English Law's Encounters with Sweden's Loccenius

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In his inaugural lecture, the great legal historian Frederic William Maitland reflected on the role of foreign ideas in English law; he stated that '[w]hen great work has been done some fertilizing germ has been wafted from abroad; now it may be the influence of Azo and now of the Lombard feudists, now of Savigny and now of Brunner'.[1] Quite apart from the fact that not all foreign ideas are good[2] and not all good ideas are foreign, this list is puzzlingly incomplete. French jurists, in particular, are conspicuous by their absence. Where, for example, is Robert-Joseph Pothier, 'an authority… as high as can be had, next to a court of justice in this country'[3] or his contemporary compatriots, Balthazar-Marie Emerigon (1716–1784) and Réné-Josué Valin (1695–1765), whose views are found throughout the canon of English cases on insurance law?[4] One might not immediately think of adding Swedish legal scholarship to Maitland's list. Yet three legal luminaries of the seventeenth century, who worked at Swedish universities, influenced English jurists,

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[1] FW Maitland, *Why the History of English Law Is Not Written* (Cambridge University Press, 1888) 1, 12.

[2] See, for example, C Kennefick, 'Looking Afresh at the French Roots of Continuous Easements in English Law' in W Eves, J Hudson, I Ivarsen and SB White (eds), *Common Law, Civil Law, and Colonial Law: Essays in Comparative Legal History from the Twelfth to the Twentieth Centuries* (Cambridge University Press, 2021) 183.

[3] *Cox v Troy* (1822) 5 B & Ald 474, 480 (Best J). Best J added that Pothier's 'writings have been constantly referred to by the Courts': ibid., 481.

[4] Just seven years before Maitland's inaugural lecture, Brett LJ stated that Emerigon 'is always quoted as an authority with regard to Insurance Law, and his language is certainly to be carefully considered before it is rejected': *Bradford v Symondson* (1881) 7 QBD 456, 463. Three decades before that case, Lord Campbell CJ treated Valin as one of 'the Continental writers of the highest authority, from whom our commercial code has been chiefly framed': *Knight v Faith* (1850) 15 QB 649, 662.

judges and advocates: Johann Stiernhöök (1596–1675) at Turku, Johannes Loccenius (1598–1677), the subject of this chapter, at Uppsala and Samuel Pufendorf (1632–1694) who published his magnum opus *De Jure Naturae et Gentium* in Lund in 1672 when he was a professor in the University of that city.[5] From the perspective of an English lawyer in the twenty-first century, Loccenius is especially interesting: unlike Stiernhöök, Loccenius featured in several important English cases in the eighteenth and nineteenth centuries;[6] and unlike Pufendorf whose legal ideas were of universal application, Swedish law was at the centre of Loccenius's scholarship.[7]

This chapter explores why and how this importation of Loccenius's legal ideas occurred and considers its legacy today. First, as we see in section 1, the seventeenth century was the dawn of Swedish legal scholarship; the conditions were propitious for the emergence of excellent legal scholarship in Latin, the language of intellectual exchange in that period. Of equal importance were the conditions of the importer: in the eighteenth century and especially in the nineteenth century, English courts were notably receptive to foreign legal ideas.[8] Section 3 analyses from various angles the English courts' embrace, in this period, of Loccenius's legal ideas. In section 2, we examine the principal features of Loccenius's legal scholarship and especially

[5] S Pufendorf, *De Jure Naturae et Gentium Libri Octo* (Junghans, 1672).

[6] See section 3 below on the reception of Loccenius in English cases. Stiernhöök was cited by counsel to support a point relating to English criminal law 'before the introduction of the feudal system' in an appeal from India to the Privy Council: *Advocate-General of Bengal v Dossee* (1863) 2 Moo PC NS 22, 50. Stiernhöök also appears in a reporter's footnote to support a point relating to excommunication in the ecclesiastical law of 'other countries': *Veley v Burder* (1841) 12 Ad & El 265, 292. Stiernhöök was, manifestly, a favourite of William Blackstone. In the latter's famous treatise, Stiernhöök is cited five times in the first thirteen chapters alone of the fourth book: W Blackstone, *Commentaries on the Laws of England: Book the Fourth* (Clarendon Press, 1769) 124 (the 'old Gothic constitution'), 126 ('the Gothic constitutions'), 133 ('the Salic law'), 164 ('the laws both of antient and modern Sweden'), 168 ('the hospitable laws of Norway'). The prominent place of Swedish law and Stiernhöök in Blackstone's treatise has previously been noted in passing: HG Hanbury, 'Blackstone in Retrospect' (1950) 66 *LQR* 318.

[7] Pufendorf appears in several leading cases in English law. In contract law alone, he is invoked in leading cases on restraint of trade (*Mitchell v Reynolds* (1712) 10 Mod 130, 135 (Parker CJ)) and frustration (*Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd* [1943] AC 32, 58 (Lord Macmillan)).

[8] In contract law alone, see, for example, W Swain, *The Law of Contract: 1670–1870* (Cambridge University Press, 2015) 34–35 on the eighteenth century and AWB Simpson 'Innovation in Nineteenth Century Contract Law' (1975) 91 *LQR* 247 on the nineteenth century.

those of *De Jure Maritimo et Navali*,[9] the treatise which English law fervently embraced. This Anglo-Swedish legal tale leads to two concluding reflections of a comparative and an historical nature: the role of Roman law in the exchange of ideas between non-civilian systems[10] and gaps in time between the exportation and importation of legal ideas.

The author of this chapter, a legal scholar working in England who, currently, has the privilege of being a fellow of the Stockholm Centre for Commercial Law, hopes that this exploration of Anglo-Swedish legal encounters honours in an appropriate way the first quarter century in the life of the Centre. Indeed, commerce is at the heart of this story of the reception of Loccenius in England.

1. The Dawn of Swedish Legal Scholarship in the Seventeenth Century

There was nothing learned about Swedish law until the seventeenth century.[11] Sweden's first university was established in Uppsala in 1477 but it was only in 1620 that the teaching of law began there in earnest.[12] Furthermore, there was no appellate court in Sweden until the establishment of the *Svea hovrätt* in Stockholm in 1614 and, even then, that court initially struggled to recruit suitably learned judges.[13] Roman law, the quintessential learned law, never took root in Sweden.[14] Swedish law in the seventeenth century was – and still is today – based on statutes dealing with specific matters

[9] *De Jure Maritimo et Navali Libri Tres* (Janssonius, 1650).

[10] Views differ on whether Swedish law today is civilian or in a category of its own: U Bernitz, 'What is Scandinavian Law? Concept, Characteristics, Future' in P Wahlgren (ed) *What is Scandinavian Law? Social Private Law* (Stockholm Institute for Scandinavian Law, 2007) 13, 15–22. However, the factors which point most strongly in the direction of the former are either absent or much less prominent in the seventeenth century (the focus of our study); the minimal reception of Roman law is particularly important in this regard. See section 1 below.

[11] H Pihlajamäki, *Conquest and The Law in Swedish Livonia (ca 1630–1710): A Case of Legal Pluralism in Early Modern Europe* (Brill, 2017) 2.

[12] M Vasara-Aaltonen, 'Legal Learning of Various Kinds: Swedish Court of Appeal Judges in the Seventeenth Century' in M Korpiola (ed), *Legal Literacy in Premodern European Societies* (Palgrave Macmillan, 2019) 59, 60, 73.

[13] Ibid *passim*. Other *hovrätter* were subsequently established elsewhere in the kingdom in the seventeenth century: Ibid 63–64.

[14] The extent to which Roman law influenced Swedish law is contested yet it is clear that there was never a reception of the sort which occurred on the continent: Pihlajamäki, *Conquest* (n 11) 76–84.

and applying throughout the realm: the principal statutes before the great (non-civilian) codification of 1734[15] were the *Stadslag* (Urban Law) and the *Landslag* (Rural Law) which were introduced during the reign of King Magnus Eriksson in the fourteenth century;[16] the *Sjölag* (Sea Law), which was promulgated in 1667, was also of significance.[17]

The emergence of Swedish legal scholarship in the seventeenth century coincided with the rise of Sweden as a great military power. By 1651, Sweden's territorial gains were so extensive that it 'had almost succeeded in establishing an encirclement of the Baltic'.[18] The development of university education was a policy of the state.[19] Clearly, legal expertise in particular was required in order to administer an empire effectively. Universities with law faculties were created in Dorpat (now Tartu) in 1632, Turku in 1640 and Lund in 1666.[20]

Loccenius, who took up a professorship in law in Uppsala in 1634,[21] was, as mentioned in the preceding section, one of the leading lights of Swedish legal scholarship in its first century. We now turn to an analysis of his work.

2. The Oeuvre of Loccenius

Loccenius was born in Itzehoe in Holstein in 1598[22] but he spent the entirety of his academic career in Sweden. He completed his doctoral degree in law in Leiden in 1625 before being appointed to his first professorship – in history

15 W Chydenius, 'The Swedish Lawbook of 1734: An Early Germanic Codification Law' (1904) 20 *LQR* 377.

16 The *Landslag* was altered in the fifteenth century: Pihlajamäki, *Conquest* (n 11) 74.

17 H Pihlajamäki 'Understanding the Sources of Early Modern and Modern Commercial Law' in H Pihlajamäki, A Cordes, S Dauchy, D de Ruysscher (eds) *Understanding the Sources of Early Modern and Modern Commercial Law: Courts, Statutes, Contracts, and Legal Scholarship* (Brill, 2018) 266, 272, 274–275, 276, 284 (although 1682 is, erroneously, given as the year on this page).

18 JE Olesen, 'The Struggle for Supremacy in the Baltic between Denmark and Sweden, 1563–1721' in EI Kouri and JE Olesen (eds) *The Cambridge History of Scandinavia: Vol II, 1520–1870* (Cambridge University Press, 2016) 246, 258.

19 PD Lockhart, *Sweden in the Seventeenth Century* (Palgrave Macmillan, 2004) 86–87.

20 A founding date of 1668 is sometimes given for Lund. See, for example, Lockhart (n 19) 86. The university 'was inaugurated' thirteen months after it was founded: https://www.lunduniversity.lu.se/about-university/university-glance/history-lund-university (accessed 12 January 2025).

21 H Jaumann, *Handbuch Gelehrtenkultur der Frühen Neuzeit, Band 1: Bio-bibliographisches Repertorium* (De Gruyter, 2004) 414.

22 Ibid. Hence why we do not describe him as a Swedish jurist in this chapter.

– at Uppsala in the same year.[23] In 1634, he was made professor of Roman Law and in 1666, Honorary Professor of Swedish Law.[24]

Loccenius's intellectual legacy is significant. His legal oeuvre includes treatises (in Latin) on Swedish law (both public and private) and maritime law.[25] He was also an eminent historian. As a member of 'the *Antikvitetskollegium* or "College of Antiquities" which was established in 1666', he played a role in the flourishing of 'Swedish Gothicism', an intellectual and political movement which tried to justify Swedish ascendancy by claiming *inter alia* that Sweden had 'brought civilisation to the ancient Greeks and Romans'.[26]

Loccenius's influence in English cases rests solely on his treatise on maritime law, *De Jure Maritimo et Navali* the first edition of which was first published in 1650.[27] Three features of what, in his own words, is a 'succinct' treatise – it comprises only 288 pages – are especially noteworthy.[28] First, its sources are eclectic. As Loccenius aptly observes in the preface, his method is to act like 'a bee, visiting flowers of all kinds in order to absorb the best nectar'.[29] In addition to Swedish laws,[30] one finds laws from around the Baltic Sea and the North Sea: the sea laws of Visby[31] and the Hanse towns[32] are particularly prominent. Unsurprisingly, there are also copious references to the *Corpus Iuris Civilis*, principally the Digest.[33] The secondary sources range

23 Ibid.

24 Ibid.

25 *Synopsis Juris Publici Svecani* (Amund Grefwe, 1673); *Synopsis Juris Privati, ad Leges Svecanas Accomodata* (Amund Grefwe, 1673); *De Jure Maritimo et Navali Libri Tres* (1650).

26 W Poole and KJ Williams 'A Swede in Restoration Oxford: Gothic Patriots, Swedish Books, English Scholars' (2012) 39 (1) *Lias* 1, 3–4, 11–13; Lockhart (n 19) 87–88.

27 *De Jure Maritimo et Navali Libri Tres* (Janssonius, 1650); *De Jure Maritimo et Navali Libri Tres* 2nd edn (Janssonius, 1652). A third edition was attached to Loccenius's translation from Swedish to Latin of the Sea Law of 1667: *Sveciae Regni Jus Maritimum, Lingua Svetica Conscriptum* (Wankijf, 1674); *De Jure Maritimo et Navali Libri Tres* 3rd edn (Wankijf, 1674).

28 *De Jure Maritimo et Navali Libri Tres* (Janssonius, 1650) 5.

29 Ibid. 7. All translations in this chapter are mine.

30 See for example, *De Jure Maritimo et Navali* (n 28) 58–59, 65–66, 72, 90, 129, 139, 183–184, 214–215, 216, 221, 235, 266–267, 270, 284.

31 See for example, *De Jure Maritimo et Navali* (n 28) 66, 183–184, 190–191, 193, 195, 220–221, 287. It was only in 1645 that Gotland (and thus Visby) was ceded to Sweden by Denmark (under the Peace Treaty of Brömsebro mentioned below in this section): Lockhart (n 19) 66.

32 See for example, *De Jure Maritimo et Navali* (n 28) 177, 178, 192, 250. On the Hanse organisation, see J Wubs-Mrozewicz and S Jenks (eds), *The Hanse in Medieval and Early Modern Europe* (Brill, 2012).

33 *De Jure Maritimo et Navali* (n 28) *passim*. The final chapter, for example, contains refer-

over an even wider canvas: in addition to the French humanist, Jacques Cujas (1522–1590) and the Dutch natural lawyer, Hugo Grotius (1583–1645), Loccenius cites John Selden (1584–1654), the English jurist and historian, and Alberico Gentili (1552–1608), Regius Professor of Civil Law at Oxford.[34]

The second notable feature is the emphasis on legal practice. One case from Sweden on a maritime loan ('*fenus nauticum*') is discussed over two pages in the form of a report which Loccenius received in a letter from a friend.[35] A case from Genoa is mentioned briefly as is the practice of the admiralty courts of Holland.[36] More remarkably, a (Latin translation of a) standard form insurance contract from Antwerp is reproduced over several pages.[37] Indeed, this standard form contract was of particular interest in English courts.[38]

The final feature of note is that the treatise incorporates sources which, in 1650, were strikingly recent. On at least two occasions, Loccenius cites provisions of a Peace Treaty of 1645 between Denmark and Sweden, presumably that of Brömsebro which ended the Torstensson War.[39] Furthermore, one of the most frequently cited secondary sources in Loccenius's treatise is a commentary of 1647 by his contemporary in Leiden, Arnold Vinnius (1588–1657), on a treatise on maritime law which had been written by Peter Peckius (1529–1589).[40] This commentary was widely acclaimed;[41] indeed,

ences to the Digest on two of its six pages and a reference to Codex on one of them: ibid., 284, 286, 287.

[34] See for example, *De Jure Maritimo et Navali* (n 28) 83, 98, 241, 251 (Cujas); 225, 228, 230, 270, 286 (Grotius in Book III alone of Loccenius's treatise); 42, 69 (Selden); 44–45, 132, 147–148, 228 (Gentili).

[35] *De Jure Maritimo et Navali* (n 28) 180–181.

[36] *De Jure Maritimo et Navali* (n 28) 287, 285.

[37] *De Jure Maritimo et Navali* (n 28) 154–156.

[38] *Kidston v Empire Marine Insurance Co* (1866) LR 1 CP 535, 550–551 (Willes J); *Oppenheim v Fry* (1864) 5 B & S 348, 351 (counsel).

[39] *De Jure Maritimo et Navali* (n 28) 48, 85: other provisions of a treaty between Sweden and Denmark are cited elsewhere in this treatise but it is not clear which specific treaty the author has in mind: 83, 227. On the war and this treaty of 1645, a 'watershed' in the history of inter-Scandinavian relations, in the constitutional development of Denmark, and in the story of Sweden's rise to great-power status', see Lockhart (n 19) 64–67, 66.

[40] A Vinnius, *Petri Peckii In Titt. Dig. et Cod. ad Rem Nauticam Pertinentes Commentarii* (Wyngaerden, 1647). See *De Jure Maritimo et Navali* (n 28) *passim*. There are, however, almost twice as many references to Grotius in Loccenius's treatise as there are to Vinnius's commentary on Peckius.

[41] D de Ruysscher, 'Peck on Maritime Affairs' in S Dauchy, G Martyn, A Musson, H Pihlajamäki and A Wijffels (eds), *The Formation and Transmission of Western Legal Culture: 150 Books that Made the Law in the Age of Printing* (Springer, 2016) 115, 116–117.

in the preface to *De Jure Maritimo et Navali*, Loccenius singles out Vinnius's commentary for praise.[42] Manifestly, Loccenius was at the vanguard of knowledge in maritime law.

Given the strengths of Loccenius's *De Jure Maritimo et Navali*, it is unsurprising that English judges and jurists turned to it for inspiration. In the seventeenth century, several of Loccenius's books were in Oxford[43] and he was cited in some English legal treatises.[44] However, there seems to be no trace of Loccenius in the English cases in that period. He eventually emerges in that body of legal literature over a century after the publication of *De Jure Maritimo et Navali*.

3. The English Reception

We now examine the corpus of English law reports from the oblique angle of one jurist; as Maitland reminds us, 'there is not much "comparative jurisprudence" for Englishmen who will not slave at their law reports'.[45] Loccenius appears in ten English cases from the first in 1757 to the last in 1866; from this evidence, we obtain a clear picture of the use of *De Jure Maritimo et Navali* in English law.

The first point of note is the international dimension. Three of these cases address consequences of two major events in world history: the emergence of the Dutch Batavian Republic in 1795[46] and the Battle of Grand Port near Mauritius in 1810,[47] the latter being 'one of the worst defeats the Royal Navy suffered during the Revolutionary and Napoleonic Wars'.[48]

42 *De Jure Maritimo et Navali* (n 28) 5–6.

43 Poole and Williams (n 26) *passim*.

44 Poole and Williams (n 26) 36 (by the 'famous civilian Richard Zouche… and the admiralty judge John Exton'). See too the reference to Loccenius by the less famous civilian Robert Wisebrooke in *The Law of Laws, or, The Excellency of the Civil Law above All Other Humane Laws Whatsoever* (Royston, 1657) 98.

45 Maitland (n 1) 12. A comprehensive examination of the treatment of Loccenius's work in contemporary secondary sources would add a valuable dimension to this study but it would not radically alter the story of the reception of Loccenius in English law. Furthermore, as Nozick astutely observed, '[t]here is room for words on a subject other than last words': *Anarchy, State and Utopia* (Basic Books, 1974) xii.

46 *Lucena v Craufurd* (1806) 2 Bos & P (NR) 269; *The Twee Gebroeders* (1801) 3 C Rob 336. On the Batavian Republic (1795–1806), see S Schama, *Patriots and Liberators: Revolution in the Netherlands, 1780–1813* 2nd edn (Fontana, 1992) 178–491.

47 *The Ceylon* (1811) 1 Dods 105.

48 A Mikaberidze, *The Napoleonic Wars: A Global History* (Oxford University Press, 2020) 497.

Strikingly, Swedish elements – but not Swedish law – form the backdrop to three other cases. In *The Aquila*, the ship found derelict at sea 'had been restored as Swedish property' and the 'Swedish consul' had been informed of the events;[49] the dispute concerned the cargo the original owners of which were unknown. In *The Elizabeth*, the ship ran aground on rocks near Gotland, 'the Swedish Diving Company' brought the ship to Östergarn and the claimant sailor subsequently left the island on a ship from Visby.[50] In *Pelly v Royal Exchange Assurance Co*, the connection to Sweden is more tenuous: the fire that destroyed the 'rigging, sails and furniture' of the claimant's ship emanated from a warehouse 'belonging to a Swedish ship' on a sandbank in a river in China; the Swedish owner was not involved in the case.[51]

Turning to the legal categories into which the ten cases fall, a clear pattern emerges: they concern what we now call contract law, international law and non-contractual salvage. Sixty per cent of the cases fall into the first category. Five cases address legal questions relating to insurance contracts. The interpretation of certain clauses in marine insurance contracts is the subject of *Kidston v Empire Marine Insurance Company*, *Oppenheim v Fry* and *Pelly v Royal Exchange Assurance*.[52] In *Paterson v Powell*, the question was whether a contract relating to the price of shares was one of insurance.[53] The concept of an insurable interest was considered in *Lucena v Craufurd*.[54] The sixth case on contract law, *The Elizabeth*, addressed the question of the termination of a contract for the labour of a seaman on the ground of 'vis major'.[55]

Three of the ten cases in which Loccenius is mentioned fall within international law. The question of jurisdiction for manslaughter committed at sea was addressed in *R v Keyn*.[56] *The Ceylon* and *The Twee Gebroeders* are prize cases:[57] the main issue in the latter was whether a ship had been captured in enemy or neutral waters and the former considered whether ownership of a ship was lost when it had been captured by the enemy and then

49 (1798) 1 C Rob 37, 37, 49.
50 (1819) 2 Dods 403, 403–404.
51 (1757) 1 Burr 341, 346, 341.
52 (1866) LR 1 CP 535; (1864) 5 B & S 348; (1757) 1 Burr 341.
53 (1832) 9 Bing 320. Significantly, *Lucena v Craufurd* (1806) 2 Bos & P (NR) 269 is cited by counsel in this case: 323.
54 (1806) 2 Bos & P (NR) 269.
55 (1819) 2 Dods 403.
56 (1876) 2 Ex D 63.
57 (1811) 1 Dods 105; (1801) 3 C Rob 336. Significantly, *The Twee Gebroeders* (1801) 3 C Rob 336 is also cited in *R v Keyn*: (1876) 2 Ex D 63, 91 (Lindley J).

retaken by the British. The final case, *The Aquila*, is alone in the category of non-contractual salvage:[58] the question was whether derelict property should belong in equal shares to the Crown and the salvor or whether the salvor should simply receive an award, the derelict property belonging entirely to the Crown.

The third point of note about these ten cases is that Loccenius's learning was invoked by all legal actors: judges, advocates and law reporters. In half of the cases, he appears in the judgments which were delivered.[59] Indeed, in two cases, he is cited by more than one judge: in *R v Keyn*, in two judgments of the majority and in *Lucena v Craufurd*, in a majority judgment and a minority judgment.[60] He appears only in the arguments of counsel in three cases[61] and only in the footnote or marginal note of the reporter in two cases.[62]

These legal actors generally make a faithful use of Loccenius's arguments in the ten cases. The one exception is *Lucena v Craufurd* in which Lawrence J states that 'the definition of an insurance is given by Grotius… as cited in Loccenius 175'.[63] However, no such definition is provided on this page – or on any other page – in any of the three editions of Loccenius's treatise. It is, therefore, apt that the definition is attributed to 'Grotius cited by Lawrence J' in a leading commentary on the Marine Insurance Act 1906.[64]

Fourthly, in the cases in which Loccenius is cited by judges and advocates, his work is generally used to support legal propositions applicable in all times and places but it is also invoked to substantiate claims about a particular time

[58] (1798) 1 C Rob 37. Technically, it is also a prize case as the derelict property was assumed to be enemy property in order to cater for the fact that the original owner might emerge at some stage: 41.

[59] *R v Keyn* (1876) 2 Ex D 63, 76, 176; *Lucena v Craufurd* (1806) 2 Bos & P (NR) 269, 295, 300; *Kidston v Empire Marine Insurance Co* (1866) LR 1 CP 535, 551; *The Ceylon* (1811) 1 Dods 105, 117–118; *The Aquila* (1798) 1 C Rob 37, 42.

[60] *R v Keyn* (1876) 2 Ex D 63, 76 (Sir Robert Phillimore), 176 (Cockburn CJ); *Lucena v Craufurd* (1806) 2 Bos & P (NR) 269, 295 (a joint opinion by Graham B, Le Blanc J, Rooke J, Grose J, Heath J, Macdonald CB and Sir James Mansfield CJ), 300 (Lawrence J).

[61] *Oppenheim v Fry* (1864) 5 B & S 348, 351 (and, notably, counsel's argument is commended by Erle CJ as 'able': 352); *Pelly v Royal Exchange Assurance* (1751) 1 Burr 341, 344; *Paterson v Powell* (1832) 9 Bing 320, 323.

[62] *The Elizabeth* (1819) 2 Dods 403, 409 (marginal note); *The Twee Gebroeders* (1801) 3 C Rob 336, 348 (footnote). In *The Ceylon*, Loccenius is cited in the judgment and the reporter's footnote: (1811) 1 Dods 105, 117–118.

[63] (1806) 2 Bos & P (NR) 269, 300.

[64] S Rainey, G Blackwood and D Walsh, *Chalmers' Marine Insurance Act 1906* 11th edn (Bloomsbury, 2019) 467.

or place.[65] Significantly all cases in the former category concern the construction of insurance contracts and all the cases on the construction of insurance contracts in which Loccenius is mentioned also fall within this category.[66] However, Loccenius's views are considered to be restricted to a particular time in *R v Keyn*.[67] Similarly, Loccenius is cited to support arguments limited to 'the general law of Europe' and the law 'in the North of Europe' in *The Ceylon* and *The Aquila* respectively;[68] nonetheless, these arguments which are restricted in space are used in these two cases to support arguments that the particular rules outlined by Loccenius are applicable in England too.

The final observation of note on these ten cases is that they are, unquestionably, of legal significance. First, this was true in their own time: Loccenius was mentioned by or before two of the greatest of English law's judges: Lord Mansfield and Sir William Scott (Lord Stowell).[69] Of lesser distinction but also of particular significance were Willes J, Sir Robert Phillimore and Cockburn CJ all of whom invoked Loccenius.[70] It is equally relevant that citations of Loccenius were not limited to a narrow range of courts: we find him in the Court of King's Bench, the Court of Common Pleas, the Court of Admiralty, the Court of Exchequer Chamber, the Court of Crown Cases Reserved and the House of Lords. The two cases in the House of Lords and

65 It is not possible to draw such inferences in the two cases in which Loccenius is mentioned only by the reporter: *The Twee Gebroeders* (1801) 3 C Rob 336, 348; *The Elizabeth* (1819) 2 Dods 403, 409.

66 *Kidston v Empire Marine Insurance Co* (1866) LR 1 CP 535, 551; *Oppenheim v Fry* (1864) 5 B & S 348, 351; *Paterson v Powell* (1832) 9 Bing 320, 323; *Pelly v Royal Exchange Assurance* (1751) 1 Burr 341, 344.

67 *R v Keyn* (1876) 2 Ex D 63, 76.

68 (1811) 1 Dods 105, 117–118; (1798) 1 C Rob 37, 42.

69 *Pelly v Royal Exchange Assurance* (1751) 1 Burr 341, 344 (counsel before Lord Mansfield); *The Ceylon* (1811) 1 Dods 105, 118 (Sir William Scott); *The Aquila* (1798) 1 C Rob 37, 42 (Sir William Scott). On Lord Mansfield and Sir William Scoot, see, for example, James Oldham, *English Common Law in the Age of Mansfield* (University of North Carolina Press, 2004) and HJ Bourguignon, *Sir William Scott, Lord Stowell: Judge of the High Court of Admiralty, 1798–1828* (Cambridge University Press, 1987) respectively.

70 *Kidston v Empire Marine Insurance Co* (1866) LR 1 CP 535, 551 (Willes J); *R v Keyn* (1876) 2 Ex D 63, 76 (Sir Robert Phillimore), 176 (Cockburn CJ). Willes J was 'perhaps the most learned common lawyer of his day' and Cockburn CJ was 'the greatest of the Chief Justices of the King's Bench' between 1833 and 1875: W Holdsworth, *A History of English Law* vol XV (Methuen, Sweet and Maxwell, 1965) 506, 443. Sir Robert Phillimore has been described as 'a distinguished representative of a famous legal family' W Holdsworth, *A History of English Law* vol XVI (Methuen, Sweet and Maxwell, 1966) 146.

the Court of Crown Cases Reserved were heard by ten and fourteen judges respectively.[71]

Indeed, most of these ten cases are not simply of historical significance: eight of them can be found in treatises published in the twenty-first century and, as such, constitute important authorities in English law today.[72] Of particular significance today are *R v Keyn* and *Lucena v Craufurd* in international law and insurance law respectively. One measure is the frequency with which they have been cited in the Court of Appeal or the House of Lords/ Supreme Court in the twenty-first century: in this period, *Lucena v Craufurd* has been discussed extensively in two cases before the Court of Appeal[73] and *R v Keyn* features in judicial speeches in two cases before the House of Lords/ Supreme Court.[74] Furthermore, Brian Simpson's *Leading Cases in the Common Law* devotes one of its ten chapters to *R v Keyn*, confirming the august status of this case in the common law firmament.[75]

71 *Lucena v Craufurd* (1806) 2 Bos & P (NR) 269, 279; *R v Keyn* (1876) 2 Ex D 63, 64–65.

72 On *R v Keyn* (1876) 2 Ex D 63 see, for example, J Crawford, *Brownlie's Principles of Public International Law* 9th edn (Oxford University Press, 2019) 52, 58, 441 (although in the citation on this latter page, the year is wrongly given as 1878); On *Kidston v Empire Marine Insurance Co* (1866) LR 1 CP 535 see, for example, M Templeman, C Blanchard, P Hopkins, N Hart, D Walsh and H Morton, *Arnould: Law of Marine Insurance and Average 21st edn* (Sweet & Maxwell, 2024) [2-29], [25-09], [25-20], [25-36], [27-01], [27-35], [27-36] [28-29]; On *Paterson v Powell* (1832) 9 Bing 320, see, for example, HG Beale (ed), *Chitty on Contracts* 35th edn (Sweet & Maxwell, 2023) [45-014]; On *The Elizabeth* (1819) 2 Dods 403, see, for example, E Peel, *Frustration and Force Majeure* 4th edn (Sweet & Maxwell, 2022) [2-026]-[[2-027]; On *Lucena v Craufurd* (1806) 2 Bos & P (NR) 269, see, for example, Beale (ed), *Chitty* (n 72) [45-001], [45-006], [45-008]; On *The Twee Gebroeders* (1801) 3 C Rob 336, see, for example, Crawford, *Brownlie's Principles* (n 72) 242; On *The Aquila* (1798) 1 C Rob 37, see, for example, FD Rose, *Kennedy and Rose on the Law of Salvage* 10th edn (Sweet & Maxwell, 2021) [4-059], [4-060], [8-198]-[8-199], [16-071]; On *Pelly v Royal Exchange Assurance* (1751) 1 Burr 341, see, for example, Templeman et al, *Arnould* (n 72) [3-10].

73 *Feasey v Sun Life Assurance Co of Canada* [2003] EWCA Civ 885 [68]-[71], [81], [89] (Waller LJ); [175]-[176], [186], [188] (Ward LJ); *Quadra Commodities SA v XL Insurance Co SE* [2023] EWCA Civ 432 [20], [30], [33], [65], [94], [97], [123] (Sir Julian Flaux C).

74 *R (Keyu) v Secretary of State for Foreign and Commonwealth Affairs* [2016] AC 1355 [146] (Lord Mance JSC); *R v Jones (Margaret)* [2007] 1 AC 136, [23] (Lord Bingham); *R (European Roma Rights) v Prague Immigration Officer* [2005] 2 AC 1, [27] (Lord Bingham). 'In October 2009, The Supreme Court of the United Kingdom (UKSC) replaced The Appellate Committee of the House of Lords as the highest appeal court in the United Kingdom': <https://supremecourt.uk/about-the-court> (accessed 3 February 2025).

75 AWB Simpson, *Leading Cases in the Common Law* (Oxford University Press, 1995) 227–258.

4. Place and Time

Comparative legal history generates insights relating to place and time. From this encounter between English law and Loccenius, there are two conclusions of this nature, both of which contain an element of irony. First, while foreign jurists are frequently cited in English cases in the eighteenth and nineteenth centuries, what we have recounted above is a rare and early importation into English law of the ideas of a system which is neither common law nor civilian. Nonetheless, it is ironic that Roman law and its language, Latin, played a significant role in this story. The use of *De Jure Maritimo et Navali* in English law would have been unthinkable had the treatise been composed in Swedish instead of Latin.[76] Indeed, the leading Swedish jurist of the subsequent century, David Nehrman, eschewed Latin and, unsurprisingly, his work went unnoticed in England.[77] Equally unthinkable is the conception and execution of *De Jure Maritimo et Navali* in the absence of the emergence of Swedish legal scholarship in the seventeenth century which itself owed much to Roman law, the quintessential learned law.[78]

The second conclusion relates to time. According to the theory of special relativity, space is not independent of time and time is not independent of space.[79] While an historian sees time and place on different planes, a useful analogy with classical physics can be drawn here. Just as the light from distant stars may reach observers on earth only hundreds of years later,[80] so did the light of Loccenius's learning reach English cases over a hundred years after the publication of the first two editions of *De Jure Maritimo et Navali*. Yet, curiously, this significant gap in time was not an obstacle to its reception. The observer of a star, generally but wrongly, treats the star as being at

[76] Claudius Kloot (ca 1612–1690), a prominent Swedish jurist who wrote in Swedish and Latin is a case in point. In the seventeenth century, the Bodleian Library in Oxford held only copies of Kloot's work which had been composed in Swedish: Poole and Williams (n 26) 34, 64. Yet, unlike Pufendorf, Stiernhöök and Loccenius, Kloot has never been cited in English cases. No work by Kloot is held by the University of Cambridge.

[77] His principal treatise – *Inledning til then Swenska Iurisprudentiam Civilem* (Decreaux, 1729) – is not even held by the Bodleian Library in Oxford. The copy of this treatise in the University of Cambridge is a reprint from 1979.

[78] Pihlajamäki, *Conquest* (n 11) 2. See too section 2 above.

[79] A Einstein, 'Zur Elektrodynamik bewegter Körper' (1905) 17 *Annalen der Physik* 891. The theory is called 'the relativity principle' – without a qualifying adjective – in this seminal paper.

[80] 'If you look at the bright star Betelgeuse… you wind back time more than six hundred years. Its reddish glow started its journey to earth in the Middle Ages': J Dunkley, *Our Universe: An Astronomer's Guide* (Penguin, 2019) 14.

that moment in the particular place where it is seen;[81] likewise, as we saw in section 3, English judges, advocates and reporters, generally, treated the law expressed by Loccenius as the law of their own time. Of course, law, especially commercial law, was frequently treated as atemporal in this period. As Lord Mansfield noted in *Pelly v Royal Exchange Assurance*, '[t]he mercantile law… is the same all over the world. For, from the same premises, the sound conclusions of reason and justice must universally be the same'.[82] Nonetheless, this atemporal treatment of Loccenius is distinctly ironic given that he emphasised that his aim was to produce a treatise which 'suited the requirements of [his] time'.[83] Time did, though, eventually catch up with Loccenius. Fittingly, in *R v Keyn*, the last case in which Loccenius appears, his view was dismissed partly on the ground that it was not 'modern'.[84]

English cases are not just historical events in a given place and time; as a consequence of the doctrine of precedent, they are also of normative value in different places and times. Ronald Dworkin famously described English law as a chain novel.[85] As each case is effectively a new chapter in the story, every court before which a dispute is heard must adequately accommodate in its decision all the relevant cases that preceded it; it cannot simply start with a tabula rasa.[86] Thus, the result of the reception of Loccenius's ideas in English cases in the eighteenth and nineteenth centuries is that Swedish legal ideas which were developed in the middle of the seventeenth century are indelibly inscribed today in the plot of the grand and constantly expanding story that is English law.

[81] 'We see things in space as they were when the light set off from whatever it is we are looking at. This means that we see the nearest layers of space to us as they were hundreds to thousands of years ago': Dunkley (n 80) 73. Consequently, at the point at which stars are observed, in all but exceptional cases, they will have moved or they will no longer exist.

[82] (1751) 1 Burr 341, 347.

[83] *De Jure Maritimo et Navali* (n 28) 5.

[84] (1876) 2 Ex D 63, 76 (Sir Robert Phillimore).

[85] R Dworkin, *Law's Empire* (first published 1986, Hart, 1998) 228–238.

[86] Ibid.