled the need. The textual relations between Fitzherbert and the printed year books (especially for the later reigns) need investigation.

¹⁵This table is based upon the works of BEALE and WINFIELD, *loc. cit. supra* notes 9, 1, together with COWLEY, BIBLIOGRAPHY OF ABRIDGEMENTS (Selden Society, 1932), and A. W. POLLARD, SHORT-TITLE CATALOGUE (Bibliographical Society, 1926). In the table, and throughout the article, dates have been converted to New Style. These authors have shown that many alleged editions mentioned in the older lists (especially in the DICTIONARY OF NATIONAL BIOGRAPHY) never existed. This table therefore omits the following editions which can now be regarded as illusory: FITZHERBERT—editions of

Date	Title of work	Edition	Range
1516: Dec. 21	Fitzherbert, Abridgement	1st ed.	c. 1217-c. 1509
1565: Nov. 12	"	2d ed.	" "
1571: Oct. 24	Plowden, Reports I	1st ed.	1550-1571
1574: Jan. 25	Brooke, Abridgement	1st ed.	c. 1347-1558
1576: Oct. 12	"	2d ed.	" "
1577: Aug. 20	Fitzherbert, Abridgement	3d ed.	c. 1217-c. 1509
1578: Oct. 15	Brooke's New Cases	1st ed.	1515-1558
" Oct. 20	Plowden, Reports I	2d ed.	1550-1571
1585: Feb. 15	Plowden, Reports II	1st ed.	1571-1579
1586: Jan. 1	Dyer, Reports	1st ed.	1512-1582
" Sept. 29	Brooke, Abridgement	3d ed.	c. 1347-1558
1587	Brooke's New Cases	2d ed.	1515-1558
1588: Oct. 22	Plowden, Reports I	3d ed.	1550-1571
1593: Jan. 1	Dyer, Reports	2d ed.	1512-1582
1594	Plowden, Reports II	2d ed.	1571-1579
1597	Brooke's New Cases	3d ed.	1515-1558
1599	Plowden, Reports I	4th ed.	1550-1571

The first conclusion to be drawn from this table is that there was a sudden boom in expensive law books during the seventies. It took fifty years to absorb the first edition of Fitzherbert; but the twelve years from 1565 to 1577 saw two new editions of Fitzherbert, and two editions of Brooke. Clearly, then, the appearance of the two collections of recent cases in Plowden and in Brooke's Abridgement did nothing to deflect interest from the solid mass of mediaeval cases in the two heavy folios of Fitzherbert and Brooke.¹⁶ Secondly, the trend of publications seems quite consistent with the conjecture just put forward in order to explain why Brooke's New Cases was published at all—and an explanation certainly seems called for. A plan there must have been, for all these books came from the same house.¹⁷ Thirdly, a further element must be considered. The years covered by Plowden neatly continue the period for which Brooke's Abridgement had such novel material. This was doubtless a mere coincidence, but it did suggest the usefulness of a continuous stream of reports, one beginning where the other left off. Now Plowden's first edition was going well, and so it may have provided an additional reason for collecting the "New Cases" out of Brooke's Abridgement and making of them a volume to accompany the second edition of Plowden; in fact, they were published almost simultaneously. Lastly, it is abundantly clear that not only was there a steady demand for what we may call the mediaeval classics, but also a new demand for a novel type of

1514, 1573, 1586; BROOKE—editions of 1568, 1570; BROOKE, NEW CASES—edition of 1585; PLOWDEN, PART I—edition of 1584; PLOWDEN, PART II—editions of 1578, 1588, 1599.

¹⁶Tottel contemplated a fourth edition of FITZHERBERT in 1583, but did not proceed with it. COWLEY, *op. cit. supra* note 15, at xlvi-xlvii.

¹⁷Except the FITZHERBERT of 1516 (which was published by John Rastell). The PLOWDEN of 1594 came from Charles Yetsweirt, the BROOKE'S NEW CASES of 1597 from his widow Jane, and the PLOWDEN of 1599 from Thomas Wight, all of whom in turn were Tottel's successors in the business.

material, namely, the "new cases." Plowden's book, we suggest, was not planned as a response to that demand; but it did greatly stimulate it.¹⁸ The first edition of the Commentaries in 1571 whetted the appetites of lawyers, and when the first edition of Brooke's Abridgement appeared soon afterwards in 1574, it is a safe inference that the later cases in Brooke were a powerful factor in its amazingly rapid success. The full effect of Plowden's example (unconscious though it was) appears in 1578. That year witnessed a second edition of Plowden, and also the first edition of Brooke's New Cases. The new demand for recent cases could have had no more striking illustration than this dismemberment of Brooke's heavy work. Tottel had divined that there were lawyers who wanted Brooke's new cases but not his old ones.

The unforeseen effect of Plowden's Commentaries was, therefore, the creation of a new class of legal literature, that of "new cases." Plowden would have had us admire his book for its deep learning, its infinite care, its scientific basis in the most fundamental principles of pleading. To his busy, contentious fellow lawyers these qualities were less obvious; to them it was a book of new cases, to which they could soon add the untidy and unscientific reports gleaned by Bellewe out of Brooke's Abridgement. It is curious to note in passing that the crafty Tottel had Brooke's New Cases arranged chronologically instead of under subjects, thus increasing the resemblance (at best, superficial) to Plowden's Commentaries. Even in point of novelty, however, Brooke's New Cases could not compete with Plowden, in spite of their challenging title. Brooke died in 1558, and the cases which Bellewe culled from his Abridgement run from 1515 to 1558. Brooke's most recent case was therefore sixteen years old when it first appeared in the Abridgement, and twenty years old when Bellewe brought out the New Cases. Plowden, on the other hand, consists of an even run of cases from 1550 to 1571. Tottel dated the colophon October 24, 1571, and purchasers who looked over their acquisition during the Christmas vacation would have found that the last case in the volume was barely six months old. Could a case, even today, be much newer than that? Once again, however, we must scrutinize Plowden's preface. He makes not the slightest allusion to the newness of his cases; it is only their quality that interests him. He tells us that he began reporting in 1538. Slowly he found a principle and a method, and by 1550 he had reported a case well enough to put in his book. In 1556 he felt sufficiently sure of his learning and judgment to adopt a shorter method. And so he continued. Clearly, he published his later cases

¹⁸The demand for new material appeared early in Henry VIII's reign, when numerous editions (unfortunately many of them undated) of the year books of Henry VII were published.

simply because he was well satisfied with them, and not because he thought the public wanted "new cases."

Unwittingly, therefore, Plowden created a demand for reports of recent cases. The first reaction was the appearance of the factitious "New Cases" compiled by Bellewe. Soon Plowden himself was caught into the stream, and in 1585 he was persuaded to publish a continuation of his first volume.¹⁹ The cases resume at the point where he had left off, and run continuously from 1571 to 1579. Moreover, the pagination is continuous with the first volume, so that the two could be easily bound together as one book. In short, the consequence was the appearance of still more new cases, although they were not quite so startlingly recent as the last case in the first part.

A further consequence may be seen in the appearance of Dyer's reports in the same year, 1585. Plowden's book rested entirely on its intrinsic merits. Its author was a simple barrister;²⁰ his firm adherence to the Catholic faith excluded him from the coif and the bench; his friends believed that the Great Seal was within his reach if only he would conform. But Plowden preferred to live and die a simple "apprentice in the law." Dyer, on the other hand, had been for twenty-three years the Chief Justice of the Common Pleas. Yet in spite of the prestige of his high office, Dyer's reports never acquired the renown which sheer merit had won for the Commentaries of the simple apprentice.

We have spoken of Dyer's "Reports." Indeed, it is often said (no doubt following Wallace) that "Dyer is the first book regularly called reports."²¹ Such words are misleading as well as ambiguous. As we have seen, the first reports to be printed were Plowden's, and he regularly called them "Reports" in his preface and "Commentaries or Reports" on the title page.²² Next in order of time (and fifteen years later) came Dyer's book, which certainly came to be called his "Reports" in a few years. In point of fact, however, the early editions of Dyer were published under the title of "Certain New Cases."²³ In name as well as in substance, therefore, our earliest re-

¹⁹The second part of PLOWDEN is strictly a posthumous publication but only by a few days. The colophon is dated February 15, 1585; Plowden had died on the 6th of that month.

²⁰He was not a serjeant. WALLACE, *op. cit. supra* note 1, at 145. The writ calling him to that rank, indeed, issued, but abated by the death of Queen Mary; Elizabeth issued no new writ.

²¹WALLACE, *op. cit. supra* note 1, at 131-2.

²²*Supra*, note 9. The first edition of the second part of PLOWDEN was entitled "Cy ensuont certeyne Cases reportes par Edmunde Plowden puis le premier imprimier . . ."; the second edition was entitled "La second part de les Reports. . ."

²³The first edition (1585) was entitled "Cy ensuont ascuns nouel cases Collectes per le iades tres-reuerend Iudge Mounsieur Iasques Dyer. . ." An index separately published three years later, however, adopts the newer terminology—"La Table al lieu des Reports del tresreuerend Iudge Sir James Dyer . . ." (1588). BEALE, *op. cit. supra* note 9, at R 483.

ports are Plowden's. The title selected by Dyer's executors is not without significance, for it seems to indicate that in their judgment what the profession wanted was "new cases," and, as we have seen, this thirst for new cases was the result of the first publication of Plowden.

After Plowden and Dyer came Coke.²⁴ The currents in legal literature which have just been mentioned were certainly well known to him. The first edition of the first part of Plowden came out when Coke had just entered Clifford's Inn as a nineteen-year-old law student. Brooke's New Cases appeared when Coke had just been called and held his first brief in the King's Bench.²⁵ When Dyer came out, Coke was Recorder of Norwich. By the time Coke's first report was published (in 1600) there had been four editions of 1 Plowden, three of Brooke's New Cases, three of Brooke's Abridgement, two of 2 Plowden, and two of Dyer's New Cases. In short, Coke's vertiginous career—by now he had been autumn reader, Recorder of London, solicitor general, member of parliament, speaker, and attorney general—was passed in the period when Tottel was discovering how eager lawyers were for "new cases." Coke knew it too, and he too was ready to satisfy the demand. In 1600 there appeared "The First Part of the Reports of Sir Edward Coke, Knt."

After the straightforward simplicity of Plowden and Dyer, the Reports of Coke present a strong contrast at almost every point. The natural chronological arrangement of the two elder reporters is here replaced by indescribable confusion. Plowden and Dyer each pursued steadily his own individual method of reporting. The result in each case was a book homogeneous and consistent. Coke, on the other hand, presents us with every conceivable variety of style and method. Such confusion and diversity can hardly have been deliberately planned. Coke had before his eyes the solemn, sober folios of his two predecessors—the only models yet in print. If he did not follow them, there must have been a reason (or at least a cause). Single-handed, Coke doubled the number of volumes of law reports on the shelves of his contemporaries; more than that, his books greatly out-weighed those of his predecessors in their ultimate influence upon legal development. How Coke's books came to be written, and why, is a matter of legitimate curiosity for lawyers.

Even if Plowden had left us no preface, we could easily have discovered his method and guessed his sources. Many of his reports are of cases in

²⁴For Coke's biography see the lives by H. W. WOOLRYCH (1826), CUTHBERT W. JOHNSON (1837), and HASTINGS LYON and HERMAN BLOCK (1929); cf. LORD CAMPBELL, LIVES OF THE CHIEF JUSTICES (1849) and FOSS, JUDGES OF ENGLAND (1870). For his reports, see 5 HOLDSWORTH, *op. cit. supra* note 1, at 461-6.

²⁵Cromwell's Case, (1578-1581) 4 Rep. 12b, at 14.

which he had been professionally engaged; he had the pleadings and drafts of the arguments among his business papers. In court he made notes of the case as it was actually presented, and of the resulting arguments—and in those days the judges were far from silent listeners; they argued point after point backwards and forwards among themselves, as well as with the bar. Such an argument might be spread over several terms or even years before judgment was eventually reached.²⁶ Then only did Plowden arrange his notes and write up the case in his big book. Necessarily,²⁷ the order of the cases in that book was the chronological order of judgments.

The first glance at Coke is enough to show that the set of reports as a whole does not come from a chronologically arranged register like Plowden's, and does not reproduce a single series of cases noted down as they occurred. Indeed, no single series of any sort, chronological or systematical, seems to explain the present arrangement of the Reports. The only plausible hypothesis seems to be that the printed book is based upon several collections (which may or may not be the work of the same hand), with the addition of particular cases when there were special reasons for including them.

The range of dates in the Reports is interesting. Almost without exception the cases come from between 1581 and the year of publication. Beyond all doubt, Coke could draw heavily upon a vast reserve of cases coming from those years, and actually did so, in the preparation of every Part of his Reports. The accompanying tabulation will facilitate the study of these points. A vertical column is devoted to each of the Parts I to XI of Coke's Reports, giving the number of cases from any particular year contained in it. The total at the foot of each column is therefore the total number of cases in that Part. The total of each horizontal line of figures will be the number of cases from any particular year printed anywhere in the set of eleven Parts. The horizontal rule at the head of each column will indicate that that Part was first published in the year appropriate to the line next below it. The number of folios in each Part is put on the lowest line of each column; two numbers were needed in Parts V and VII as they each contain a case separately foliated from the rest. Those cases (and their foliation) are distinguished in the table by asterisks. Parts XII and XIII have no place in this discussion; they were published long after Coke's death under circumstances which can throw no light upon Coke's own methods.

²⁶Thus, *Capel's Case*, 1 Rep. 61b, was argued for twelve years, 1581-1593.

²⁷In *Smith v. Stapleton*, Plowd. 426, at 438, we see his scruples carried even further. The plaintiff got judgment in 1569, but did not pay the requisite fees for its entry on the roll until 1573. Consequently Plowden omitted it from his first volume (which contains other cases decided in 1569) and printed it only when the record was complete; hence the case appears in the second part among those of 1573. In only one instance did Plowden disturb the chronological order, and that was when he put *Bracebridge v. Clowse*, 1576, immediately after *Bracebridge v. Cook*, 1572, both cases arising upon the same title.

Year	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	Total
1615	—	—	—	—	—	—	—	—	—	—	3	3
1614	—	—	—	—	—	—	—	—	—	—	11	11
1613	—	—	—	—	—	—	—	—	—	9	2	11
1612	—	—	—	—	—	—	—	—	9	11	2	22
1611	—	—	—	—	—	—	—	—	15	1	—	16
1610	—	—	—	—	—	—	—	23	6	—	1	30
1609	—	—	—	—	—	—	—	11	1	3	—	15
1608	—	—	—	—	—	—	1*	9	—	—	—	10
1607	—	—	—	—	—	9	3	—	—	—	1	13
1606	—	—	—	—	—	4	1	1	—	—	—	6
1605	—	—	—	—	3	10	1	—	—	—	—	14
1604	—	—	—	—	6	1	2	—	—	—	—	9
1603	—	—	—	5	4	1	1	1	—	—	—	12
1602	—	—	4	5	2	1	—	—	—	—	1	13
1601	—	3	—	3	11	3	1	—	—	—	—	21
1600	3	—	—	1	5	1	1	—	2	—	—	13
1599	—	1	—	6	12	6	—	—	—	—	—	25
1598	2	1	1	2	9	4	1	—	—	1	—	21
1597	2	2	—	4	8	—	2	—	—	—	1	19
1596	—	2	3	1	9	2	—	—	—	—	—	17
1595	1	1	1	4	1*,7	3	—	—	—	—	—	18
1594	1	1	1	5	3	4	—	—	—	—	—	15
1593	1	—	—	3	11	1	—	—	—	—	—	16
1592	1	—	2	1	7	—	1	—	—	—	—	12
1591	—	1	1	6	2	—	2	—	1	—	—	13
1590	1	—	—	3	5	—	—	—	—	—	—	9
1589	—	3	1	3	3	—	1	—	—	—	—	11
1588	—	—	—	4	4	—	—	2	1	—	—	11
1587	—	—	1	4	3	1	2	1	—	—	—	12
1586	1	1	—	3	—	—	1	—	2	—	—	8
1585	—	1	—	6	1	—	3	—	—	—	—	11
1584	1	2	3	6	1	—	—	1	—	—	—	14
1583	—	—	1	3	2	1	1	—	—	—	—	8
1582	—	1	—	1	—	—	—	—	—	—	—	2
1581	1	—	—	2	—	—	—	—	—	—	—	3
1580	—	—	—	—	—	—	—	—	—	—	—	—
1579	—	—	—	—	1	—	—	—	—	—	—	1
1578	—	—	—	—	—	—	—	—	—	—	—	—
1577	—	—	—	—	—	—	—	—	—	—	—	—
1576	—	—	—	1	—	—	—	—	—	—	—	1
1575	—	—	—	—	—	—	—	—	—	—	—	—
1574	—	—	—	—	—	—	—	—	—	—	—	—
1573	—	—	—	—	—	—	—	—	—	—	—	—
1572	—	—	—	1	—	—	—	—	—	—	—	1
Total	15	20	19	83	1*,119	52	1*,24	49	37	25	22	467
Folios	177	94	91	128	127 41*	80	45 28*	173	142	144	100	1301 69*

If we assume that Coke himself reported all the cases he printed (a statement which is both ambiguous and unproved)²⁸ then the year 1580 becomes

²⁸To say that Coke "reported" a case may mean (a) that he attended the arguments, noted them, and forthwith drew up the final report as printed; or (b) that he heard the arguments and made notes which some years afterwards he cast into shape, possibly enriched by his own later learning; or (c) that having been engaged himself in a case

significant. He printed no cases whatever from this year—we may conjecture that the duties of Reader at Lyon's Inn completely absorbed the energies of the young and comparatively inexperienced lawyer. The three isolated and very early cases of 1572, 1576 and 1579 obviously stand outside the general patterns, and may be set aside as casual intruders. We are therefore left with the large mass of cases drawn from the years 1581 to 1615. The totals in the last column of the table show that after a slow start (3 cases in 1581 and 2 in 1582) Coke began in 1583 to establish a fairly steady pace in reporting.²⁹ Between 1583 and 1614, both years included, he reported (or obtained material for the reports of) 456 cases, out of a grand total of 467. The average over those thirty-two years is slightly above 14 cases a year, and generally speaking Coke kept fairly close to his average; there were only five years in which he took more than 20 cases, and only once did he take 30 cases. The general picture is undeniably one of steady, persistent effort maintained unflinchingly over thirty-two years.³⁰

A comparison with Plowden at once suggests itself. The two parts of Plowden contain a continuous chronological series of 62 cases, covering a range of thirty years. The adjoining tabulation tells their simple story in its simplest terms. Once again, however, we must remember Plowden's preface. He says that he was assiduous in collecting reports from the age of twenty, that is to say, from the year 1538. Of all the cases which he collected in the twelve years 1538 to 1549 not one did he print—silently he suppressed the first quarter of his life's work. We have already said that he was ruthless in the cause of science, and here is further proof; the proof is all the more impressive since it is apparent only after an analysis of dates and figures. His prime still lay before him, and the next thirty years produced the 62 cases which he eventually deemed worthy of publication. Here the contrasts between Coke and Plowden are most striking. Whereas Plowden averaged 2 cases a year, Coke gave us over 14. Plowden's maximum for any one year is 5; Coke's is 30. For six separate years Plowden reported nothing; Coke never gave less than 6 cases in any one year. Plowden's original accumulation may easily have been as large as Coke's grand total³¹ of 467; the significant fact, however, is that Coke chose to print seven times as many cases as Plowden. Evidently we have an exacting choice

Years	Cases
1579	2
1578	5
1577	1
1576	4
1575	1
1574	1
1573	4
1572	2
1571	2
1570	—
1569	2
1568	3
1567	—
1566	—
1565	5
1564	2
1563	—
1562	3
1561	1
1560	3
1559	—
1558	2
1557	—
1556	2
1555	1
1554	4
1553	4
1552	1
1551	2
1550	5
Total	62
Folios	567

he made no contemporary report, but later wrote it up from the papers in the case resting in his office; or (d) that he used notes taken by other hands, but revised in the

on the one hand and a wide comprehension on the other, as the broad and general distinction between the two reporters.

So far, we have considered Coke's reported cases in the bulk, as a single mass of material steadily collected in the course of some thirty-two years, and have thought merely of the mounting pile of papers in his study. To do this, it was necessary to compile a tabulation of the material he used, because the form in which he published it (unlike Plowden's) effectually concealed the chronological range of his work. It is now time to approach another aspect of the matter and to examine the method by which Coke published his collection of cases. With Plowden there is no problem at all. It was his regular practice to enter into his book those cases which he knew were of real importance and which he knew he had reported adequately by his own high standards. Then he printed the book. Its chronological arrangement was inevitable.

In Coke's Reports there is a seeming capriciousness and irregularity in the distribution of the material which is deeply puzzling. If it is the result of Coke's deliberate planning, then we ought to try to discover that plan, and with it, the real meaning and significance of a set of law reports as Coke conceived of it. If, on the other hand, the published state of Coke's Reports is merely accidental, then we ought to know that too, and consider its bearing on our estimate of the man and his book and the place of both in the history of English law.

Looking once more at the tabulation of Coke's cases, it is immediately clear

light of his own recollection of it, and his own view of the legal points involved; or (e) that he had notes of a case, which he stated with great brevity merely as a text for a disquisition on a portion of law, possibly wider than the matters directly raised by the case. Any of these possible methods may lie behind a case reported by Coke. He sometimes significantly refers to his reports as "Commentaries". 8 Rep., preface.

²⁹1 Rep. preface, xxxviii.

³⁰The later years even show some acceleration.

³¹Plowden explains in his preface that there are many of his notes in circulation which he asks the public to ignore, as not conforming to his highest standards; and, of course, lawyers exchanged experiences in private conversation as we can see from a passage in *Fermor's Case*, 3 Rep. 77, at 79 (1602), where Coke mentions "Some's Case in the common pleas in Sir James Dyer's time, as Plowden told me." This is one of possibly many cases reported but not published by Plowden. Coke's total of 467 was reached by counting those cases which had a separate name or title in the text or in the table of cases. It often happens, however, that a report by Coke will contain statements of other cases, but without disclosing whether (a) these are additional cases reported by Coke and added by him to enrich his report, or whether (b) they are merely cases cited in the course of argument in court, and hence appearing in Coke's notes. In many cases only Coke himself could tell into which class a particular citation should be put. If there were many which ought to be put in class (a), that would explain Coke's estimate that he had reported "above six hundred cases." See his letter to the Earl of Buckingham, in WALLACE, *op. cit. supra* note 1, at 181. These "cases within cases" are an opportunity for an intricate investigation which might throw more light upon Coke's methods.

that Parts I, II, and III are much alike in structure (their subject-matter does not concern us at this stage). Each part contains few cases—twenty or less—drawn from a period of about twenty years, and fairly evenly selected from that period. Parts IV, V, and VI yield a very different set of figures. Part IV contains four times the number of cases in Part II; Part V, six times; Part VI, two and a half times. The range of years covered is slightly longer—about twenty-three years, with an exceptional range of thirty years in Part IV. Their respective totals of 83, 119,³² and 52 cases are the highest for the whole set. Part VII has a small total, but it is a very slender volume (save for the separately folioated *Calvin's Case*) and like Parts IV, V, and VI it is evenly drawn from a long range of years. Still a third pattern is revealed in the concluding Parts VIII to XI. Here the totals are dwindling towards the point at which the set began—49, 37, 25, and 22 respectively. The range of years shortens also. Moreover, a new feature appears in these last four parts. We have seen that in Parts I to VII the cases were drawn fairly evenly from the range of twenty or more years covered in each part; now in Parts VIII to XI that distribution is conspicuously abandoned. Instead, we get a marked preponderance of recent cases. Thus, out of the 49 cases in Part VIII, 43 are from within four years of the date of publication. In the succeeding parts the figures are still more striking—31 out of 37, 21 out of 25, and 18 out of 22.

Coke's Reports therefore fall into three clearly distinguishable groups, comprising Parts I-III, IV-VII, and VIII-XI, each group being characterized by its own distribution of material—and, as we shall see later, by other features as well. We are bound to conclude from this that Coke twice changed his policy in the course of his career as a publisher of law reports.

The first group, consisting of Parts I, II, and III, may therefore be studied as illustrating the master's first manner. When he began publication in the year 1600, Coke was already looking ahead, for he entitled his book "The First Part. . . ." How many parts he originally contemplated we cannot say. The example of Plowden suggested but two. Perhaps he meant to cap Plowden by publishing three volumes; if so, that would account for the uniformity of style in the first three parts. Examining once more the tabulated analysis, it is evident that by the year 1600 Coke had accumulated at least 248 cases from the years up to and including 1599. All of these 248

³²There are two special circumstances here. Prefixed to Part V is a report of *Caudrey's Case* which is separately foliated; *Calvin's Case* is similarly prefixed to Part VII. In calculating the average length of cases in these two parts it was obviously necessary to omit these two exceptional, and in the author's intention, separate cases. *Caudrey's Case* covers 41 folios, and *Calvin's* 28. These two cases are distinguished by asterisks in the general tabulation of Coke's Reports given above, and their foliation is likewise indicated separately with the same symbol.

cases he printed sooner or later (and we may be certain that this stock included a possibly small number of cases which he published elsewhere, or not at all during his lifetime). In order to make up Part I of his Reports, Coke picked out only 12 of these 248 cases, and added to them 3 which had been decided in the very year of publication. From these figures alone it is clear that Part I is an extremely select collection. That conclusion is more than confirmed when we think of the cases themselves: *Archer's*, *Corbet's*, *Shelley's*, *Chudleigh's Cases*—never before had such ponderous masses of law in the raw been assembled in one book of very moderate size. Beyond all doubt, Part I contained the cream of the cream from Coke's collections.

It is curious to note the arrangement of this extremely choice material. In substance it is all concerned with property and conveyancing—and for that matter, so are Parts II and III. As the subsequent Parts were to show, Coke's collection covered much wider ground than that; hence it follows that the consistency of the cases in Parts I to III is due to the deliberate choice of the author. In assembling material for these parts, Coke took not only his choicest cases, but his choicest property cases. Beyond this, there is little indication of deliberate arrangement. Part I opens with a single case from the equity side of Chancery; this is followed by three from the Exchequer, four from the Common Pleas, six from the King's Bench (the last of which originated on the common law side of Chancery), and the concluding case from the Court of Wards. The arrangement of the cases within each of these groups is chronological. The most recent were the *Case of Alton Woods*, *Digges' Case*, and *Corbet's Case* (all from 1600, the year of publication); the oldest was *Shelley's Case* (1581).³³

Part I, therefore, was probably intended to illustrate some of the great heads of property law—remainders, uses, powers, perpetuities and the like. Part II is devoted to another aspect of the same wide subject. Of the first three cases, two deal with the deed of an illiterate grantor, and the other with a deed wrongly dated. The rest of the volume is devoted to cases on feoffments, fines, covenants to stand seised, bargains and sales, conditions, attornment, and kindred topics.³⁴ By way of confirmation of all that this implies, we read in the preface that a great part of the legal troubles which come into court can be laid at the door of amateur conveyancing by "parsons, scriveners and such like imperites."³⁵ In short, Part II is a collection of

³³*Shelley's Case* is also the longest report in the book (the greater apparent length of the *Case of Alton Woods* is due to exceptionally verbose pleadings). In 1581, when *Shelley's Case* was decided, Coke was reader at Lyons Inn; the length and style of the report almost suggest that Coke possibly combined his original report with notes of a heavy course of lectures on the questions involved. Cf. note 41 *infra*.

³⁴Three of the cases deal with tithes.

³⁵2 Rep., preface. A century later country clergy are still found "drawing bills,

cases on conveyancing. The internal arrangement of the volume is not according to the courts concerned (as it was in Part I), nor yet according to the type of conveyance under discussion, but is chronological throughout save for a single exception.³⁶

Part III, as we have said, is still a book of property cases, and on this basis, as well as upon the other grounds mentioned already, belongs in the same group as Parts I and II. The majority of the cases deal with leases, wills, fines, recoveries, etc., and thus resemble those in Part II. Occasionally the selection wanders somewhat from this subject. Thus three of the cases deal with the escape of persons taken in execution for debt. The arrangement could only be called roughly chronological.

Looking at these three volumes together, we seem to detect our author searching through his notes of nearly three hundred cases; matching his reports with the pleadings (which would often be in his office files), picking out the most considerable from his accumulation of twenty years, and putting them together for his books. From the start, he had at least two volumes in mind, one on estates and interests, the other on conveyancing. There was so much material on the latter topic that it seems to have overflowed—hence Part III (which appeared in the same year as Part II). Speaking generally, the reports are fairly long. For Part I the average is nearly 12 folios; for Part II it is over 4½ folios; for Part III, nearly 5 folios. Taking all three parts together, the average is nearly 6¾ folios to the case.

The significance of all this appears more clearly still when we pass to the second group, consisting of Parts IV, V, VI, and VII. We have already remarked upon the high number of cases they contain. It is now time to note that in spite of this the volumes are hardly any bigger. Parts I to III with their 54 cases, contain 362 folios. Parts IV to VII run only to 386 folios, although they contain 278 cases. The average is therefore less than 1½ folios per case.³⁷ This is no accident. The difference between 6¾ (the average for Parts I to III) and 1½ (the average of Parts IV to VII) is much too great to admit of any other explanation than a change of plan. The arrangement of Part IV shows the new scheme. It begins (somewhat inconsistently) with the earliest case in the whole eleven volumes (*Vernon's Case*, 1572) which was decided six years before Coke was called. Although

bonds, conveyances, wills, etc." as a recognized means of augmenting their slender salaries: NORMAN SYKES, *CHURCH AND STATE IN ENGLAND IN THE XVIIITH CENTURY* (Cambridge, 1934) 206-7. Coke also castigated the parliamentary draftsmen in this same preface, but it is noteworthy that he did not attempt to collect cases on statutory interpretation—that field was pre-eminently Plowden's.

³⁶The exception is *Thoroughgood's Case*, which, being the oldest, should have come first instead of third in the volume.

³⁷Omitting *Caudrey's* and *Calvin's Cases* (cf. note 32 *supra*).

the pleadings are not printed, the report alone extends to five folios. It is followed by *Bevill's Case* (1583), occupying two folios of pleadings and four of report or six folios in all. Both these cases are therefore on the scale of the reports in Part III. At this point the new system appears. Under the general heading "actions for slander" we get 17 numbered cases. These are immediately followed by 25 numbered cases headed "copyhold cases" (and among them is *French's Case*, 1576, the second oldest case in the whole set). After a short diversion of three miscellaneous cases, there comes a third classified group consisting of 13 numbered³⁸ cases under the heading "cases of appeals, indictments, etc." The volume concludes with 23 cases on a great diversity of subjects, united only by their chronological arrangement and their fairly even distribution over the years. They are also slightly longer than those in the classified groups. Even so, the average length of all the cases in Part IV is just 1½ folios. In this Part, therefore, we find a new policy. Instead of long and very choice cases, few in number but carefully selected, we now get a large number of short cases, more than half of them put under subject headings and the remainder very miscellaneous but fairly recent. The three groups of classified cases rather suggest that Coke was taking whole pages out of his commonplace book.

This impression is deepened by an examination of Part V, which shows the next stage of the new policy. Here we have the shortest cases of the whole set, the average length being merely one folio. The subject headings have increased from three to nine, but the cases within each group are not numbered in the text (although they are in the table of cases). The volume begins with 12 cases in chronological order on "leases." Then come 14 cases on "covenants in leases," again chronological. The next 10 cases are on "executors," followed by 15 cases on "jeofails," both groups being nearly chronological. After these four titles, containing 51 cases, the volume rapidly falls to pieces. Five more subject headings do in fact appear (7 cases on "pardons," 2 on "by-laws," 2 on "usury," 2 on "customs," and 5 on "executions") but they are separated by large numbers of highly miscellaneous cases, to such an extent that the later editions often fail to note where the subject headings cease to apply, and the miscellanea begin.

The first four titles seem to indicate that Coke took many pages out of his commonplace book—a possibility already suggested by the examination of Part IV. Such a book, if it recorded solely those cases which he himself heard argued in court, would inevitably be chronological within each title. It might happen, however, that he occasionally heard of a case from other sources (either written or oral) and added it to his collection. If such a

³⁸In the later editions the numbers of this third group have somehow disappeared.

case were not recent, then the result may possibly be to interrupt the chronological order, which would be resumed only when the compiler added fresh cases from his own knowledge. It may therefore be suggested that cases thus appearing out of order may in fact be cases which Coke acquired at second hand. The large mass of miscellaneous cases printed in this and other Parts is equally cogent evidence, however, that Coke's stock of cases was not kept in one planned series. He certainly had at least one commonplace book, but only a fraction of his collections ever formed part of it. The miscellany of short cases may have been kept loose—which would account for the lack of chronological order. The elaborate reports of the earlier Parts suggest still another system, arranged possibly according to courts. So many different arrangements existing simultaneously make it difficult to suppress the suspicion that Coke may sometimes have been drawing upon collections made by other hands than his.

That Part V was not an impressive piece of work seems to have been evident to the author himself, and he took a step which seems to have been designed as a make-weight. This took the form of a report, separately foliated and prefixed to the volume, of *Caudrey's Case*, written up in resounding Latin periods. This case was decided in 1595 and so was ten years old when Part V appeared. The report of the point actually at issue is quite short, but in this pamphlet Coke surveys ecclesiastical history from the days of "King Kenulph" down to his own, in an endeavor to show that the royal supremacy in church as well as state had always been admitted. Whatever one might think of the rest of Part V, this at least was exciting, and in fact it provoked a hard-hitting reply from Father Parsons, S.J., to which Coke made no further answer³⁹ save a short and frigid homily on literary manners in the preface to Part VI. It was *Caudrey's Case*, therefore, which saved the day, and actually made Part V a very successful book. The first edition had appeared in 1605; a second came out in 1606, a third in 1607, a fourth in 1612, and a fifth in 1624. None of the other Parts had so successful a run as that.

We are bound to ask why *Caudrey's Case* was separately foliated. At first sight it might seem that it was meant to be sold separately from the rest of Part V, but this conjecture is not supported by such library catalogues as I have been able to consult; *Caudrey's Case* does not occur separately, it seems. The only other plausible explanation is that it was an after-thought, added to make up in some measure for the scrappy and ill-digested character of the 119 cases which were already in type. To achieve

³⁹The later editions of 5 Rep. contain a preface on ignorance which was directed against Parsons.

this purpose, it ought to be conspicuously placed at the head of the volume. That, however, raised problems of foliation; the easiest solution was to foliate it separately. Nearly the same thing happened to Part VII. Here the after-thought was *Calvin's Case*, but the reasons for adding it were not quite the same. The cases in Part VII are rather more substantial than those in Part V, and they might well have made their way (slim though the volume was) without any adventitious help. *Calvin's Case*, however, was of the utmost importance in constitutional law and laid down principles of political theory which at the time, and for long afterwards, were of high concern.⁴⁰ Moreover, it was decided in 1608, the very year in which Part VII was published—quite possibly at the moment when the rest of Part VII was already in type. The same solution was obvious: *Calvin's Case* must be printed at once, and printed prominently. Hence its appearance at the head of Part VII, but separately foliated so as not to disturb the rest of the volume. The great difference to be noted, however, is that *Calvin's Case* was urgently needed for legal and political reasons, and had only just been decided; on the other hand there was no urgency about *Caudrey's Case*, and the political theory which Coke injected into his essay (although it touched upon the legal nature of the Reformation) was not essential to the decision. We are thus left with the conclusion that urgency will amply explain the separate foliation of *Calvin's Case*, but will not explain that of the ten-year-old *Caudrey's Case*—which, as already suggested, seems best accounted for as a heavy dose of spice added to an otherwise unattractive dish.

We have already noted that when Coke first embarked upon the publication of law reports in 1600, he could draw upon a stock of at least 248 cases which had been decided down to the end of 1599. In the five Parts so far considered he has been steadily drawing upon that stock—at first with careful discrimination (12 of them were used in Part I, 17 in Part II, 15 in Part III), then dipping into them with both hands and using them lavishly (69 in Part IV, 89 in Part V). With the publication of Part V, therefore, 202 of the stock of old cases had been used; only 46 remained. Of these 46 he was to use 22 for Part VI and 14 for Part VII. The early and middle group of his reports, therefore, accounted for practically the whole of his old stock; only 10 of the 248 cases remained unpublished. This

⁴⁰In the preface to 7 Rep., Coke explains that this was the greatest case that ever was argued in Westminster Hall, that he reported it for his own private solace, that he never meant to publish it because it did not touch matters that would arise in ordinary practice, but that he was "commanded" to print it (no doubt by the king). For this purpose he had to expand his succinct notes. He then suggests that the rest of the cases were added to give the volume some usefulness for ordinary practitioners. Coke is obviously bent on concealing something here, and we feel some hesitation in taking all this literally; but James I may well have been eager to get *Calvin's Case* into print.

simple arithmetical fact had important results. Coke had begun by meeting the demand for "new cases," that is to say, cases later than the latest in Plowden (1579). By 1600 he had built up a stock of material consisting of cases dating from 1581 onwards. In the first seven Parts he had drawn upon it so heavily that little remained. Faced by that situation, Coke had either to abandon further publication or else to rely on current or very recent cases. Rather than stop printing he chose the latter course. Indeed, the situation was temporarily relieved by the fact that Coke had been accumulating a second stock. When he began publication in 1600, he did not give up the practice of law reporting; on the contrary he was steadily making new acquisitions. In the years from 1600 to 1608 (when Part VII appeared and his second group of Reports was complete) he collected 111 cases. These should have helped to replenish the old stock. In fact, they had little effect, for he was using new and old cases with equal prodigality. Of these 111 cases there remained only 15 unpublished when Part VII had appeared in 1608. An examination of Parts VI and VII shows how the pressure of these facts produced the inevitable result. The number of cases falls sharply; if Part V had 119 cases, Part VI had only 52, and Part VII a mere 24. Equally significant, and inevitable, is the changed distribution in point of dates. In Part VI 30 cases came from the new stock (1600 and later) and 22 from the old (1599 and earlier). In Part VII *Calvin's Case* and 10 others came from the new, and 14 from the old. Both stocks, as we have seen, were now well-nigh exhausted.

And so we come to the last group, consisting of Parts VIII to XI. The circumstances already described compelled Coke to a change of policy; and the change was all to the good. The number of cases falls; 49 and 37 in Parts VIII and IX, and 25 and 22 in Parts X and XI. The length of the cases is conspicuously greater, varying from an average of over $3\frac{1}{2}$ folios in Part VIII to nearly 6 folios in Part X. Not only were these cases fewer and longer; they were much more recent. For the first time in his career as a reporter, Coke now published a preponderance of cases decided within four years of the date of publication. The proportion of such cases is 43 out of 49 in Part VIII, 30 out of 37 in Part IX, 21 out of 25 in Part X, and 18 out of 22 in Part XI. Coke was now forced to rely upon current cases for his reports, and it is that fact which brings him nearest our own time. If he had continued this course, he would no doubt have given us a long series of up-to-date reports, and the profession quickly would have learned that "new cases" are not merely those decided within the last generation but within the last three or four years. That was destined not to be. Part XI appeared in 1615; in 1616 Coke was dismissed, and never entered a court of common law again.

We have said nothing about Parts XII and XIII of the Reports. They were not published until after Coke's death, and their nature will be clear from the foregoing study. They could only be the tattered scraps and fragments which remained after Coke himself had picked out all that mattered. Much of their content was probably rejected by Coke several times, as he dipped again and again into his store of material. It may be doubted (in the light of the foregoing analysis) whether any purely legal material of consequence was lost when Coke's papers were impounded. A larger question is raised by Coke's other writings. He was indefatigable as a note taker, and his collections must have been immense. We have already seen that he wrote up some cases in the form of elaborate reports which tended to become essays or lectures,⁴¹ that he kept others in his commonplace books, that still others may have reached him from outside sources, to be cued in⁴² hastily when he was short of matter. Besides all this, however, there was much else. It was natural for him, as it is for any active scholar, to make annotations in the margins of the great classics of the law. Thus a large paper copy of Littleton's Tenures was furnished with a bewildering gloss which must have slowly accumulated over a number of years. Another way of keeping notes was to attach comments to a set of statutes, to imitate and modernize Staundford's Pleas of the Crown or Crompton's Jurisdiction of the Courts.

Absence from the courts put an end to Coke's Reports, but printer's ink was in his veins. In 1628, at the age of seventy-six, he not only led the opposition in the House of Commons and penned the Petition of Right, but embarked upon a new series of publications. In that year he published "The First Part of the Institutes of the Laws of England." As with the Reports, so with the Institutes he saw before him an imposing vista of folios. The preface to the First Institute announced that the second and third were already in shape, and the fourth in preparation. The First Part, a "painful and large volume" which achieved fame as Coke upon Littleton, was the only one to delight its author's eyes in print. After his death came the gloss on the statutes (2 Inst.), the notes on criminal law (3 Inst.), and the notes on courts (4 Inst.). To the very end, cases may turn up in unexpected places; thus, a really valuable case of 1600 (*Sir Moyle Finch's Case*) did not see the light of day until 1644, because Coke happened to file it away with his notes on the jurisdiction of courts, so that it is now to be found in 4 Inst. 86.

⁴¹Such a report in longhand would form a book. Cf. Holkham MS, 250 (Buckhurst's Case, 1 Rep. 1), described in ROYAL COMMISSION ON HISTORICAL MANUSCRIPTS, 9th Report, app. ii.361 and MS 251 (Shelley's Case).

⁴²Cf. the anonymous Case of Avowry, 9 Rep. 20 (?1588).

There are many other problems in Coke's Reports. Their accuracy has been debated several times, but with insufficient reference to surviving manuscript material. The sources of at least some of the reports might possibly be traced to other hands, as we have already suggested. There may be some connection with the unpublished reports of Chief Justice Wray.⁴³ The library of Coke's descendants, the earls of Leicester, at Holkham Hall still contains many manuscripts, some of which belonged to Coke himself; but Wray's reports seem to be in the British Museum. Coke openly stated that he had the original manuscript of Dyer's Reports (he had bought Dyer's estate at Stoughton), and he several times cites cases from the manuscript which are not in the printed edition.⁴⁴ These and other matters can only be dealt with when the treasures of the English libraries are once again available to readers. In the meantime, it will have been useful to extract from the text of the Reports some light upon Coke's material, how he accumulated it and used it, and how he came near to publishing a continuous series of recent cases. Most significant of all, perhaps, is the way in which circumstances compelled Coke to do what no one, even in "this scribbling world"⁴⁵ had yet undertaken, namely, to report cases expressly for the purpose of printing them shortly afterwards, as he did in Parts VIII to XI of his Reports. Plowden—Dyer—Coke is an imposing line of names, and as Coke is entitled to the third place in the succession of printed reports, so Plowden must have his due, and lead the rest. Of the differences between Plowden's idea of a law report and Coke's, it is difficult to speak shortly. The question is not merely one of length, style, carefulness, or accuracy; more important considerations even than these are involved. Plowden would have made a precedent fundamentally a matter of record—that is to say, a proposition logically deduced from the pleadings enrolled on the record. Although Coke also occasionally uses language to this effect, his practice as a reporter is essentially different. He seems to have drifted steadily away from an insistence upon the pleadings, and in most of his work is more concerned with the "resolutions" of the judges, that is to say, their statements of general principle, making little distinction between those which were the basis of the decision and those which were only obiter. It might be possible to deduce that Coke was thinking (unconsciously perhaps) of the law in terms of substance rather than of procedure, and that would be an important conclusion if it were established. On the other hand, it could be maintained that Plowden was advancing far beyond his contempo-

⁴³Cf. *Herlakenden's Case*, 4 Rep. 63 (1589).

⁴⁴10 Rep., preface; WALLACE, *op. cit. supra* note 1, at 126-7.

⁴⁵7 Rep., preface.

raries and the old Year Book tradition of "sudden sayings" toward something more scientific, while Coke tarried behind with his beloved *Quadragesimo*. Indeed, if Plowden's view were pressed to its logical conclusion, a single case might become a binding precedent—which, superficially, looks very modern; Coke's interest in "resolutions," on the other hand, places the emphasis upon a body of principles whose authority he seems to derive from their undisputed acceptance over a number of years. In other words, he looks not to the single case, but to a settled policy implied by a line of several cases. These are all weighty matters which someone, some day, may discuss more adequately. The aim of the present article has been merely to tabulate dates and figures, and by their means to watch Plowden entering up his "book," and Coke dipping time and again into his huge store of papers in search of material for his Reports.