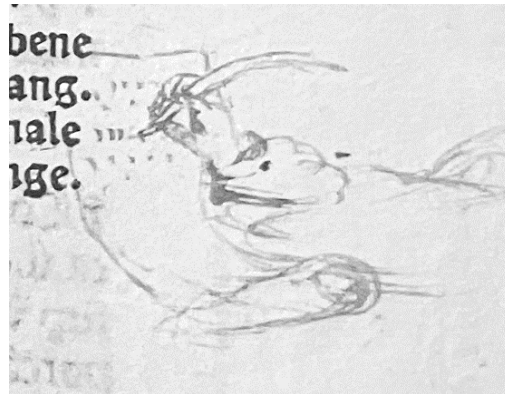


Exploring Humanist Networks of Knowledge and Reading in
Queens' College Old Library, Cambridge:
The Library of Sir Thomas Smith (1513-1577)

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Abbreviations:

DLG – *De recta & emendata linguae Graecae pronuntiatione* (Paris, Estienne, 1568)

DAS – *De recta & emendata linguae Anglicae scriptione* (Paris, Estienne, 1568)

DRA – *De Republica Anglorum* (London, Seton, 1583)

CJC – *Corpus Juris Civilis* (Roman law code)

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Abstract:

Sir Thomas Smith (1513-77) was prolific annotator of books, using a complex series of interconnected and intertextual symbols that allowed him to navigate texts within his library. In this thesis I will argue that Smith's reading was not isolated to specific political concerns but was broadly indicative of the nature of humanist learning in England during the mid-sixteenth century. There are two unhelpful paradigms introduced by past scholarship on English sixteenth-century humanism: firstly, that English humanism was subordinate or inferior to Continental humanism; secondly, that humanist scholarship was predicated on the fragmentary reading of the classics, resulting in shallow learning. Smith, I will argue, was a deep and involved reader, whose library is evidence of a broadly conceived intellectual project, the aim of which was the comparison of English common law with Roman civil law. Smith's reading directly influenced his most famous work, *De Republica Anglorum* (1583), which was a "chorographical" depiction of the English system of common law in the early Elizabethan period. I will argue that Smith read his books chorographically, i.e. with a strong interest in place and in legal jurisdiction. Furthermore, the highly spatial and visual nature of Smith's annotations allowed him to navigate texts both intra- and inter-textually within his library. The evidence for such a coherent intellectual project will be Smith's books at Queens' College, Cambridge, which he bequeathed to the college library in 1577. I will argue that Smith's written works, especially *DRA*, can only be fully understood through close consideration of the evidence of Smith's reading and marginalia contained in his books. Furthermore, Smith's reading is evidence of a "middle period" of sixteenth-century English humanist learning – connecting the Greek learning of figures like Thomas More and the mathematical and antiquarian pursuits of figures like Savile and Camden – that has been overlooked.

CHAPTER 1: INTRODUCTION: Sir Thomas Smith (1513-1577), a humanist and his books.

i. Aims.

The purpose of this introductory chapter is to address the context of Sir Thomas Smith's (1513-1577) books in Queens' College Old Library, Cambridge, principally in terms of their status as a "humanist" collection of books, thus putting Smith into the role of a "humanist" collector of books. I will establish some sense of why Smith owned these books; why he read and annotated them; and why these were the particular set of books that arrived at Queens' in 1577. There are two dominant paradigms to be considered here: the first is the concept of an originally Italian humanism of the fourteenth and fifteenth centuries that spread its learning into Northern Europe, whereby it was somehow diminished, or at least transformed into something quite different;¹ the second is of sixteenth century humanists moving towards a method of scholarship that (contrary to humanist rhetoric) corrupted the nobler classical scholarship of the scholastic period, as part of the move from "humanism to the humanities", the latter term – according to Anthony Grafton and Lisa Jardine – supposedly representing a shallower kind of learning.² Both models are concerned with elitism and the diminution of good scholarly practices: the first describes the noble aims of the fifteenth-century

¹ The Italian influence on English humanists was noted by Frederic Seebohm, who identified a shift in English humanism towards religious reform in *The Oxford Reformers: John Colet, Erasmus, and Thomas More* (London: Longmans, Green, and Co., 1896): 'These men [like William Grocyn (c.1446-1519)] had been to Italy and had returned, to all appearances, mere humanists. Now five years later [John] Colet (1467-1519) had been to Italy and had returned, *not* a mere humanist, but an earnest Christian reformer' (p. 14). The critical appraisal of English humanism was introduced by Roberto Weiss, *Humanism in England during the Fifteenth Century* (Oxford: Blackwell, 1967).

² This phrase was the title of a book by Anthony Grafton and Lisa Jardine, *From Humanism to the Humanities: Education and the Liberal Arts in Fifteenth and Sixteenth-Century Europe* (London: Duckworth, 1986).

Italian “professional” humanists being sullied by an English failure to grasp the true “spirit” of the new learning; the second saw the later sixteenth-century achievement of this same professionalism as being responsible for the corruption of the medieval scholastic tradition, as well as the establishment of a rigid social order dominated by a trained and learned elite. This latter theory was applied to libraries and to the reading habits of English humanists, most notably Smith’s protégé, Gabriel Harvey (1545-1630), who was, like his patron, a voracious reader and annotator of books: ‘His extravagant aim seems to have been to acquire for his own use the sum total of human knowledge – learning, however, not for learning’s sake but rather for pragmatic purposes.’³ While Smith was undoubtedly, in many ways, a pragmatist, I will argue that to apply this characterisation to his reading and collecting would be completely unjustified; neither of the models described above is sufficient to describe Smith and his books at Queens’. This in turn suggests that the history of English humanism is more nuanced than the standard models allow; this is the intervention in scholarship that my thesis performs.

The characterisation of Smith as a humanist will serve to contextualise his methods, which are explored in the following chapters. Tim Wade provides a usefully clear definition of humanism:

Despite its name, humanism was not founded on the philosophical importance of mankind or the individual. What humanists actually shared was a research methodology.

³ Virginia Stern, *Gabriel Harvey: His Life, Marginalia and Library* (Oxford: Oxford University Press, 1979), p. 137; this preceded Grafton and Jardine’s study of Harvey, which developed their earlier thesis in op. cit. (1986): “‘Studied for Action’: How Gabriel Harvey Read his Livy” in *Past & Present*, 129 (1990), pp. 30-78. The professional services rendered by later sixteenth-century humanists to wealthy patrons were termed “knowledge transactions” and “scholarly services” by Jardine and William Sherman: “Pragmatic Readers: Knowledge Transactions and Scholarly Services in late Elizabethan England” in Anthony Fletcher and Peter Roberts, eds, *Religion, Culture and Society in Early Modern Britain: Essays in Honour of Patrick Collinson* (Cambridge: Cambridge University Press, 1994), pp. 102-103.

They revered the classical past and argued that the various branches of learning ought to be reworked in line with the views of the ancient Greeks and Romans. These classical authors, they proposed, could only be truly understood in their original languages, rather than in translation or with the assistance of medieval commentators. They therefore promoted the study of Latin and Greek and emphasized facets of the curriculum, which had been less prominent in the medieval university, such as rhetoric. Finally, they set about comparing and copying the surviving manuscripts of a given text in the hopes of purging them of errors or clarifying obscure passages.⁴

The concept of a “network of knowledge and reading” not only illustrates Smith’s position in a shared European scholarly tradition – Renaissance humanism – but also offers a model for his reading practices, which were not merely “active” and “pragmatic”, but also three-dimensional, highly intertextual, and scholarly. Wade is describing a classic model of humanism, rooted in the fifteenth-century Italian Renaissance tradition and redolent of swashbuckling humanists like the manuscript-hunting Poggio Bracciolini (1380-1459). Smith, on the other hand, was not known for editing Greek or Latin texts. His only manuscripts at Queens’ are the fragments of printer’s waste that were used to bind his books and the two commonplace books that he apparently left to the college, the latter placing him firmly within the paradigm of active and pragmatic reading, i.e. the chopping up of texts into useful fragments. The lost corpus of Smith’s manuscripts includes alchemical manuscripts, but these were more concerned with medieval Islamic or modern Paracelsian traditions of medicinal distillation than any ancient Roman or Greek tradition. Furthermore, Smith offered only printed books to Queens’ in his bequest. Smith’s attitude to the purity of ancient texts and translation is therefore less clearly defined than in Wade’s traditional model. Smith

⁴ Tim Wade, “Reginald Pole and Humanism in Padua” in James Willoughby, ed., *Reformation Cardinal: Reginald Pole in Sixteenth-Century Italy & England*, exh. cat., Lambeth Palace Library, London, 5 October-15 December 2023 (Oxford: New College Library, 2023), p. 16.

possessed, for example, Dionysius of Halicarnassus's *Roman Antiquities* in both the original Greek and Latin translation, but it was only the Latin translation that apparently came to Queens'; he also possessed a copy of Theophilus's paraphrase of Justinian's *Institutiones* in Greek, but mainly concerned himself with the accompanying Latin commentary, while in the same volume there is a copy of a work by Galen, translated from the original Greek into Latin.⁵ While Smith published his learned works on Greek pronunciation and English orthography in Latin, his works on English politics and law, and his economic treatise on Roman coinage, were written in English and circulated in manuscript form, so that they could be widely understood at home; in a similar vein, Smith bequeathed a copy of Chaucer to one of his servants.⁶

The two paradigms of Renaissance humanism that I have described share a conception of humanism as being elitist and hierarchical; the former, earlier model blaming the failure of English humanists to become true professionals – learned secretaries to aristocratic patrons – and the latter model, conversely, blaming the same drive towards professionalism for diminishing true scholarship (while also enshrining humanism's inherent elitism within the modern arts curriculum).⁷ Smith easily fits into the category of "elitist", not only in terms of the views espoused in *De Republica Anglorum* (1583),⁸ his famous work of political theory (in which Smith responded to the firmly hierarchical model of Roman Republicanism, in an eminently humanist mode), but also in terms of

⁵ There may have been less of a requirement in the library at Queens' for the kind of pedagogical Greek texts that students and fellows would typically have owned themselves; the obvious exceptions are Smith's Aldine editions of Greek texts, namely Dioscorides (1499) (F.10.15; A50) and Aesop (1505) (C.4.23; A43). NB: These numbers (A1 etc.) refer to the Appendix, which is a bibliographical list of Smith's books at Queens' and in British libraries, and is attended to form a kind of index to the thesis.

⁶ TNA PROB 11/59/410; Smith's bequests of books all appear on ff. 238r-238v.

⁷ David Rundle, "Introduction" in Roberto Weiss, *Humanism in England during the Fifteenth Century* (Oxford: Society for the Study of Medieval Languages and Literature, 2010), p. xxvi; op. cit. Grafton and Jardine.

⁸ Hereafter *DRA*.

his bequest to his old college, Queens'. Furthermore, Smith has historically been considered a statesman-scholar, an iteration of Elizabethan "civic humanism", whose learning was consciously directed towards political aims; in this he was judged a failure.⁹ Portrayals of humanism of this nature presented the humanist library as a vital part of the scholar-statesman's arsenal, for example the enormous library of John Dee (1527-1608/9) at Mortlake, which far exceeded Smith's in size.¹⁰ The problem with subsuming the library into this portrayal of civic humanism, however, is that humanist reading methods are thereby assumed to be active, pragmatic (i.e. selective), and fragmentary: a shallow form of learning geared towards practical use in political life. Smith's reading was, naturally, all of these things, but it was also "paratextual" (i.e. concerned with elements of the printed book beyond the main authorial text), intertextual, and related directly to Smith's own scholarly works. In this thesis, Smith's surviving library at Queens' will be used to portray humanist reading neither as learning for learning's sake, nor as simply the pragmatic application of texts to real-life political aims (though clearly it could encompass both of these), but as a fully conceived, highly individual, and scholarly method, which was geared towards the production of scholarly texts.

ii. Smith the professional humanist.

⁹ John Strype's biography of Smith's friend Sir John Cheke (1514-1557) (Oxford: Oxford University Press, 1821), place Smith in the "Athenian Tribe" of scholars interested in Erasmian learning and study of the classics (pp. 6-7 and 20); cf. John McDiarmid and Susan Wabuda, eds, *The Cambridge Connection in Tudor England* (Leiden: Brill, 2021).

¹⁰ William H. Sherman, *John Dee: The Politics of Reading and Writing in the English Renaissance* (Amherst: University of Massachusetts Press, 1995): 'Dee's bookshelves held between three and four thousand titles' (p. 31).

Firstly, therefore, I want to address the evidence for Smith's humanism as a reader and collector of books. The scholarly denigration of English humanism was founded upon a normative dichotomy between genuine humanists, i.e. Italian "professional" humanists, and English humanists (also in many cases professionals, that is, working for a living) who simply failed to grasp the "spirit" of humanism, even if they grasped the letter, through their use of Italian, classical-style scripts, or "italic". Smith was also, however, consciously a member of the international scholarly community called the "Republic of Letters". Smith studied in Padua in the 1540s, like many ambitious English humanists of his generation and the generation before;¹¹ he even owned a huge set of Avicenna in five volumes, apparently bought on the second-hand market in Cambridge after the death of its previous owner, who had himself studied medicine in Padua. Smith visited Paris and engaged in debates with Greeks about the ancient pronunciation of their language. He later visited Switzerland and met Théodore de Bèze (1519-1605) after John Calvin's (1509-1564) funeral in Geneva, thus positioning Smith within an eminent Protestant circle abroad.¹² Later, when he was an Ambassador to France, Smith interacted with prominent French intellectuals (including medicinal alchemists, pursuing an interest that will be discussed at the end of this chapter). In Paris in 1568, Smith also made a clear statement of his membership of the European intellectual elite, potentially a very expensive one: Smith had two tracts published, one on Greek pronunciation and the other on English orthography, the latter written in the typically humanistic form of a dialogue between himself ("Smithus") and a "Roman"

¹¹ Op. cit. Wade. It is a tradition that Smith studied at Padua (cf. "Smith, Sir Thomas" in Venn, *A Cambridge Alumni Database* (Cambridge University of Cambridge, 2001) but there is no evidence of his enrolment there, according to Mary Dewar, *Sir Thomas Smith: A Tudor Intellectual in Office* (London: Athlone Press, 1964), p. 22.

¹² Andrew Burnett, Richard Simpson and Deborah Thorpe, *Roman Coins, Money and Society in Elizabethan England: Sir Thomas Smith's On the Wages of a Roman Footsoldier* (New York: American Numismatic Society, 2017), p. 32.

called Quintus, printed by none other than the French King's Printer, Robert Estienne II (1530-1570); such a project was almost certainly financed by Smith, at least in part, making this a deliberate bid for scholarly recognition abroad. There are, therefore, three conceptions of Smith's humanism to consider: firstly, that of the English professional humanist; secondly, Smith's conception of himself as a civic humanist, advancing English interests abroad; and finally, a third conception that will stretch the limits of the normative definition of "classical" humanism, which involves Smith's "modern" interests in Paracelsianism and medicinal alchemy, something which occupied him in the last decade of his life.

"Utilitarianism" was Roberto Weiss's negative summation of humanism in fifteenth-century England, in which patrons only sought from humanist scholarship what they thought would help them in their political or professional lives.¹³ This was simply a problem of values: 'the letter was obviously more easy to appreciate than its spirit, and thus the first humanistic manifestations in England naturally suffered from such drawbacks as are constantly present in attempts at assimilating values more subtle than one's own.'¹⁴ The guardians and priests of the classical spirit were Italians, some of whom were tempted to England by patrons and paid to behave as humanists, acting as secretaries and presenting manuscript works in exchange for payment; their new environment, however, with its disappointing lack of manuscripts and stultifying lack of classical learning, caused the Italians' intellects to suffer. Such is our normative model for humanism, but its problem is its circularity: Weiss was forced to admit that these superior Italian humanists in English exile, restricted to studying in their "leisure"

¹³ Op. cit. Weiss, p. 182.

¹⁴ Ibid., p. 30.

time, were prevented by their professional (usually scribal) work from undertaking the truly humanist scholarship of which they were capable.¹⁵ The best humanists, therefore, became the worst humanists, at least when they were in England. Weiss ended by concluding that there was no “pure” humanism in England in the fifteenth century.¹⁶

What did it mean to be a pure humanist? For J.B. Trapp, the Italian poet Petrarch (1304-1374) remained the embodiment of pure classicism: ‘strike him anywhere and you hear the ring of ancient bronze.’¹⁷ However, Petrarch was sufficient to contain various *kinds* of humanism: ‘diffused, applied, assimilated humanism – often more importantly influential than the stricter, professional kind, with which it is often combined in the same person.’¹⁸ The problem, argued Trapp, was the lack of sufficient evidence for diffusion or assimilation in England; professional humanists engaged in boring secretarial work left little trace of their truly humanist scholarship.¹⁹ This was a question of economic realities, perhaps less in evidence in the case of Petrarch. David Carlson, writing about the early sixteenth century in England – with printed books as well as manuscripts in mind – stripped the economic formula of humanism to its barest sociological bones: patrons needed books to show off their wealth, for which they needed humanists. Humanists, meanwhile, needed patrons because they needed to eat: ‘Books were used most effectively in England in the late fifteenth and early sixteenth centuries by these people who had no choice, who were trying to make livings for themselves by their skills as writers ... the fact that they were humanists is more or less

¹⁵ Ibid., pp. 82-83; Weiss is in fact discussing an English professional humanist, not an Italian, but the implication is the same. Poggio (see below) had ‘sufficient leisure time’ for literature in England, but had not apparently anticipated the poverty of classical sources available to him there (p. 13).

¹⁶ Ibid., p. 183; Weiss conceded that a mixture of scholasticism and humanism prevailed.

¹⁷ J.B. Trapp, *Erasmus, Colet and More: The Early Tudor Humanists and their Books* (London: British Library, 1991), pp. 34-35.

¹⁸ Ibid., p. 34.

¹⁹ Trapp was especially suspicious of annotations, describing the potential for ‘drab encounter[s] with ... great work[s]’ (p. 22), but was also wary of libraries and book-lists (p. 124).

incidental.’²⁰ Carlson rather romantically imbued his humanists, in the complexified, sixteenth-century context of printed books, with something of an eighteenth-century Grub Street ethos – something quite different from the Petrarchan spirit of classicism. Carlson portrayed humanists using flattery, skulduggery and deceit to secure patronage – for example, by dedicating one work to several patrons “exclusively” – so that now we not only have bad humanists, but good humanists behaving badly. Carlson nonetheless soberly called this relationship of patronage a ‘professional mature humanism’.²¹ The introduction of necessity into humanism – the necessity of payment – had not diminished humanist scholarship, therefore, merely *matured* it. Humanism in England had developed in line with the advent of printed books, and the greater opportunities for patronage – dedications, *prooemiums*, *encomia*, i.e. paratexts – that printed books provided.

Scholars of English humanism have, more recently, attempted to rectify the lack of evidence that Trapp bewailed, also in terms of humanism that was perhaps incidental to the professional, scribal work being done by those under its influence. Two scholars in particular, David Rundle and Daniel Wakelin, have attempted to identify traces of “diffused” humanism by using palaeographical sources to show humanist influences on English scribal book-hands. Wakelin’s subtle argument sometimes requires feats of mental gymnastics: ‘To understand the dispersal and dilution of humanism throughout English culture ... it might be worth looking for some self-conscious awareness of the *lack* of such influence ... humanism might be present even when absent, as it were, as

²⁰ David R. Carlson, *English Humanist Books: Writers and Patrons, Manuscript and Print, 1475-1525* (Toronto: University of Toronto Press, 1995), p. 10.

²¹ *Ibid.*, p. 15.

an opportunity knowingly missed.²² Wakelin quotes an English scribe apologising for his poor book-hand: a ‘scruffy handwriting modelled on secretary ... unexceptional in the late fifteenth century: so what is he worrying about?’²³ The awareness of a failure to emulate a humanist script thus becomes evidence of humanism in place of the script itself: ‘even when an influence is not followed it can nevertheless be influential, for once that new influence is available, the status quo is no longer automatic or natural but is suddenly a choice.’²⁴ Whereas Carlson saw English humanism in terms of the lack of choice, describing humanism itself as incidental to economic necessity, Wakelin argues that a negative choice can be evidence of humanist influences that are equally incidental, but nonetheless apparent. David Rundle points ironically to the visit of Poggio: ‘England at the end of the 1410s was playing host to the inventor of *littera antiqua* but not to the script he had created. It might even seem to be an opportunity missed, with those island dunderheads failing to appreciate the genius they had in their midst.’²⁵ Rundle looks instead for the ‘incurably plural’²⁶ choices made by scribes: using humanist scripts for non-humanist texts, and vice versa, copying twelfth-century English scripts (‘archaising which went beyond the narrowly humanist’), and changing between scripts, even within a single manuscript.²⁷ Rundle’s point is that there is no reliable temporal, geographical or textual method for describing humanist influence: ‘there is no simple “progress” towards the humanist.’²⁸

²² Daniel Wakelin, “England: Humanism Beyond Weiss” in David Rundle, ed., *Humanism in Fifteenth-Century Europe* (Oxford: Society for the Study of Medieval Languages and Literature, 2012), p. 298; Weiss also used the term “diffused” for English humanism, but with negative connotations (p. 138).

²³ *Ibid.*

²⁴ *Ibid.* *ibid.*

²⁵ David Rundle, *The Renaissance Reform of the Book in Britain: The English Quattrocento* (Cambridge: Cambridge University Press, 2019), pp. 52-53.

²⁶ *Ibid.*, p. 86; from Louis MacNeice’s “Snow” (1935).

²⁷ *Ibid.*, pp. 104-105.

²⁸ *Ibid.*, p. 104.

“Incorrigibly plural” is a useful epithet to apply to Thomas Smith, especially when considering his own progress from being a university scholar of ancient Greek to a failed colonial idealist and alchemist. Forgetting for a moment these categories of mature, assimilated or diffused humanism, what if we were to apply Weiss’s model of the professional humanist to Smith, who arrived at Cambridge in the 1530s, when the study of Greek and the *studia humanitatis* was in full swing?²⁹ John Strype, Smith’s first biographer, refers to Smith lecturing on Aristotle’s *Politics*,³⁰ but by Smith’s own admission he gave this up when appointed the inaugural Regius Professor of Civil Law in 1540;³¹ possibly the superiority in ancient Greek of his friend Sir John Cheke (1514-1577), who was appointed the Regius Professor of Greek in the same year, persuaded Smith to drop any claim to the subject. Smith then travelled to Padua to study civil law, before returning to give his lectures in 1543. The civil law gave Smith a profession: he not only worked in the ecclesiastical (church) courts of Ely during the 1540s as a secretary (*cancellarius*) to the Bishop, but the royal recognition that came with his professorship (and his appointment as Vice-Chancellor of Cambridge University in 1543) enabled him to pursue a career outside of the university, i.e. in politics. Smith’s

²⁹ St. John’s College, where Cheke studied, was the centre *par excellence* for Greek studies in Cambridge, a status derived in part from the man who organised its foundation in 1511, John Fisher (1469-1535). Fisher had also been Master of Queens’ (1505-1508), and likely brought Erasmus to Cambridge in 1511 to lecture in Greek; Erasmus lived at Queens’ during his short time in Cambridge. Cf. J.H. Gray, *The Queens’ College of St. Margaret and St. Bernard in the University of Cambridge* (Cambridge: Cambridge University Press, 1926), pp. 46-51; Arthur Tilley, “Greek Studies in Early Sixteenth-Century England” in *The English Historical Review*, 53.210 (1938), especially pp. 225-226; and Tilley, “Greek Studies in Early Sixteenth-Century England (Continued)” in *The English Historical Review*, 53.211 (1938), pp. 438-456.

³⁰ John Strype, *The Life of the Learned Sir Thomas Smith, Kt.* (Oxford: Oxford University Press, 1820), p. 11.

³¹ Smith, *De recta & emendata linguae graecae pronuntiatione* (Paris, Estienne, 1568): *Nunc ad alia vocor, aliam mihi Spartam Regia benignitas concessit, quam & pro virili ornabo: Graecam linguam neque mihi discere necesse est, neque docere vacat* (fp. 3r); ‘I am now called to another Sparta which I will “adorn” to the best of my power. I need no longer learn nor teach Greek’ (trans. Bror Danielsson, ed., *Sir Thomas Smith, Literary and Linguistic Works*, Part II (Stockholm: Almqvist & Wiksell, 1978), p. 21). NB: all contractions in Latin texts have been expanded without the indicative use of square brackets, to ease legibility. However, these have been kept in Smith’s annotations to retain the sense of his annotative style, though I have not included Smith’s “superior letter” contractions (e.g. “contractiss^{ime}”), again for legibility’s sake. NNB: All quoted translations will be by the stated translator unless otherwise stated; any translations without references are my own.

learning, especially in civil law, put him on the path to being a “civic humanist”, which we might see as the ultimate expression of professional humanism in the latter half of the sixteenth century, one which Smith understood well and sought to cultivate.

iii. Smith the civic humanist.

Thomas Smith’s civic humanism was amplified by John Strype, who saw figures like Cheke and Smith as heroes of the Anglican Reformation (and dedicated his biographies to their wealthy descendants, who lived near his rectory in Essex).³² Mary Dewar, Smith’s twentieth-century biographer, was, on the other hand, dismissive of his achievements as an ambassador and courtier, portraying him as a political failure.³³ Smith worked as a propagandist for the Earl of Somerset’s government during the minority of Edward VI; when his patron fell in 1549 so did Smith, spending a brief period imprisoned in the Tower, where he wrote English metrical Psalms.³⁴ However, in the 1560s Smith experienced a resurgence, serving as Ambassador to France (1562-1566) and First Secretary to Elizabeth I (1572-1576).³⁵ The main problem with Dewar’s account, however, was that it ignored elements of Smith’s intellectual life, which Richard Simpson has more recently begun to recover.³⁶ These included Smith’s interest in classical architecture, which influenced his own designs of his house at Hill Hall in

³² Op. cit. Strype (1820) and (1821).

³³ Op. cit. Dewar.

³⁴ Op. cit. Danielsson, Part I, *Certain Psalms or Songes of David* (1963).

³⁵ Quentin Skinner described attaining a secretaryship as the apogee of later sixteenth-century English humanism, according to humanists themselves; *Reason and Rhetoric in the Philosophy of Hobbes* (Cambridge: Cambridge University Press, 1996), pp. 72-74.

³⁶ Richard Simpson, “Sir Thomas Smith’s Stillhouse at Hill Hall: Books, Practice, Antiquity and Innovation” in Matthew Dimmock, Andrew Hadfield and Margaret Healy, eds, *The Intellectual Culture of the English Country House, 1500-1700* (Manchester: Manchester University Press, 2015), pp. 101-116; Simpson, “Disputed Sounds: Thomas Smith on the Pronunciation of Ancient Greek – Representing the Evanescent in Sound and Image” in op. cit. McDiarmid and Wabuda, pp. 51–102. Dewar stated that all of Smith’s books at Queens’ had been ‘scattered at lost’, which seems an extraordinary and even inexplicable oversight (p. 16).

Essex,³⁷ and alchemical distillation, which he carried out in a laboratory there.³⁸ The historical appraisal of Smith has therefore occurred both alongside (and in reverse to) that of John Dee, who was Cheke's pupil at Cambridge. Dee was traditionally caricatured as a *magus*, or magical seer, for having practised occult magic and the Jewish cabbala, aims which ultimately ended in failure.³⁹ Later, however, William Sherman emphasised Dee's civic humanism, i.e. the role of his library in providing expertise for the government and his learning in benefitting the "commonwealth" or *res publica*, relating this specifically to an interest in navigational cartography and a dawning age of colonial expansion (also observing a link with Smith, namely in their similar methods of annotating books, i.e. "doodling").⁴⁰ Sherman concluded that it was impossible to unite the civic humanist with the avant-garde occultist; Smith, indeed, listed his alchemical books separately from his main library.⁴¹ Sherman preferred instead to observe Dee's act of travelling between the traditionally humanist and the

³⁷ For the relationship between Smith's decorative programme at Hill Hall and his use of printed sources, cf. Paul Drury and Richard Simpson, *Hill Hall: A Singular House Devised by a Tudor Intellectual* (London: Society of Antiquaries, 2009), pp. 180-242.

³⁸ Op. cit. Simpson (2015).

³⁹ Frances Yates, *The Occult Philosophy in the Elizabethan Age* (London: Routledge, 1999), especially pp. 83-93; Yates divided Dee's life into periods of success and failure, trending towards the latter.

⁴⁰ Op. cit. Sherman (1995), pp. 75-78.

⁴¹ Why Smith did this is unclear. The Paracelsus that ended up at Queens' was listed in his main inventory, along with an anti-Paracelsian work, possibly because it was not considered directly useful for medical distillation. There is a possibility that Smith did not want his more explicitly alchemical books to go to Queens'; supposedly his wife promised some of his manuscripts – quite possibly those listed in the stillhouse library (see MS49, ff. 117r-118v; op. cit. Simpson (2015)) – to both Andrew Perne and Gabriel Harvey, who had a row over them at Smith's funeral, at which Perne had delivered the sermon (cf. Patrick Collinson, David McKitterick and Elizabeth Leedham-Green, *Andrew Perne: Quatercentenary Studies* (Cambridge: Cambridge Bibliographical Society, 1991), p. 56). According to Harvey's vengeful relation of this encounter, Perne called Harvey a "fox"; Harvey's sharp reply (that he was young enough to be called a cub, but too young to be a fox, especially in Perne's presence) apparently rendered Perne speechless and able only to perform his slow, deliberate nod and "chameleon's gape", which was interpreted by McKitterick (perhaps in jest) as the self-restraint of a 'thwarted bibliophile' (ibid.). NB: Smith made an inventory of his library in 1576 (ff. 89r-99v), updating an earlier 1566 inventory of books (MS49, ff. 70r-78r; in a scribal hand), both appearing in a commonplace book, now at Queens', which chiefly consists of inventories. Smith's own copy of the 1566 inventory appears in QC MS83, a second commonplace book belonging to Smith at Queens' (ff. 144v-151r), which was printed in Strype (1698), "Appendix", pp. 139-147. The scribe evidently had no Greek, because the Greek titles have been omitted (with placeholder marks) and then supplied later in a different hand and ink.

traditionally “not”: ‘[Dee’s] voyages of reconnaissance and plunder in the world of knowledge take him to both poles.’⁴² It might therefore be equally impossible to unite the two Smiths – linguistic humanist and medicinal alchemist – as well as the reflection of these two “selves” (at least according to our normative paradigms of humanism) within the books at Smith’s library.

After Smith left Cambridge he was employed by the government of the Earl of Somerset, Lord Protector during the minority of Edward VI. Working alongside other Cambridge-educated Protestants like William Cecil, later Lord Burghley (1520-1598), Smith was engaged in several significant projects. He travelled to Scotland, where illness prevented him witnessing the Battle of Pinkie in 1547, and where, as Dale Hoak has shown, he was involved with the production of government propaganda promoting the planned English subjugation of Scotland.⁴³ Smith also showed an aptitude for religious reform, which seems to have deserted him in his later years, possibly after the traumas of the unrest in 1549 and Somerset’s consequent fall; he was often accused of being “lukewarm” in religious matters.⁴⁴ In 1548 Smith was involved in liturgical debates for the Prayer Book of 1549, apparently making his views plain, particularly

⁴² Op. cit. Sherman (1995), p. 21.

⁴³ Cf. Dale Hoak, “Sir William Cecil, Sir Thomas Smith, and the Monarchical Republic of Tudor England” in John F. McDiarmid, ed., *The Monarchical Republic of Tudor England* (London: Routledge, 2007), pp. 37-54.

⁴⁴ Op. cit. Dewar, pp. 29 and 38. Smith was ordained in 1545, vacating his position as a parish rector in 1549 to get married, which was perhaps one reason for his reputation for religious indifference (cf. John Gough Nichols, “Some Additions to the Biographies of Sir John Cheke and Sir Thomas Smith” in *Archaeologia*, 38.1 (1860), p. 105)). There is some evidence that Smith was evangelical in temperament: he was the patron of a clearly radical priest called Christopher Threder (1554-1579), who had been deprived as vicar of Saffron Walden in 1559 for marrying; Smith installed him as his priest at Theydon Mount, where he was also deprived in 1566, almost certainly for refusing vestments (Arthur Burns, Kenneth Fincham and Stephen Taylor, *Clergy of the Church of England Database* (London: King’s College London, 2013). One of Smith’s commonplace books is riddled with Calvinist notes on Paul’s *Epistles*, generally focussed on original sin and corruptibility, but these are clearly not in his hand – apparently dating to the end of the sixteenth or beginning of the seventeenth centuries – and their authorship is uncertain; they are probably sermon notes (MS89, ff. 55r, 97r-98v, 100r-104v, 106r-108r, 157v-158r, and 159v).

on the doctrine of the Eucharist.⁴⁵ In Smith's books of canon (Roman Catholic ecclesiastical) law there are annotations concerning the real presence in the Eucharist, i.e. the belief that Christ's body was really present in the Host or bread during the Mass. Protestants saw this as superstition, and reserved particular derision for the belief that if the congregation masticated or chewed the host with their teeth, this damaged the literal body of Christ. Addressing the medieval canonist Gratian's commentary on the *Decretals* (Paris, Boucard for Petit, 1522),⁴⁶ concerning the Eucharist, Smith noted that when the priest says, "Hoc est corpus meum" (this is my body), the word "hoc" does not refer to anything ("hoc nichil demonstrat"): it does not describe the bread, since the priest is clearly referring to Christ's *body*, but at this point in the Mass, neither can *hoc* refer to Christ's *literal* body, because the real presence only occurred at the moment when the priest elevated the Host, which was only after the priest had finished speaking the words. Duly, in the Reformed liturgy for the Mass in the new 1549 Prayer Book, the harmless words were retained while the offending elevation of the Host was removed. Meanwhile, Smith refers to a marginal *lemma* describing mastication of the Host with a "manicule", i.e. a drawing of a pointing finger: *Dentibus* (fp. 549r), i.e. with the teeth. Smith was noting Berengarius of Tours's assertion that the body and blood are enjoyed sensually in the Mass: broken (*frangi*) by the priest's hands and then crushed (*atteri*) by the communicants' teeth; Smith countered that this could not be true because the Host was simply not Christ's body ("Non hoc corpus" (fp. 549v)).⁴⁷ That these points had legal ramifications for Smith goes beyond his accessing them through books of canon law; in his copy of Justinian's *Codex* (Lyon, Aemon de la Porte,

⁴⁵ Op. cit. Dewar, p. 39.

⁴⁶ K.9.5; A84.

⁴⁷ ... *non hoc corpus qui videtis manducaturi estis, et bibituri illum sanguinem quem effusum sunt qui me crucifigunt*; 'You shall not eat this body which you see, nor shall you drink this blood which they who crucify me shall spill' (ibid.).

1540),⁴⁸ which set out the legal philosophy of the Roman civil law code, Smith noted – with a sketch of a chalice and crucifix – that the soul was always more important than the paraphernalia of the mass (*arcana vasa*) or ecclesiastical vestments (*vestes*) (“Animae h[om]ini quibusc[u]mque vasis praeferu[n]tur” (fp. 10v)), rejecting this legal injunction on the necessity of such things for the divine office (*ad divinam religionem necessaria sunt* (ibid.; 1.2.21)) with a purely spiritual point.⁴⁹ Another project Smith was involved in was the Protestant reformation of English ecclesiastical law – which operated according to Roman civil and canon law – in an attempt to bring it in line with English common law. Smith is listed on the 1553 commission for drafting the *Reformatio Legum Ecclesiasticarum* (on which he appeared with the Italian Reformer Peter Martyr Vermigli (1499-1562)), and on the proposed commission for the short-lived 1571 revival of this failed project, initiated by John Foxe (1516-1587).⁵⁰ Aside from these failures, any success Smith might have felt from the 1549 Prayer Book was undone when Mary I (temporarily) restored Catholicism to England. His main work was, however, conducted abroad, as Ambassador to France during Elizabeth’s reign, a job that put him in sustained contact with an international intellectual circle of humanists.

The idea of civic humanism was reliant upon a distinction familiar to humanists from Cicero: *otium* versus *negotium*, the contemplative life versus the active life of *res publica*. Leisure was conducive to scholarship, but *negotium* was valued as the truest

⁴⁸ M.2.14; A56.

⁴⁹ NB: All references to the *CJC* have been derived from the modern editions (cf. Blume and Frier (*Codex*) and Watson (*Digest*)) and will not correspond to those in the edition used by Smith.

⁵⁰ Gerald Bray, *Tudor Church Reform: The Henrician Canons of 1535 and the Reformatio Legum Ecclesiasticarum* (Woodbridge: Boydell Press, 2000), pp. xlix and lxxxvi. Foxe gave Smith a copy of his *De Christo Crucifixo Concio* (1571), which is now at the Mazarine Library in Paris (shelfmark 13186), with a presentation inscription from Foxe and containing Smith’s annotations. I have been unable to view this book, and I am very grateful to Richard Simpson for this information.

expression of learning: giving one's education back to the state. This argument therefore relies on the humanist conception of *otium* and *negotium* in opposition, though as Mordechai Feingold points out, in the original Roman conception of the trope, civic business and country leisure (i.e. reading) were not considered mutually exclusive.⁵¹ Much of the information on how Smith portrayed himself in Europe, i.e. when involved in *negotium* as an ambassador, can be found in his ambassadorial reports. There are two factors that must be considered in regard to these public letters home: firstly, the desire to return was commonplace, mainly due to the expense of maintaining a household abroad, and was commonly expressed in formal applications for replacement;⁵² secondly, ambassadors' leisure time was dependent on political events.⁵³ Smith's experience was, on the surface, no different: in his work on English orthography, he explains that he had "a little leisure time" (*aliquantulum otii*) because things had calmed down abroad, though perhaps Smith also felt the need to show he was not shirking his duties.⁵⁴ Smith's wilful misunderstanding of the trope was, after all, dependent upon the exalted status that Smith's circle placed upon work carried out abroad on behalf of the government. Walter Haddon (1514/15-1571), supposedly taught by Smith at Cambridge and likewise possessing a doctorate in civil law (in fact the only D.C.L. in the subject awarded at Cambridge in the decade after Smith's

⁵¹ Mordechai Feingold, "Reading Mathematics in the English Collegiate-Humanist Universities" in Philip Beeley, Yelda Nasifoglu and Benjamin Wardaugh, *Reading Mathematics in Early Modern Europe* (London: Routledge, 2020): 'In fact, the Roman conception of *negotium* and of civic duty was not opposed to fruitful *otium*, be it forced or voluntary; what was rejected was any descent into idleness' (p. 126).

⁵² Op. cit. Dewar, p. 88.

⁵³ Ibid., p. 139.

⁵⁴ *Cum in Gallia ... pro nostra Regina legatus agebam ad calida Balnea Burbonis Archembaldici, anno & novem mensibus post icta cum Francorum Rege foedera Trecensia, eo tempore quo Gallorum Rex per suum edictum suspicionem Guisianae caedis liberavit Praefectum Galliae maritimum, quem vocant Admirallum, nactus aliquantulum otii ...* (fp. 4r); 'When I was in France as the Queen's Ambassador ... at the hot baths of Bourbon l'Archambault, a year and nine months after the treaty with the king of France at Troyes [11 April 1564] at the time when the French king by his edict cleared the head of the French navy, whom they call the Admiral, from the suspicion of having murdered the Duke of Guise, I had a little leisure' (p. 25).

lectureship; Haddon was also a successor of Smith's as Regius Professor),⁵⁵ was not (strictly speaking) an ambassador; however, he achieved international significance when for some twenty years he conducted his religious controversy in Latin with the Portuguese Catholic controversialist Jeronimo Osório (1506-1580).⁵⁶ Smith supposedly printed Haddon's earliest reply to Osório in Paris, on William Cecil's behalf, with his favoured Protestant printer Estienne.⁵⁷ Smith and Haddon were thus involved in an international intellectual controversy on behalf of the Crown and the Reformed religion, exactly the kind of project that an English civic humanist would dream of (at least prior to the advent of the age of imperial expansion). Haddon wrote to Smith while on embassy: *Plato, te non sinit esse tuus, nec meus me Cicero, qui patriae nos servire volunt, et illi reddi omnia, unde universa prus accepimus* (p. 312).⁵⁸ To justify his "Ciceronianism",⁵⁹ Haddon puts in some *otium/negotium* tropes, for example, *fortassis otium Laertis potius, quam Ulyssis negotium eligeres* (ibid.)⁶⁰ and, more interestingly, *Deus nos in Angliam salvos deducat, ut ibi tecum in specula tua more meo philosophari possim* (ibid.).⁶¹ Haddon's image of two scholars philosophising (and possibly reading) together in their tower may well have been a fantasy, but this was possibly the point:

⁵⁵ Op. cit. Dewar, p. 22.

⁵⁶ Gerald Bray, "Haddon, Walter" in *Oxford Dictionary of National Biography* (Oxford: Oxford University Press, 2015).

⁵⁷ Lawrence V. Ryan, "The Haddon-Osorio Controversy (1563-1583)" in *Church History*, 22.2 (1953), pp. 147-148; Ryan based his account largely on Smith's letters, which suggested that through his efforts the book was printed by Estienne in Paris, without privilege and with a false imprint; no copies of this edition have survived. Cf. Bray, "Smith, Sir Thomas" in *ODNB*; op. cit. Burnett, Simpson and Thorpe, p. 36, n. 283.

⁵⁸ 'Your Plato will not suffer you, nor my Tully me, to be our own, who would have us serve our country; and as we at first received all that we had from it, so to return all back again' (p. 312); first published by Thomas Hatcher of Cambridge in 1567 as Haddon, Walter, *Lucubrationes passim collectae & editae* (London, Seresium, 1567) and dedicated to William Cecil; transl. in op. cit. Strype (1820), p. 90.

⁵⁹ Jennifer Richards has provided an account of Smith's attempt (and failure) to inhabit a Ciceronian mode of "civil disagreement" in his debates with Bishop Stephen Gardiner over the pronunciation of ancient Greek (*Rhetoric and Courtliness in Early Modern Literature* (Cambridge: Cambridge University Press, 2003), pp. 78-85).

⁶⁰ 'Perhaps you would rather prefer the *otium* of Laertes to the *negotium* of Ulysses' (my translation).

⁶¹ 'Let God bring us safely home to England, so that there I shall be able to philosophise in my fashion with you in your watch-tower' (my translation).

the *otium/negotium* trope was an extremely useful means for humanists in the world of public affairs to frame their university learning, portrayed (perhaps only facetiously) as days of idle *otium*!

A missive sent by Smith to the Privy Council during his first embassy to France demonstrates his own use of this trope. Smith's political isolation in the French court was alleviated after his meeting with Cardinal Ippolito II d'Este (1509-1572), the Papal Legate in France, who was a well-known humanist and collector of antiquities.⁶² D'Este was quite the intellectual prize for Smith, and one he was eager to show off to William Cecil and, indeed, to the entire Privy Council, in one of Smith's notoriously voluminous ambassadorial reports, written in the third person:

At last the Cardinal said that he saw that [Smith] was furnished for all matters, and that he heard he was learned; to which Smith answered that, having been many years at home, passing his time hawking and hunting, and now and then reading a book as a philosopher, he must needs covet to understand matters of religion.⁶³

Smith's aim here was apparently to deprecate his own learning before the Council and Cecil, to whom the letters are primarily addressed, despite their knowing perfectly well how learned Smith was. Indeed, Smith was certainly *not* deprecating his own learning because here he offered an appraisal, from the horse's mouth (as it were), of his reputation in humanist circles abroad. Smith's prior relationship with Cecil is also alluded to with a reference to humanist circles formed in Cambridge:

... at compliments [Smith] is the "veriest calf and beast in the world." As he thinks none can do them so well as M. Bizzarro, he asks Cecil to speak to the Earl of Bedford to move him to write some forms of such entertaining speeches to all kinds of people in

⁶² David R. Coffin, "Villa d'Este" in *Oxford Art Online* (Oxford: Oxford University Press, 2016).

⁶³ CSP Foreign Vol. 5, Nov 7, 1562, Letter 996, pt. 6.

Italian, and [Smith] will get them translated into French, and learn them by heart; but is afraid Bizzarro will be too curious, and then they will not agree with [Smith's] rude manner of speaking.⁶⁴

What was Smith trying to do here, besides undermining his own qualities as both a linguist and an ambassador? On the surface, Smith was exhorting Cecil to commission Pietro Bizzarri (1525-1586), who also acted as an agent abroad for Cecil,⁶⁵ to produce niceties for Smith to use at the French court. Bizzarri was a “full-fat” Italian – poet, historian, spy and fellow of St. John’s College, Cambridge by royal assent – and therefore another prize humanist acquaintance for Smith.⁶⁶ However, Smith does not encourage Cecil, another St. John’s man, to enact his commission directly (though no doubt Smith knew he could do so if he desired), but rather through Francis Russell, 2nd Earl of Bedford (c.1527-1585); Bedford had also studied at St. John’s, where he met Bizzarri and subsequently employed him as a secretary. Smith’s request is therefore incredibly convoluted, knowing, and ultimately empty. Smith may genuinely have struggled with French compliments, but he cannot have really expected that Bizzarri would send them. Indeed, this was understood by all the players to be something of a game: Smith’s nudge-wink letter is simply a device for publicly emphasising his own prominence in humanist circles formed in Cambridge and now operating abroad.⁶⁷

⁶⁴ Ibid., pt. 4.

⁶⁵ Kenneth R. Bartlett, “Bizzarri [Bizari], Pietro” in *ODNB* (2008). Smith owned a copy of Bizzarri’s *Pannonicum Bellum* (1573), the author’s Latin translation of his own earlier Italian work on the Habsburg war against the Ottomans, first published in 1568 (MS49, f. 89r).

⁶⁶ Bizzari was elected Fellow in 1549 (“Bizarri, Pietro” in op. cit. Venn).

⁶⁷ Nicolas Barker, “The Perils of Publishing in the Sixteenth Century: Pietro Bizari [sic] and William Parry, Two Elizabethan Misfits” in Edward Chaney and Peter Mack, eds, *England and the Continental Renaissance: Essays in Honour of J. B. Trapp* (Woodbridge: Boydell and Brewer, 1994), p. 127: ‘I am afraid that Smith was not wholly serious in his request.’ Barker also records Cecil’s response, which noted that Russell acknowledged the joke at Bizzarri’s request (p. 128).

Smith's tactics are more significant when viewed in the context of what he achieved intellectually in France. He had time both for writing – *DRA* was written during his embassy⁶⁸ – and, more significantly in terms of “humanist networks”, for printing. In 1568 Smith revived two earlier projects, both dating back to his Cambridge days: *De recta & emendata linguae Graecae pronuntiatione*⁶⁹ and *De recta et emendata linguae Angliae scriptione, dialogus*,⁷⁰ both printed in Paris by Estienne. It would be interesting to know if Smith commissioned and paid for their printing – in which case it would have been his own responsibility to distribute them⁷¹ – or whether Estienne suggested and paid for the work;⁷² a mixed model is the most likely, with the two sharing the costs. One significant question is who supplied the Anglo-Saxon characters that featured in Smith's reformed orthography: assuming Estienne did not have them lying around (which seems unlikely) it seems they must have been produced specially by his type-cutters.⁷³ With such additional expenses (producing type was not at all cheap) the point of the exercise cannot have been profit, but rather humanist reputation-building that benefitted both parties. Smith's proposed “Erasmian” reform of Greek pronunciation, which had failed in Cambridge in 1542 and (ironically) in Paris during Smith's visit there in 1540, was not necessarily dead and buried. As late as 1574, a

⁶⁸ Op. cit. Dewar, p. 110.

⁶⁹ Hereafter *DLG*.

⁷⁰ Hereafter *DAS*.

⁷¹ There are numerous copies of both of Smith's pamphlets in institutional libraries, perhaps suggesting a larger print run than this model would warrant; few, if any, appear to be presentation copies. Smith listed ten copies of these works (presumably of each) in his inventory of 1576 (f. 97v). The two works appear bound together in a copy at Queens' (though undoubtedly in a later binding), the first work bearing the signature of Philemon Holland (1552-1637), translator (U.4.8(2)).

⁷² Smith was apparently the only English author to be printed by Estienne in Paris in the 1560s or 1570s; Estienne printed George Buchanan's (1506-1582) *Psalms*, while other authors from outside of France included Joseph Scaliger (1540-1609) and Cristophe Varsevicius (1543-1603).

⁷³ According to Peter J. Lucas, Smith had his Anglo-Saxon and other “sorts” (i.e. additional type founts specially made to accompany an existing alphabet) produced in line with Estienne's use of Great Primer Italic, a type designed by the typographer Claude Garamont (c.1510-1561). Lucas posits that the sorts were therefore made in Paris, possibly by the type-cutter Guillaume Le Blé (1525-1598) (“Sixteenth-Century English Spelling Reform and the Printers in Continental Perspective: Sir Thomas Smith and John Hart” in *The Library*, 1.1 (2000), p. 6).

posthumous work by the Cambridge-educated physician John Caius (1510-1573) appeared, printed by John Day under the aegis of Matthew Parker, Archbishop of Canterbury (1504-1575), and supporting the “old” pronunciation that had so offended Smith; Smith’s copy of this book, now in the British Library,⁷⁴ was a gift from Parker, who had championed the production of the first set of Anglo-Saxon type by Day.⁷⁵ Smith’s was not an urgent project, however, and the main advantage of his being in Paris was that a printer of Estienne’s high standards could not have been found in London in 1568 (if anything Day was probably nearest to Estienne in quality). Smith almost certainly proofed the complicated texts – with their plethora of accented characters, Anglo-Saxon fonts and English vernacular terms – in person, although the errata list for his English orthographical work is relatively extensive (fp. *2r). Regardless, the point is that when Smith was in France he was behaving how a humanist *should* behave: preparing scholarly works on ancient and modern linguistics for the Continental press. He was also doing so while “on the job”, undermining the typical model of work and leisure in opposition, which Smith nonetheless attempted to shore up in his letters. The trope needs to be broken down, however, in a way that can usefully combat the doubly unhelpful and limiting paradigm of the “professional” humanist: a shallow but elitist scholar, either constrained by work from pursuing learning, or perhaps even entirely uninterested. In fact, what Smith picked up in France during his “little leisure” was brought home to his estate, Hill Hall in Essex.

⁷⁴ Henry Davis Gift 61; A89. Cf. op. cit. Lucas, p. 11, n. 33; Mirjam M. Foot, *The Henry Davis Gift: A Collection of Bookbindings* (London: British Library, 1983), II, no. 54 (pp. 86-88).

⁷⁵ Day produced the first Anglo-Saxon fonts in London, c.1566: Aelfric of Eynsham, *A Testimonie of Antiquitie*.

iv. Smith the alchemist.

Smith's admission of *otium* in his letters home from France – hawking, hunting and “occasional” reading – was a variation on another humanist complaint exchanged by Haddon and Smith, which was that if only they were at home or had more time, they could be getting on with serious study. However, clearly what Smith *did* get up to, both at home and in France, was not only vast amounts of reading, as attested by his annotated books at Queens', but also the writing and printing of his own works. Moreover, his intellectual contacts in France led to his building the earliest surviving, truly classical-style Renaissance house in England, the inner courtyard of which is something like a miniature iteration of Anne de Montmorency's (c.1493-1567) Château of Écouen.⁷⁶ It was here that Smith put into practice some of the interests he developed in France, and which he reinforced through his reading: in his orchard, his fish-ponds, his garden, and his laboratory. Smith managed an agricultural estate, which in Roman terms was perhaps the ultimate expression of useful *otium*; the truest Roman was arguably the craggy farmer, like Cincinnatus, who left his plough to defend Rome as *dictator* and then, when victorious, returned to his fields. However, Smith's agricultural and connected architectural interests, which were in many ways “civic”, are also related to a far less traditionally humanistic pursuit: alchemical distillation.

Smith's alchemical interests largely revolve around Richard Eden (c.1520-1576), a former pupil of Smith's at Queens', as has been well-documented by Richard

⁷⁶ Drury and Simpson (op. cit. 2009) have shown the influence of mannerist architecture and art in France, namely the School of Fontainebleau as expressed in the Châteaux of Fontainebleau and Écouen, the latter belonging to Anne de Montmorency, Constable of France (1493-1567), on both the architecture (p. 274) and stained glass (pp. 232-233) at Hill Hall.

Simpson.⁷⁷ Eden is better-known as the translator of Latin works describing the Spanish exploration and conquest of the New World (in which capacity we will consider him at the end of this chapter).⁷⁸ Eden had spent time in France in the employment of the Huguenot Jean de Ferrières, Vidame de Chartres (1520-1586). Ferrières later sent alchemical works to William Cecil while in exile in England in 1569, during the French Wars of Religion.⁷⁹ Eden, when in France with the Vidame in 1562, supposedly introduced him to Humphrey Gilbert (c.1539-1583), later a crony of Smith's, who was involved in his failed colonial and alchemical projects of the 1570s (the latter also ensnaring William Cecil).⁸⁰ Eden suggested that Smith visit another contact while in France, Jacques Gohory (1520-1576), who possessed a "philosophical garden" near Paris, where herbs were grown for distillation into strong waters; it is not clear whether this meeting ever took place.⁸¹ Smith, however, writing to Eden while on embassy in 1572, described his intended visit to Blois to see a "bollus or terra sigillata" (sealed earth, said to have medicinal properties), which Smith reported in terms of his desire to see this phenomenon 'as an astronomer'.⁸² Smith's connections with figures such as Eden and Gilbert – both of whom were present for Smith's debates on Livy at Hill Hall in the 1570s – return us to the idea of "active" reading among an elite group, who were principally concerned with their political and colonial projects. However, this later

⁷⁷ Op. cit. Simpson (2015).

⁷⁸ Smith possessed a copy of Eden's translation of Peter Martyr d'Angheria's account of the exploration of the New World, published in London in 1555 (QC MS49, f. 73r; appearing only in Smith's 1566 list).

⁷⁹ William Jones, "Two Learned Italians in Elizabethan England" in *Italica*, 32.4 (Dec. 1955), p. 245.

⁸⁰ Gilbert and Cecil had been involved in Smith's patented venture to industrially manufacture quicksilver and convert iron into copper using sulphuric acid, in which they were duped by a charlatan alchemist (Strype (1820), pp. 100-105, 282-286).

⁸¹ Op. cit. Simpson (2015), p. 106. Smith appears to have owned a copy of Gohory's French translation of Machiavelli's *Discorsi* (1531), first published in 1544 as *Le Discours de l'estat de paix et de guerre*. This appeared in Smith's 1576 library list (though not his 1566 list), as "Discourses de Machiavelli" (f. 90r). Smith also owned Italian editions of *The Prince*, the *Discourses*, and the *Florentine Histories*; cf. Alessandra Petrina, *Machiavelli in the British Isles: Two Early Modern Translations of The Prince* (London: Routledge, 2009), p. 20.

⁸² Op. cit. Dewar, p. 140.

generation of expansionist Tudor intellectuals were also interested in subjects that take us beyond the “narrowly humanist”: alchemy and astrology. This expanded vision of English humanism relies upon a more expansive account of the reading habits of figures like Smith.

Richard Simpson has addressed Smith’s stillhouse and the books that were apparently used within it, especially Smith’s preference for pseudo-Lullian alchemy – an early modern tradition associated with the medieval Spanish philosopher Raymond Lull – in favour of which, Simpson argued, Smith rejected Paracelsian alchemy.⁸³ On the face of it, Smith’s stillhouse books are the perfect illustration of what Simpson identifies as Smith’s humanist “principle of verification”,⁸⁴ wherein the ‘verification of meaning is essentially extra-textual’.⁸⁵ This principle involved corroborating ancient texts with those by modern authors; the claims of both could also be verified through practical experiments, such as weighing Roman coins:⁸⁶ ‘Smith’s books located the practical procedures in which he was engaged within a wider process of investigation and experimentation recognised as the product of lengthy, sober, human endeavour.’⁸⁷ Simpson’s suggestion that Smith rejected Paracelsianism is therefore problematic, since Paracelsus (1493/4-1541) embodied the modern interrogation of ancient medical authors through experiential practice.⁸⁸ Indeed, if Smith was not a follower of Paracelsus in some practical, utilitarian sense, then why did Smith have so *much*

⁸³ Op. cit. Simpson (2015), p. 108.

⁸⁴ Op. cit. Burnett, Simpson and Thorpe, p. 49.

⁸⁵ Op. cit. Simpson (2015), p. 109; ‘a mediation between texts and direct observation which can, in turn, be checked directly in the workshop.’

⁸⁶ Op. cit. Burnett, Simpson and Thorpe, p. 115; it is interesting to note that Smith did not always weigh his own coins (if he did at all) but farmed this job out to ‘apothecaries and goldsmiths.’ Smith’s stillhouse list does mention two pairs of scales and a set of brass weights, but these were possibly not accurate enough for weighing coins.

⁸⁷ Op. cit. Simpson (2015), p. 106.

⁸⁸ Paracelsus, trans. C. Lilian Temkin, “Seven Defensiones” in *Four Treatises of Theophrastus von Hohenheim called Paracelsus* (Baltimore, 1941), pp. 4-6.

Paracelsus (seven volumes, amounting to twenty-six works)?⁸⁹ Was he in fact interested, medically, because Paracelsus emphasised astrological influences on the body?⁹⁰ In this section I will address this apparent opposition between Smith's "practical" reading of Paracelsus and a reading that possibly demonstrated his belief in Paracelsian principles; this will rely on the single copy of a book by Paracelsus and annotated by Smith that has survived at Queens', since there is otherwise no evidence remaining of the alchemical collection in the stillhouse, which has vanished entirely.

The implication of Simpson's "principle of verification" is that, because Smith rejected Paracelsian dictates, his ownership of Paracelsus should therefore not demonstrate any interest in Paracelsian principles. Simpson notes Smith's ownership of works *attacking* Paracelsus,⁹¹ as well as the absence of any instructions in letters sent from France to Smith's then-parson at Theydon Mount, Thurston Shaw, regarding Paracelsian methods (as opposed to those of the pseudo-Lullian system, which Smith apparently favoured).⁹² Paracelsus was opposed to the use of "residues" in medicinal alchemy, a practice in which Smith actively encouraged Shaw in his missives home.⁹³ Smith's copy of Paracelsus's *Chirurgia Magna* and *Minor* (Strasbourg, [s.n.], 1573), listed in his main library inventory, is at Queens'.⁹⁴ The annotations are by no means extensive, occurring mostly in the first volume of the *Chirurgia Magna*, in which Smith engaged with some of the central precepts of Paracelsian medicine. Much of this is basic medical theory

⁸⁹ Op. cit. Simpson (2015), p. 108: 'Although smaller than John Dee's exceptional collection dated 1583, Smith's 1576 inventories suggest a collection both earlier in date and larger in scale than the private collections identified hitherto.' Dee possessed 157 copies of 92 editions of Paracelsus's works, an extraordinary number (op. cit. Sherman (1995), p. 43).

⁹⁰ D.P. Walker, *Spiritual and Demonic Magic from Ficino to Campanella* (London: Warburg Institute, 1958), pp. 102-103; Walker viewed Paracelsus' Ficinian origins through the lens of Gohory, whose Paracelsian *Compendium* was in Smith's stillhouse library.

⁹¹ Op. cit. Simpson (2015), pp. 107 and 115, n.56.

⁹² Ibid., pp. 107-108. Cf. Dewar, pp. 142-143.

⁹³ Ibid., p. 104.

⁹⁴ F.10.20(2); A51.

that was expressed in Smith's more seriously humanistic medical reading, such as in his Latin copy of a work by Galen (on which more in Chapter 3). Noting Paracelsus's valuation of practical experience over the wisdom of medical authors, Smith has underlined: *quod eae usu ac experientia quam ex scriptis cognoscantur rectius* (p. 2).⁹⁵ Smith's main focus seems to be on the treatment of wounds. He has sketched a star next to the passage on astral influence, in which Paracelsus notes that surgeons must consider the influence of planetary bodies on wounds (*Coeli influentia in vulneribus consideranda* (p. 6)), neither can they deny that such an influence exists (*quis dubitet coelestia vulneribus sua influencia nocere posse?* (ibid.)). Paracelsus knows that the explanation for this influence is obscure and is better left to the astronomers (*sed quia disputatio ista & prolixa & difficilis est, Astronomis eam relinquemus* (ibid.)), but he does argue that doctors must look to the skies (*Chirurgus coeli situm inspicere debet* (ibid.)). It is foolish, Paracelsus notes, to contend with the stars (*ut cum astris pugnare temerarium putet* (ibid.)), unless they change their dispositions; so also the changeability of man will be liable to introduce danger (*quod ob subjecti (hominis scilicet) inconstantiam ac mutabilitatem judicia periculosa existant* (ibid.)), just as medicinal clay (*lutus*) dug up at the wrong time will introduce pests: *quemadmodum lutum, non debito tempore effossum, cicadas producere* (ibid.). Paracelsus's point, besides mounting an attack on bad doctors who do not follow his precepts, is that sometimes only the specific and secret cure will heal the wound (*non nisi singularibus Arcanis tolli posse* (ibid.)). This is therefore knowledge outside of ancient medical experience, as well as the ancient textual tradition.

⁹⁵ 'That these matters are better understood by practice and experience than from writings.'

However, while in practice Smith seems to have gone against Paracelsian directives, implying some scepticism about the “secrets” that Paracelsus divulged, in the *Chirurgia* he seems more sympathetic to Paracelsian *methods* and treatments. Smith’s annotations on the section on wounds leads him to a Paracelsian novelty: that “balsam” (*balsamus*) is good in the body, where it occurs as a natural substance (*Scias ergo naturam corporis, carnis, ossium, nervosarumq[ue] partium radicalem ac congenitum Balsamum in se continere* (p. 3)).⁹⁶ This was a redefinition of the term, confuting it with its former usage, which described the artificial, medicinal drug balsam, covering a large number of resins or saps extracted from trees. According to Paracelsus, bodily balsam (*balsamus naturalis*, likened to the life force or vapours of life in Galenic medicine)⁹⁷ is notable for its effects on wounds, especially in fixing bones (*ossa conglutinat*), closing wounds (*in carne reco[n]ditus*), and guarding against putrefaction (*carnosum vulnus sanat* (ibid.)). Smith seems to go right along with the Paracelsian definition of *balsam*, as well as Paracelsus’s adversarial style, which again takes aim at those doctors who do not follow his precepts (it is perhaps no wonder that Smith possessed anti-Paracelsian literature too): *Quapropter meminerit Chyrurgus, non se, sed Balsamum, qui in corpore consistit, vulnera curare: non enim levis error est, si medicus sibi curationem adscribat* (ibid.).⁹⁸ Smith notes the error on the part of arrogant physicians in ascribing any success to their own efforts: “Error si medicus curatione[m] sibi ascribat” (ibid.). Paracelsus puts it even more simply: *ut iam recte dicatur, bonus Balsami custos, bonus Chyrurgus esse* (ibid.).⁹⁹

⁹⁶ ‘Therefore you know that the parts of the body, flesh, bones, and nerves naturally contain Balsam congenitally and innately (the sense of *radicalem* is “in the root”).’

⁹⁷ Elizabeth Moreau, “Balsam” in Dana Jalobeanu and Charles T. Wolfe, eds, *Encyclopedia of Early Modern Philosophy and the Sciences* (Berlin: Springer, 2022), pp. 165-167. Cf. Paracelsus, trans. Gregory Zilboorg, in op. cit. Temkin, p. 140.

⁹⁸ ‘For this reason, the surgeon should remember that it is not he, but the balsam residing in the body, that heals wounds: it is no small error if the physician attributes the cure to himself.’

⁹⁹ ‘So that it is rightly said, the good doctor is a good caretaker of balsam.’

Smith's annotations regarding *balsam* are particularly useful because this ingredient is one of the few included in Smith's stillhouse list: "Balsami arnoldi" appears in the stillhouse list, along with another controversial ingredient, "oleum magistrale", on which more momentarily. As we have seen, the Paracelsian attitude towards "balsam" depended entirely on which kind of balsam was being discussed, as well as on the changes that occur within or outside of the body. Bodily balsam had to be maintained through good nutrition, a festering wound ("Putredo, foetor"; *vulnus putrescit, ac foetidum exhalat* (p. 4)) being a sure sign of poor nutrition (*duo signa nutrimenti errorem certo testantur*); the wound of someone poisoned with excrement in their food will also issue excrement ("Vulnera non pus nec putredinem, sed excreme[n]tum emittur" (ibid.)). Smith's practical interest in healing wounds therefore stems from an apparent acceptance of the principle of internal bodily balsam. He notes other related precepts, including the Paracelsian alignment of "external" balsam with the principle of salt, because of its qualities for curing putrefaction (*nam remedia curandis vulneribus destinata, Sal referunt*); salt is therefore considered a kind of external balsam, as Smith notes: "Sal balsamum externus" (p. 11). Smith's clear interest in internal and external bodily substances shows his engagement, therefore, with some of the *principles* of Paracelsianism, such as the transmutation outside the body of the *tria prima*, the three bodily elements of mercury, sulphur and salt, into soot (*fuliginem*), oil and alkali (*uti extra Microcosmum videtis, Mercurium in fuliginem, Sulphur in oleitatem, Salem in alkali transmutari* (Fig. 1; p. 193)).¹⁰⁰ Some of what Smith notes about wounds, however, is really more redolent of the principles of Galenic medicine;

¹⁰⁰ 'So that out of the microcosm you see that Mercury is changed into soot, Sulphur into oil, and Salt into alkali.' Sherman (1995) briefly describes Smith's annotations (p. 76).

that good nutrition (*nutrimentum*) should affect the strength and quality of the body's internal substances was hardly a novel idea. We should not, therefore, be leaping to call Smith a Paracelsian, but neither should we be calling him an outright devotee of humanist medicine, nor a detractor of the Paracelsian system. Smith is demonstrating what George Baker (1542-c.1612), an English physician, was achieving at exactly the same time, with his treatise on “oleum magistrale”: moving from a Galenic position to an increasing interest in “chemical medicine”.¹⁰¹

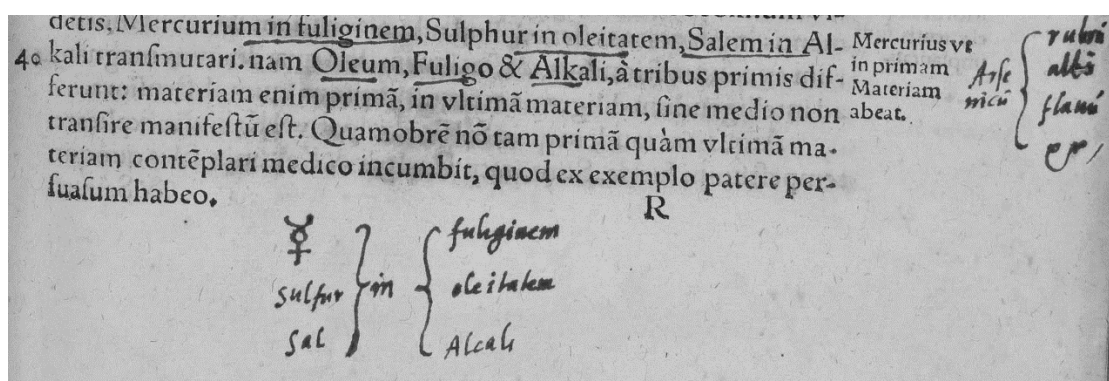


Fig. 1. Paracelsus (1573).

Indeed, Smith is interested in Paracelsus's recipes for various substances, including “Colcothar Vitrioli” (p. 106), and two different kinds of balsam. Smith has noted by the recipe for *Balsamus Argenti* (silver balsam) that mercury will be isolated (*in qua*

¹⁰¹ Baker, originally a virulently anti-Paracelsian and pro-Galenic physician, published a tract on this ingredient, *The composition or making of the moste excellente and pretious oil called oleum magistrale* (London, Alde, 1574), a translation from Aparicio de Zumia (dates unknown), dedicated to Edward de Vere, Earl of Oxford (1550-1604), who had previously been Smith's ward. This contained a translation of sections of Galen's *De compositione medicamentorum* on the treatment of wounds; cf. Deborah E. Harkness, *The Jewel House: Elizabethan London and the Scientific Revolution* (New Haven: Yale University Press, 2007), p. 87. A.G. Debus described Baker's work in terms of the “Elizabethan Compromise” in *The English Paracelsians* (London: Oldbourne, 1965): “[Baker] outlined the middle path [between Galenic and chemical medicine] which was eventually to prevail”, noting, however, that he was ‘taking his cue’ from Conrad Gessner (1516-1565) and the medieval alchemical tradition rather than from Paracelsus (p. 56). Smith listed Gessner's *Thesaurus Eonymi* (1552) in his stillhouse list.

Mercurius extinctus sit) from *aquam ovorum supra suam calcem* (ibid.),¹⁰² forming red crystals (*destillatam in rubicundum pulverum reducatur* (ibid.)), which can be used to treat wounds and ulcers (*ut & vulnera & ulcera ... perfectissime curet* (ibid.)). Smith has also tacitly noted, however, that this famous distillation of Mercury (“*praecipitatus nobilis*” (ibid.)) – Smith also jotting down its astrological symbol – is often used badly by physicians (*Praecipitatus Mercurius improbatur* (ibid.)) because of its naturally corrosive effect. In the recipe for balsam joined with arsenic, Smith has noted the use of *Sale Nitri* (ibid.) and lead oxide (*Minium*) in the preparation of lead balsam (p. 107). Smith uses more astrological symbols here, first in the recipe for vitriol (“*flos*”), which was derived from Venus, i.e. copper, and secondly in the recipe for gold balsam, which Smith has noted using the astrological symbol for the sun, naturally connected with gold (“*balsamus*” (ibid.)). Can this be considered evidence of Smith’s belief in astrological influence on metals, or is he simply utilising the expected alchemical register? Smith seems occasionally to have striated his margins with a dry nib, for example marking a passage describing the planetary regions of the body (p. 199). How much of this did Smith really understand, after all? The point seems to be the *exercise* of Smith’s interest in Paracelsian methods, rather than a sustained or engaged interest in his philosophy. A contrast can be drawn here with John Colet’s (1467-1519) reading of Marsilio Ficino (1433-1499) on demons, a concept which Smith also encountered in his astrological reading (as *eudaemones* and *cacodaemones*, or good and malicious spirits).¹⁰³ Trapp suggested that for Colet the way the demons worked in Ficino was less important than the moral implications of *how* they worked: ‘There is no doubt of the moral warning in Ficino’s descriptions of these operations, but there is also a strong

¹⁰² ‘... water of egg outside of its shell.’

¹⁰³ BL MS Sloane 325, ff. 219v and 220r; see also Smith’s Cardano (A87), fp. 26v.

desire to be precise about just how these demons operate. One senses that the operation is less important for Colet than the moral.’¹⁰⁴ Smith’s position seems to have been exactly the opposite.

A recent re-discovery of Smith’s copy of a compendium of Gerolamo Cardano’s (1501-1576) works on astrological nativities, *Libelli quinque* (Nuremberg, Petreius, 1547), now at the Bodleian Library,¹⁰⁵ provides further evidence of Smith’s combination of medieval and ancient traditions with the most up-to-date publications of the Continental publishing houses (as shown by his copy of Paracelsus, which is the book in his library at Queens’ with the latest publication date).¹⁰⁶ Smith’s reading of Cardano represents an almost entirely practical application of astrological beliefs: the casting of “genitures” or nativities, i.e. the positions of the celestial bodies at one’s birth. For his methods to be credible, however, Cardano needed to occupy a clear position in relation to the authorities on which he was drawing. For example, Smith’s regular notation of the ancient Greek astrologer and geographer Ptolemy reflects Cardano’s originally hostile attitude (“Ptolemaeus” (fp. 257v)): *Quam stulte quidam faciunt, qui volunt solum haerere Ptolemaeo* (ibid.).¹⁰⁷ Cardano said (and Smith noted) that the difference between Ptolemy and everything that followed was like comparing mud with a precious stone (*Maius est discrimen inter Ptolomaei praecepta, & omni reliquorum qui eum secuti sunt, quam inter Smaragdum & lutum* (fp. 215v)), but conceded that Ptolemy must have had access to (now lost) ancient Chaldean, Babylonian and Egyptian writings (*scripta miranda multorum saeculorum* (ibid.)), showing (*contra* Paracelsus) that the ancients could hold secrets too. Cardano’s discussion of various chronological systems

¹⁰⁴ Op. cit. Trapp, pp. 139-140.

¹⁰⁵ [MS] Ashm. 157; A87. Cf. Anthony Grafton, *Cardano’s Cosmos* (Cambridge, MA: Harvard University Press, 1999), pp. 103-104. I am extremely grateful to William Poole for pointing out the existence of Smith’s Cardano (not a moment too soon).

¹⁰⁶ Op. cit. Simpson (2015), p. 106.

¹⁰⁷ ‘How foolishly do some act, who wish only to hold by Ptolemy.’

and tables further reflected his distrust of Ptolemy, Smith noting that Giovanni Banchini's (1410-c.1469) tables give a date for Christ's birth 140 years earlier than Ptolemy's chronology, besides many other discrepancies ("Joan[nes]. Blanchinus (fp. 212r)): *Geminorum Christi, in radice quae Ptolemaei tempora praecedat annis plusquam 140 posuerit, atque alia multa quibus demonstrationes Ptolemaei haud consentiunt* (ffp. 212r-212v). Cardano is less sure, however, about the modern authority of Nicolaus Copernicus (1473-1543) (another author from the Petreius stable that Smith listed in his library),¹⁰⁸ as Smith notes ("Copernicus" (fp. 212v)); this is apparently because Cardano suspected the recently-deceased Copernicus of having held back: *Copernici autem nondum perspecta est recte sententia: vix enim, quae vellet, dicere visus est* (ibid.).¹⁰⁹ Finally, Cardano notes the continuation of Ptolemy's errors by a medieval authority, the tables of celestial motion sponsored by the thirteenth-century Castilian king Alfonso X ("Alphonsis Tabulae" (ibid.)): *Si a Nabucdonosor ad Christum anni 746 communes diesque 310 computentur, juxta Alphonsi placita error in omnibus accidet planetis, secundum Ptolemaei tabulas: ut in Saturno unius anni motum transcendat* (ibid.).¹¹⁰ Nonetheless, Smith separately possessed a copy of these tables, details of which he transcribed into the longitudinal and latitudinal star charts that he added in manuscript to the front of his Cardano, alongside positions recorded by the contemporary German astrologer Erasmus Reinhold (1515-1553); Smith dated these tables to 1555, the year in which (by his own admission) his astrological interest exploded.¹¹¹

¹⁰⁸ MS49, f. 93v; in his 1566 inventory Smith specifies the title as "revoluciones" (f. 75r), referring to Copernicus's *De revolutionibus orbis coelestium* (Nuremberg, Petreius, 1543).

¹⁰⁹ 'Copernicus's view, however, is not yet rightly understood: for he seemed hardly able to say what he wished.'

¹¹⁰ 'If the period from Nebuchadnezzar to Christ is computed to be 746 standard years and 310 days, according to the Tables of Alphonsus, and following the Tables of Ptolemy, the error occurs in all the planets, so that the motion of Saturn is exceeded by one year.'

¹¹¹ Erasmus Reinhold (1511-1553), *Tabulae directionum* (Tübingen, Morhart, 1554); Alfonso X, King of Castile (1221-1284), *Astronomicae Tabulae* (first pub. Venice, Ratdolt, 1483; Smith's edition was

When Smith added the tables, therefore, he may well also have been aware of Cardano's change of heart with regard to Ptolemy, since Cardano recanted his hostile position in his commentary on Ptolemy's *Quadripartitum* (Basel, Petri, 1554), a copy of which Smith listed in his library.¹¹² Regardless, Smith's own astrological manuscript, Sloane MS 325, shows him making detailed notes on genitural positions of the celestial bodies, derived from Ptolemy, the Arabic tradition (in the form of the medieval astrologer Haly Abenragel), and modern German astrologers in the form of Johannes Schöner (1477-1547) and Johannes Stöffler (1452-1531).¹¹³ It should not surprise us that Smith, as a humanist, was interested in astrology (as Anthony Grafton noted, in the sixteenth century no-one could escape astrology, rather like economics in modern times),¹¹⁴ nor that this interest intersected strongly with his medical reading, as we shall see in Chapter 3. Furthermore, it is hardly surprising to see that Smith's approach to his Cardano was exactly like the intellectual approach exhibited in all areas of his reading: embracing ancient and even medieval traditions, though interpreting them according to the highly practical and specific apparatus provided by modern, Continental authors, which Smith purchased hot off the presses. In this way the moral was confronted by the operation: Smith was always open to classical or medieval arguments, but they had to work in relation to modern methods. Indeed, Smith's reading can, in general, be seen to be directed towards a "middle path", or a compromise between texts, authors, and

almost certainly either Paris, Wechel, 1545, or (more probably) the second Wechel edition of 1553) (MS49, f. 93v). BL MS Sloane 325 contains Smith's astrological predictions ("Chronocratores", ff. 10r-11r), and horoscopes and geniture diagrams (ff. 7r, 13r-83r); op. cit. Burnett, Simpson and Thorpe, pp. 1-2 and Grafton (1999), pp. 112, 185-186 and 191-192.

¹¹² MS49, f. 93r.

¹¹³ BL MS Sloane 325, ff. 43r-56v; see refs to Haly (f. 45v), Stöffler (13v; Smith's geniture for his first wife was "Ex stophlerino") and Schöner (ff. 50r and 53r). For these books in Smith's library, see MS49, ff. 93r-93v: "Haly de Judiciis astroru[m]"; "Schonerus de Nativitatibus"; "Ephemerides stopherini. in 2. vo."

¹¹⁴ Op. cit. Grafton (1999), p. 11.

even intellectual traditions, both ancient and cutting-edge, with the same degree of flexibility that Cardano exhibited towards Ptolemy.

v. Smith's bequest to Queens'.

The significance of Smith's bequest is uncertain, however, in relation to his apparent desire for intertextual reading. Why did the books now in Queens' (including Paracelsus) arrive there; and why did Cardano, for example, end up elsewhere? Smith's will, which makes no specification at all of which books he wished Queens' to receive, is, however, useful for examining how he chose to advertise his intellectual credentials. The will's language in giving a golden cup decorated with the planets to Queen Elizabeth is particularly illuminating: 'My standinge massive Cuppe all guilte which hath the seaven plannettes in the Cover I give to the Quenes majestie as most woorthie havinge all the good guiftes endewed of God, which be ascribed to the seaven planettes ...'¹¹⁵ One of numerous symbols adopted by Queen Elizabeth (perhaps the earliest) was the armillary sphere, so Smith might simply have been paying lip-service to astrological convention.¹¹⁶ However, when we consider the only item that Smith specifically gave to Queens', which was his astrological globe ('my greate Globe of myne owne making'), we are led to consider whether Smith genuinely believed in the *intellectual* influence of celestial bodies (an assumption that would seem to be confirmed by his reading of Cardano). This is assuming, however, that the globe currently at Queens' – a wooden hemispherical construction with stars and the figures of the Zodiac in gilt

¹¹⁵ In MS49 this cup is valued at £1.03[s], apparently the most expensive single piece of Smith's plate, and appears alongside cups with decorations such as 'roses, Bacchus and other gods' and 'nymphs' (f. 106r).

¹¹⁶ Roy Strong, *The Elizabethan Image: An Introduction to English Portraiture 1558 to 1603* (New Haven: Yale University Press, 2019), p. 192.

resin, clearly without any practical function for astronomical calculations – is the same one that Smith was referring to. The globe is a useful metaphor, however, for the methodology of this project, not least because it tempers the hard line we have taken in regard to Smith’s dedication to the operation and not the moral, i.e. to the surface method rather than the intellectual depth: Smith cannot have “used” the globe for any practical purpose, but it can still be considered significant in terms of the intellectual force behind Smith’s bequest; the same approach, indeed, might equally be taken in relation to Smith’s unannotated books. On the other hand, Smith’s *use* of books – his reading and annotation – will be the driving force behind this study. The reading Smith undertook in the 1530s and early 1540s will be related to the reading that he undertook after leaving Cambridge. The development of Smith’s famous visual style of doodling is in evidence in his reading of Plato in the 1530s, when he was still lecturing in Greek, but this style of reading, usually associated with his reading of the 1550s and 1560s, seems only to have taken on its highly systematic quality when he was ploughing through the enormous *Corpus Juris Civilis*¹¹⁷ during the early 1540s in preparation for his civil law lectures in 1543. This is an argument that satisfies both the Weiss-Trapp and Jardine-Grafton paradigms: Smith was a professional and his reading was pragmatic and selective, bent towards a specific aim or purpose. However, such an interpretation ignores the more complex, “diffuse”, and “plural” aspects of Smith’s reading: his development of a cohesive system of visual signs to turn multiple printed copies of texts into a useable “network” of books, or (to put it more simply) into a library. This also includes a pluralistic and diffused account of “choice”: Smith’s selective reading of texts, my selective reading of Smith’s readings, and, overall, the

¹¹⁷ Hereafter *CJC*.

selection of books that arrived at Queens', which represented only a fraction of his library.

At first glance Smith's was an apparently vague gesture, his books being made over to the college without specification of their subject matter, but instead of their language (Greek and Latin books) and intended use: they must be chained in the Library *or* given for the use of the fellows, the latter on condition that the books were borrowed with 'indenture' against their safe return; Smith's awareness of the *electio* system (the annual distribution of books to the fellows) is evident, as is his belief that the books would be of practical use to the fellows. There are four possible motives behind the donation of Smith's books to Queens': firstly, *pietas* towards his old college and to his relatives, namely his nephew Clement Smith (who was also the college's agent in collecting Smith's books, and was already the incumbent of Smith's arithmetical lectureship at Queens',¹¹⁸ despite Smith's harsh assertion in his will that none of his relatives was learned);¹¹⁹ secondly, creating a repository for the books; thirdly, as an act of self-commemoration; and fourthly, providing books of practical use to the fellows, which itself furthered all of the above. Smith's choice of bequeathing books to his old college library was not a new one, as shown by John Claymond's bequest (d. 1537) of two hundred printed books to Corpus Christi College, Oxford.¹²⁰ Neither was it an unfashionable thing to do: Matthew Parker's significant bequest to Corpus Christi College, Cambridge was made in 1575. However, the idea of a college library acting as a safe repository for Smith's books was still relatively new, his bequest following

¹¹⁸ QC 4, "Magnum Journale", 1560-1587, ff. 126r and 127v.

¹¹⁹ Clement Smith received Smith's Livy, Cicero, Aristotle in Greek and Plato in Greek and Latin, as well as first choice of ten further books, but had to return them to the college if he ever ceased to be Fellow.

¹²⁰ R.M. Thomson, *The Fox and the Bees: The Early Library of Corpus Christi College, Oxford* (Woodbridge: D.S. Brewer, 2018), p. 19.

shortly after the gift of Thomas Greneway's (d. 1571) books to Corpus Christi College, Oxford, as described by R.M. Thomson: 'If they formed a bequest, it must have arrived no earlier than 1571, by which time it was safe to have such books in the Library, and indeed dangerous not to';¹²¹ incidentally, Queens' had seen the endowment of a librarian in 1571 (one of thirteen new scholars).¹²² Much had changed, therefore, since the middle of the sixteenth century, when an example of humanists behaving badly was Roger Ascham (1515-1568) and John Cheke's notorious "theft" of manuscripts from Cambridge University Library for the preparation of printed editions, apparently without any intention of returning the original manuscripts. This was, however, justifiable, according to J.C.T. Oates, because of the parlous state of the university and college libraries; the books were simply safer in private hands.¹²³ Moreover, the pertinent fact in this case was not the state of the library but rather the supremacy of the printed editions, which (having been prepared from the now defunct manuscripts) might be reinserted in their place. Smith's library, on the other hand, was a collection of printed books augmented with his own manuscript annotations.

Queens' was not unusual in dispensing with its manuscripts, though the fellows seem to have demonstrated an extraordinary alacrity in refreshing their library's collections. In 1580, during the Presidency of Humphrey Tindall (1549-1614), an inventory of

¹²¹ Ibid., p. 37.

¹²² Searle, William George, *The History of the Queens' College of St Margaret and St Bernard in the University of Cambridge: Parts I-II (1446-1560)* (Cambridge: Cambridge Antiquarian Society, 1871), II, p. 319.

¹²³ The three manuscripts in question were a volume containing Polyaeus and the *Tactica* of Emperor Leo VI, unidentified commentaries on Homer, and Tzetze's *Scholia* on Hesiod. Ascham appears to have borrowed the first, later lending it to Cheke and claiming to have read it in Cheke's chamber while preparing his *Toxophilus* (1544). Cheke must therefore have borrowed the Leo, which he translated out of Greek into Latin for Henry VIII, and the other two manuscripts, of which the Tzetzes on Hesiod was used to prepare a printed edition in Basel in 1542 for the printer Johann Birckmann, who dedicated it to Cuthbert Tunstall (1474-1559); cf. J.C.T. Oates, *Cambridge University Library: A History* (Cambridge: Cambridge University Press, 2010), I, pp. 83-86.

Queens' library was drawn up, which did not include Smith's books.¹²⁴ Clare Sargent has demonstrated that a number of the books in this inventory, especially Swiss editions of Reformed Biblical exegesis, were purchased soon after publication by the library, as shown by purchase records in the college's accounts;¹²⁵ this would seem to be rather unusual for the period, when most books accessioned into colleges were by donations of money or by bequest. In 1580 the library retained the floor plan and even the medieval lectern desks of the original medieval library, which was most likely begun by the college's first President, Andrew Docket (d. 1484). The desks were likely not extended upwards – their sloping tops being removed and replaced with upright shelving, while, apparently uniquely, retaining the lower portions – until 1613, though this might have taken place later (but certainly not before the seventeenth century, when extensive remodelling took place).¹²⁶ Before this renovation, therefore, in 1580 the library furniture consisted (as it had done in the fifteenth century) of fourteen lectern desks, alphabetically arranged. There was, in addition, a book "cupboard", possibly holding whatever medieval manuscripts or documents remained in the library, and there were likely chests for holding books left on deposit by fellows as collateral. In 1472, according to the inventory made in that year, these desks had held '220 titles in circa 190 volumes',¹²⁷ with most desks holding a maximum of roughly twenty-five books.¹²⁸ Since the layout had not changed by 1580, one can infer that there was not room for

¹²⁴ Clare Sargent, "Two sixteenth-century Book Lists from the Library of Queens' College, Cambridge" in *Transactions of the Cambridge Bibliographical Society*, 12.2 (2001), pp. 161-178; see QC MS30, ff. 21r-22r.

¹²⁵ Ibid.

¹²⁶ Burnett Hillman Streeter identified the Jacobean panelling on the current shelving as dating from 1614, indicating that the lectern desks of the chained library were converted into presses with upright shelving around this time (*The Chained Library* (Cambridge: Cambridge University Press, 2011), pp. 27-28. This is supported by the fact that purchases of books in 1613 with money donated by the Earls of Huntingdon and Rutland (Queens' Donors' Book, MS47, ff. 5-6) would have considerably increased the size of the library; none of these books, which bear their original bindings with armorial supralibros, were chained.

¹²⁷ Op. cit. Sargent, p. 163.

¹²⁸ MS 30, ff. 1v-8r.

many more books in the physical library into which Smith's books arrived. The Tindall inventory did not include any of Smith's books, but when this inventory is combined with the list of Smith's books recorded in the Donors' Book (with the caveat that the latter was not compiled until 1632 and is sometimes inaccurate), we can be fairly confident of the contents of Queens' library as it existed just after Smith's death: fifty-four titles in roughly double the number of volumes from the 1580 list, and eighty or so titles in just under one hundred volumes from Smith's list, thus forming a collection of some two hundred volumes, which was at least two-thirds of what may have been the library's full capacity.¹²⁹

The library at Queens' as catalogued in 1472 was 'a remarkably large collection for a college founded only some twenty-five years before,' according to Peter Clarke:

This was hardly sufficient time to build such a library through the typically small gifts of fellows or by purchase over years when the college's modest income would be largely committed to creating its buildings. Therefore this library must have been the result of a single major donation, possibly by the catalogue's compiler, Andrew Docket [sic] himself.¹³⁰

Docket's inventory listed around 190 volumes in 1472, overwhelmingly theological but with the usual works on grammar and a small section on canon law, and a single work on civil law.¹³¹ Clarke noted subsequent small bequests in 1476 and a number of references to purchases or the binding of books in the decades following.¹³²

¹²⁹ Philip Gaskell applied this number to the sixteenth-century library of Trinity College, Cambridge, which had only ten desks (in comparison with the fourteen at Queens'). Queens' may therefore have been able to contain around 280 volumes. 'The limit for a large college library before the 1590s was about 500 volumes' (*Trinity College Library: The First 150 Years* (Cambridge: Cambridge University Press, 1980), p. 6).

¹³⁰ Peter D. Clarke, ed., *Medieval Libraries of Great Britain, Vol. 10: The University and College Libraries of Cambridge* (London: British Library, 2002), p. 562.

¹³¹ Ibid.

¹³² There were two bequests in 1476 by Hugh Damlett (a Josephus) and Thomas Wellys (two works of canon law, almost certainly manuscripts); the Josephus is possibly the incunable edition still at Queens'

Comparison can be made with the University Library; this had existed since the fourteenth century but had been fully catalogued in 1473, when it was shown to contain 330 volumes, having trebled in size since the 1440s, apparently through small donations.¹³³ J.C.T. Oates was disparaging of the contents of the University Library, noting a conspicuously lonely work by Petrarch, and comparing this scarcity to the humanist contents of King's College Library, with its 'windows open to the fresh air of the Renaissance.'¹³⁴ By 1557, when the University Library was catalogued as part of the Visitation of the University instigated by Mary I, the collection had shrunk to 163 volumes and was in considerable disorder, probably through neglect, though there had been an increase in books in Greek: 'Most of the books that survived in 1557 had been received as gifts by 1530.'¹³⁵ Queens' may well have followed the same pattern: when Leland visited the College in the 1530s, the library was clearly in good health and contained works that interested him, especially by English authors and books of the "new learning", since Peterhouse was the only college at which he noted more books.¹³⁶ However, since by 1580 none of these books had survived, there was clearly a period of severe degradation in the half-century that followed Leland's catalogue. Thomas Yale's donation of books in 1562 which he had inherited from the former master of Queens', Simon Heynes (d. 1552; Yale married his widow), may have marked the beginning of a resurgence in the library's fortunes, since his donation coincided with the publication date of several books appearing in Tindall's inventory. The five volumes listed in Yale's donation in the Donors' Book (he is the only donor preceding

(C.11.20), which was printed in the Netherlands by an unknown printer, likely not before 1475; cf. op. cit. Clarke (2002), pp. 686 and 745. For the purchases, see p. 584.

¹³³ Op. cit. Oates, I, pp. 32-34.

¹³⁴ Ibid., I, p. 29.

¹³⁵ Op. cit. Clarke (2002), p. 74.

¹³⁶ Ibid., p. 585.

Smith) are still in the library today, with manuscript labels behind horn windows recording his donation.¹³⁷

This leads us to perhaps the most significant (and sadly unanswerable) question concerning Smith's bequest: did Smith's books directly replace other books, and, if not, why did Queens' choose the books that they did? Or, put more simply, if one hundred volumes arrived in 1577 after Smith's death, did one hundred volumes also leave? The same question must be asked of the "new" books that appear in Tindall's 1580 inventory, especially the new volumes of Continental, Reformed Biblical exegesis – certainly in keeping with the religious character of the college – one of which was published as late as 1578. Was the library in fact severely depleted in the period leading up to Smith's bequest? It might seem remarkable that at Queens' the library's complement of two hundred books existed in three entirely different iterations in the first one hundred and fifty years of its life, though such a general turnover of stock within college libraries was not necessarily uncommon, and was particularly evident in Cambridge from the 1530s until about 1560.¹³⁸ Indeed, despite the evidence that not a single volume appears to have survived from one inventory to the next, this does not necessarily imply an assiduous policy of replacement. We might assume, therefore, that the college had space to fill: why, then, did Queens' take the books that they did? They had free choice of some 450 Latin and Greek books, just over half Smith's library of some 750 titles; they had space, as we have seen, for about one hundred.¹³⁹ This was almost certainly the first major bequest since that which most likely began the library

¹³⁷ MS47, f. 1.

¹³⁸ Op. cit. Gaskell, p. 7.

¹³⁹ Smith's Italian and French books (just over one hundred in number) were bequeathed in Smith's will to the Royal Library, though none appear to have survived into the collections of the British Library.

in 1472, so it is a surprising fact that there is no evidence that Smith influenced the selection of books in any way; the vagueness of Smith's bequest is even more startling when compared with, for example, the obsessive drafting of his friend Andrew Perne's (c.1519-1589) major bequest to Peterhouse, which had undoubtedly been premeditated years previously, and had even influenced his purchase of books later in his life (i.e. with Peterhouse's collections in mind). Smith was certainly in touch with the President of Queens' in 1573 because of his donation of geometry and arithmetic professorships in that year.¹⁴⁰ His bequest of books, however, does not seem to have been similarly premeditated, indeed from his will he appeared happy to allow Queens' to take whatever suited them, despite having drawn up a full inventory in 1576 (it seems unlikely, therefore, that his final illness took him completely by surprise). The fact that the college chose works from a variety of subjects may have simply been a response to the contingencies of the situation; they had only two weeks to reach Hill Hall and remove the books before the bequest defaulted to Peterhouse. Alternatively, those responsible, one of whom appears to be Smith's own nephew, Clement, may have been thinking of what Queens' library lacked: civil law, canon law, medicine, and history. Only two or three books of Smith's in pure Greek (Aesop and Dioscorides) arrived, and in terms of theology, only a copy of the Bible; Greek linguistics and Biblical scholarship were already well-represented at Queens', however, as indicated by the 1580 inventory.

What, then of Smith's reading? Were his annotations a factor? Three of Smith's heavily annotated books in Greek (Josephus, Plato and Geoponika) have been found in libraries

¹⁴⁰ Op. cit. Searle (1871), pp. 347-348.

outside of Queens’;¹⁴¹ why were these rejected? However, heavily annotated books by Smith are yet to turn up in great numbers. Is this because the majority were selected for Queens’ library? There is naturally a connection to be made between the “use” of books (i.e. annotation) and their *usefulness*; both Smith and Queens’ may have believed that his books were more useful to the library because of his annotations, especially in the case of his civil legal books, since they were so closely connected to his Regius Professorship at Cambridge. The same belief in the usefulness of books to their recipients was behind Smith’s donation of medical books to his medically inclined servant, Thomas Crowe, who received, firstly, a copy of Foxe’s *Book of Martyrs* – signifying his Protestant credentials – but also various editions of modern botany, including Pietro Andrea Mattioli (1501-c.1577),¹⁴² Petrus Pena’s (1535-1611) *De Herbis* and William Turner’s (1509/10-1568) *Herball* (of which Smith had more than one), as well as Galen’s *Methodus medendi* and *Antidotarium speciale*, Fallopius’s *Opera*, and Guillaume Rondelet’s (1507-1566) *De piscibus marinis*, of which Smith evidently had two, since his annotated copy is still at Queens’.¹⁴³ Crowe’s interest in medicine, however, clearly did not stretch to Paracelsus. The same could be said of Smith’s parson, Thurston Shaw. Smith’s efforts with Shaw in the stillhouse seem to have failed, as indicated by his will: Shaw took Smith’s very humanist selection of the Church Fathers (Chrysostom and Origen) as well as some Protestant works, reflecting his and Smith’s shared evangelical outlook, but no Paracelsus.¹⁴⁴ Smith may sometimes have regretted that Richard Eden was in the employ of the Vidame de Ferrières and not his own.

¹⁴¹ See A92-93 and A101.

¹⁴² Strype (1698) refers to a copy of Mattioli’s commentary on Dioscorides, copiously annotated with Smith’s notes, which he claimed was stolen (pp. 213-214).

¹⁴³ Smith met Rondelet in France in 1564, visiting hot springs with him (op. cit. Burnett, Simpson and Thorpe, p. 32).

¹⁴⁴ Smith also noted a 1576 loan of Paul’s Epistles to Shaw (MS49, f. 69v).

This thesis is about Smith's reading, above all. We might consider his Herculean task of reading and annotating the texts of Roman civil law – the massive *CJC* and the modern commentaries – as being the crucible in which Smith developed his highly visual method of reading.¹⁴⁵ This annotative style, developed during his time at Queens', is also part of his later humanism, which I (and others) have characterised in terms of an expansionist and colonial project aimed at advancing *res publica*. Eden, Smith's former pupil, used the same methods of reading as his former tutor in his copy of the *Decades* (1511-1530) of the Italian author Peter Martyr d'Anghiera (1457-1526), a description of the Spanish exploration and conquest of the New World; Eden's first translation into English appeared in two separate editions in 1555, one of which Smith must have owned, since he lists it in his library.¹⁴⁶ Eden used the margins of his copy of his Latin copy of the *Decades* (Basel, Bebel, 1533) to create a visual arrangement of the islands that he would be describing in his own translation of the text, an apparently even more advanced version of Smith's rendering of islands in his copy of Albertus Krantz's Scandinavian history (S..l, s.n., 1561) (Fig. 2; p. 4),¹⁴⁷ with Eden attempting to create accurate "maps" of the islands, detailing the rivers and mountains mentioned in the text.¹⁴⁸ Here reading was being used to prepare a scholarly text, undoubtedly with "real world" (indeed New World) applications, but no less scholarly for that. The spatial

¹⁴⁵ Smith dated at least one part of his reading of Plato to 1538: The date 1538 appears on p. 647, to the commentary on death in the *Timaeus Locris*, a summary of Plato: "1538. 2^o. Octob[ris]. relegi", i.e. I re-read this. His doodles in Plato mostly consisted of highly detailed drawings specific to each moment of the text; the civil law reading of the 1540s, on the other hand, saw him develop the strategies of repetitive visual signs that are his hallmark, and which became increasingly obsessive in his historical reading of the 1550s and 1560s.

¹⁴⁶ MS49, f. 73r. This was possibly not a presentation copy, since Smith specified this in relation to a manuscript copy of Raymond Lull's *Experimenta* in his stillhouse list (op. cit. Simpson (2015), p. 106).

¹⁴⁷ D.10.22; A6.

¹⁴⁸ Earle Havens, "Richard Eden's Annotated Copy of Peter Martyr's *Decades of the New World*" in *Other People's Books: Association Copies and the Stories They Tell* (Chicago: The Caxton Club, 2011), pp. 23-28; Havens calls the book a 'national monument ... one of the first intellectual planks in the ship of state that would become the British Empire' (p. 23).

tradition, an archetypal model of the Elizabethan adventuring spirit.¹⁴⁹ Again, as with Sherman's account of Dee, scholarship has treated Gilbert as a fragmented intellectual figure: 'Little has been done to reconcile his dissected parts.'¹⁵⁰ Rapple continues: 'There was, however, something more sophisticated going on in the mind of Humphrey Gilbert than can be explained by his mid-Tudor education at Eton, Oxford and the Inns of Chancery.'¹⁵¹ What other explanation can be taken into account, Rapple asks, besides Gilbert's reading? Gilbert's speech of 1571 emphasised the absolute authority of Elizabeth I, in which, Rapple argues, he was clearly influenced by Smith's *DRA*, which was undoubtedly circulating in manuscript form at this time. However, Rapple, following the common interpretation of *DRA* as being influenced by French republican thinking and therefore opposed to absolute monarchy, sees Smith and Gilbert as being "publicly divided", Gilbert consciously setting himself up as someone with views "repugnant" to Smith.¹⁵² This thesis will use Smith's own reading of his library, as evidenced by his annotated books at Queens', to counter this perception of *DRA*. I will attempt to portray Smith's library as a coherent and deeply interlinked series of texts, rather than a fragmentary series of connected readings. Adam Smyth described a similar movement away from biography in relation to case-studies of single annotators, in terms of the network:

The close analysis of, typically, a particular reader ... has meant that the history of reading, as a field, has often been organized around biography precisely at a time when early modern studies more generally has been moving away from the individual as the

¹⁴⁹ Rory Rapple, "Making Sense of Sir Humphrey Gilbert: Glory, Notoriety and the History of Elizabeth Expansionism", paper delivered March 6 2024, Lincoln College, Oxford.

¹⁵⁰ Rory Rapple, "Elizabethan Absolutism and Tamburlaine's Tents: Sir Humphrey Gilbert Reads *De Republica Anglorum*" in *English Historical Review*, 132.554 (2017), p. 14.

¹⁵¹ Ibid.

¹⁵² Ibid., p. 27.

unit of cultural analysis, with a shift in the 1990s and 2000s to the coterie, and, in more recent years, to the network.¹⁵³

This refers to the coterie and network in terms of groups of people, which we have discussed to some extent, but this thesis – by its nature a single-annotator case study – will conceive of the network in terms of the library: neither fragmentary nor concerned principally with biography, but instead aimed at directing the close reading of Smith’s annotations towards an explication of his written works, and vice versa. Rapple, for example, who had no annotated books of Gilbert’s to draw on, nonetheless launches Gilbert into an exciting new realm of Tudor political thinking, though he does so without taking Smith (Gilbert’s apparent source) along for the ride. In this thesis I will argue that Smith’s *DRA*, heavily influenced by his legal reading in Roman civil law (undertaken more than twenty years earlier), is evidence of Smith’s subscription to the idea of absolute monarchy.

There is a final point to be made about where Smith fits within the “roadmap” of English humanism (one that arguably does not exist, or at least has never been completely drawn out). Accounts of English humanism have, as we have seen, focussed on the late fifteenth- and early sixteenth-century “achievements” (or lack thereof) of English humanists, or on the flourishing of English humanism in the late-Elizabethan and Jacobean periods. The former might be characterised by the arrival of Greek learning and the project to produce editions or translations of Greek authors, exemplified by Thomas More’s (1478-1535) translations of Lucian in the first decade of the sixteenth century, undertaken in correspondence with Erasmus; the latter is exemplified (for our purposes) by William Camden’s (1551-1623) *Britannia* (1586), a

¹⁵³ Adam Smyth, “Book Marks: Object Traces in Early Modern Books” in Katherine Acheson, ed., *Early Modern English Marginalia* (London: Routledge, 2019), pp. 63-64.

chorographical survey of ancient Roman Britain,¹⁵⁴ Henry Savile's (1549-1622) endowment of the Savilian Chairs of Astronomy and Geometry at Oxford in 1619,¹⁵⁵ and by the arch-collector of books and antiquities, Sir Robert Cotton (1570/71-1631). Smith fell neatly between these two periods: he caught the tail-end of the golden years of Greek learning at Cambridge, before apparently shifting his interests towards civil law and works of historical chorography, two subjects that are deeply interrelated in his reading. Smith's antiquarianism, which he shared with Savile and Camden, is evident from his work on ancient Roman wages, his (related) weighing of Roman coinage, and his (equally related) interest in Roman weights and measures, such as field measurements. However, at the same time as his reading of historical chorography was underway, i.e. in the mid-1550s, Smith developed a vehement obsession with astrology and (once again, in an interrelated sense) chronology; this undoubtedly influenced his decision to endow lectureships in geometry and arithmetic at Queens' in 1573. Smith's library therefore provides the "middle domino" in a succession of English humanism from the days of figures like Linacre and More, and the arrival of Greek learning in England, to the highly antiquarian projects of authors like Camden and Savile (the latter also producing Greek editions, most notably his Eton edition (1610-1613) of Saint John Chrysostom, and lecturing on Euclid in line with his incumbency of the Chair of Geometry in 1620). As I have suggested already, via the figure of Richard Eden, the final stage of English humanism was chorographical and cartographical: mathematics had a role to play in the expansionist and imperialist late-Elizabethan project (in which there were echoes of More's *Utopia*), just as chorography and cartography would be used to explore England's own ancient (and independent) past and to illustrate its

¹⁵⁴ Chorography, from the Greek *choros*, for place, means literally "place-writing", and generally referred to the historical description of a city or region.

¹⁵⁵ Camden also endowed a chair of Ancient History at Oxford in 1622.

imperial credentials, as in John Speed's (1552-1629) *Theatre of the Empire of Great Britain* (1611), produced in close harmony with Cotton's library.¹⁵⁶ Smith – with his antiquarian interest in the Roman and Anglo-Saxon origins of English law, as expressed in *DRA*; his astrological obsession; his failed colonial venture in Ireland; and, finally, his bequest to Queens' – falls somewhere in the middle of this “simple progression” towards humanism. Indeed, Smith's library, and therefore his reading, are the tools that allow us to construct the still untold story of mid-sixteenth century English humanism, and thus enable us to establish the complete trajectory of humanism in sixteenth-century England.

vii. Contents.

Chapter 2 will portray Smith's systematic and visual methods of reading in some of his most annotated books, which are his works of ancient history and modern historical chronicles. Smith's manuscript annotations will be considered in relation to the technology of the printed book and the methods used by historians and by printers for arranging chronological information, which influenced Smith's spatial awareness of historical fact, in what I will call his “chorographical” reading.

Chapter 3, on Smith's books of medicine and natural history, will continue to address the visual aspects of Smith's reading in relation to illustrations. I will use the idea of medical illustration to consider the close relationship between visual form, language and meaning in medicine, especially regarding *experientia* (experience); Smith's

¹⁵⁶ David McKitterick, “From Camden to Cambridge: Sir Robert Cotton's Roman Inscriptions, and their Subsequent Treatment” in C.J. Wright, ed., *Sir Robert Cotton as Collector: Essays on an Early Stuart Courtier and his Legacy* (London: British Library, 1997), pp. 113-114.

linguistic work of English orthography will be discussed in the context of this relationship.

Chapter 4, on language in Roman civil law, will continue this discussion with a legal reading of Smith's work on Greek pronunciation, clearly influenced by his reading of Andrea Alciato's (1492-1550) *De verborum significatione*, i.e. on the signification of words (1530).

Chapter 5, on law and jurisdiction, will discuss the spatial and temporal concerns of Roman civil law in terms of Smith's interest in the elision and opposition of Roman law and English common law. The consideration of Roman civil law in English terms is therefore part of the "chorographical" description of English law in *DRA*, which Smith conceived of as a "map".

Chapter 6, on *DRA*, involves a discussion of Smith's work alongside the Continental Reformers Peter Martyr Vermigli and Heinrich Bullinger (1504-1575), which will introduce an "economic" interpretation of Smith's work: I will argue that Smith's conception of stipendiary mediation between monarch and citizens, via the Greek and Roman Republican traditions, is crucial to his amelioration of the strictly hierarchical nature of the Roman Republic, which allowed Smith to combine his belief in an absolute monarchy with a depiction of England as being without slavery.

Finally, throughout this thesis Smith's books will be referenced in the footnotes with a number pertaining to the Appendix, which is a listing of Smith's books at Queens' and in libraries within the UK; this is not intended to be read from beginning to end, but

should provide a reference point for bibliographical details that cannot be discussed in the thesis, as well as a useful means of linking Smith's books together in ways that might not be apparent from my discussion of them here, for example, books that share bindings or even similar marginalia.

CHAPTER 2: HISTORY.

Reason demanded that the historian learn to use geography and chronology, the two eyes of history.¹⁵⁷

Anthony Grafton

i. Introduction.

In this chapter I will address Smith's historical reading as a system of visual signs, which he utilised in response to both the technologies associated with printing the "material text" (by which I mean the typographical arrangement or design of the book itself, including Smith's own imitation of specific bibliographical elements) and to the demands of reading the text itself. Smith's reading was, furthermore, a response to the varying degrees of success with which the printers of texts had met the demands set by their authors and imposed by their readers and customers. I hope to respond to two aspects of the history of reading: firstly, the now somewhat outdated concept of "reading for action" – viewing reading as professional in character, and developed by Lisa Jardine and Anthony Grafton in relation to Harvey's annotations in his copy of Livy¹⁵⁸ – and secondly, the more recent attempt to frame reading as a response to (and as an integral part of) literary "textuality". Smith may well have been reading his books with contemporary events in mind, not least his position as Ambassador to France. He certainly participated in public or "group" readings before his attempted colonisation of Ireland in 1571; readings which required the intensive and highly systematic

¹⁵⁷ Anthony Grafton, *What was History?* (Cambridge: Cambridge University Press, 2007), pp. 7-8.

¹⁵⁸ Op. Grafton and Jardine (1990).

annotation of texts. Smith also, however, as I will argue throughout this thesis, used the systematic nature of his annotations to build a wider, intertextual system of reading, in which common aspects of texts were collectively confirmed by Smith to be good evidence through their interrelation in his annotations. Necessarily, as this thesis develops, individual annotations will become our main evidence, with specific annotations eventually being tied to specific ideas expressed in Smith's written works. This chapter is therefore an attempt to establish some of the methods used by Smith in his reading to interpret texts, especially his use of these methods to unite ancient and modern historical narratives. This interpretation will refer both to material texts and to the "literary" text, in which Smith's response to the themes of each individual text will be seen to reflect his understanding and use of its specific paratextual structures, such as indexes. Finally, Smith's historical books, exhibiting his peculiar awareness of the spatial, typographical arrangement of each individual text, will be seen to elicit an equally spatial and geographical response within his reading, which he used to unite different texts and narratives, and which I call his "chorographical" reading style.

Annotations exist within a particular time and space. They are made in a specific place (in a book, wherever that book was being read), refer to a particular place *within* the book, i.e. within the text, and are made at a specific time, i.e. whenever the reader read that section. However, annotations are also accumulative and accretive. They potentially refer to earlier annotations within the same text, to an earlier reading of the text by the same reader (or earlier readers), or even to other texts within that reader's library, which could have been read simultaneously or on different occasions. Adam Smyth remarks on the temporal nature of annotations as they are often perceived by historians of reading (a field that he describes as being synonymous with the history of

marginalia, and vice versa): ‘On reading marginalia it is easy to fall into a trap of treating the annotations as all-present-at-once, or all-composed-at-once: as existing in a synchronic instant.’¹⁵⁹ Referring instead (as Smyth also does) to the “diachronic” perspective, Bradon Cormack and Carla Mazzio describe the reading of books (“book use”) in terms of private use and public implementation: ‘Use simultaneously relocates the book to the intimate, private space of the individual’s mind and makes an otherwise hidden knowledge public, thereby embedding the reader in the social realm.’¹⁶⁰ Early modern readers, it seems, can exist in multiple times and spaces at once. Scholars of book use and marginalia are therefore currently caught in two minds: unable to quite shake off the idea of “reading for action”, or “pragmatic” reading, but equally uncomfortable about the degree to which this specific, synchronic history of reading has become such an unshakeable, even monolithic, consensus. William Sherman acknowledges, for example, that the history of marginalia must somehow contain not only a history of the ineffable “traces” of unnamed readers, but also “exceptional readers” and annotators such as John Dee and Sir Julius Caesar (1558-1636), whose reading could be directly related to their public life as politicians and lawyers.¹⁶¹ The response to this difficulty increasingly involves a tendency towards the postmodernist, Derridan fragmentation of the reader, into coteries, networks, traces, or fragments of reading (Smyth borrowing the term “bricolage” from Derrida, meaning something a bit like collage, to describe early modern reading and printing practices).¹⁶² According to this conception, reading (and especially marginalia) is essentially a form of

¹⁵⁹ Op. cit. Smyth, p. 66.

¹⁶⁰ Bradon Cormack and Carla Mazzio, *Book Use, Book Theory* (Chicago: University of Chicago Library, 2005), p. 2.

¹⁶¹ William H. Sherman, *Used Books: Marking Readers in Renaissance England* (Philadelphia: University of Pennsylvania Press, 2007), especially pp. 127-148.

¹⁶² Smyth, *Material Texts in Early Modern England* (Cambridge: Cambridge University Press, 2018), p. 6.

“commonplacing”, or what Sherman calls “discontinuous reading”, an attempt to deal with what Ann Blair called the early modern “information overload” brought about by the invention of printing.¹⁶³ Smith’s selective reading is, of course, helpful in directing us through an otherwise unmanageable quantity of text. Similarly, my own selectivity in relation to the many thousands of annotations made by Smith (and that only in the relatively small portion of his library that came to Queens’) must also, naturally, be pragmatic or discontinuous. According to this model, “active” reading will always be selective and pragmatic. However, Jennifer Richards and Fred Schurink have questioned the usefulness of applying such a model to early modern readers, given the nature of the evidence: ‘To be blunt, if one’s only evidence of reading is fragments of texts, what conclusions can be drawn other than that readers “read in parts,” most likely out of self-interest?’¹⁶⁴ Or, as Smyth remarks, what would the history of an *inactive* reader look like: a history of “blank” or “unread” pages?¹⁶⁵ Richards and Schurink do not suggest, however, that the response to this problem should necessarily be to shrink from studying specific readers and their annotations, as opposed to the more diachronic, material “traces” of use; instead they argue that the fragmentary evidence should be incorporated into a *more* rigorously textual approach, one which treats both the annotations and the texts they annotate as interrelated texts: ‘an increasing rather than exclusive engagement with the “textuality” of reading.’¹⁶⁶

How can we utilise this approach within Smith’s library? One method is to read Smith’s annotations with the texts that he was annotating firmly in mind, while trying to

¹⁶³ Op. cit. Sherman (2007), p. 148; Ann Blair, “Reading Strategies for Coping with Information Overload c.1550-1700” in *Journal of the History of Ideas*, 64.1 (2003), pp. 11-28.

¹⁶⁴ Jennifer Richards and Fred Schurink, “Introduction: The Textuality and Materiality of Reading in Early Modern England” in *Huntington Library Quarterly*, 73.3 (2010), p. 352.

¹⁶⁵ Op. cit. Smyth (2019), p. 65.

¹⁶⁶ Op. cit. Richards and Schurink, p. 355.

establish links between this reading and Smith's own published works. Another is to see Smith's reading in terms of the materiality of the book, which will be the method utilised in this chapter. Smith's books of history are extremely useful in this regard because they rely so heavily upon literary and typographical methods for the systematic and spatial organisation of historical narratives, which are essentially (but not exclusively) characteristic of Renaissance historiography: indexes, genealogies, chronologies, and geography or, more properly, chorography; what we might call the chorographical organisation of material and literary texts. Moreover, these paratextual elements or bibliographical structures seem to have directly influenced Smith's methods of annotation, even when he offers no direct, "textual" response to them. For example, when Smith mimicked a typographical, paratextual element of a book in manuscript, like a thematic index, he was not only responding to the materiality of the printed book but also to the literary and narrative structures that the index supported. I will argue, further, that Smith's response to the paratextual elements of his printed books was part of his attempt to establish continuities (and discontinuities) between ancient and modern *textual* evidence. In this sense, Smith's reading was undoubtedly "pragmatic" and selective, but it also contributed directly to his published works and thus formed part of his broader intellectual project. Smith's annotations are synchronic and diachronic, in that they describe a single moment within Smith's reading but can provide direction to numerous other textual "moments", both ancient and modern; and material and literary, in that they mimic the printed book to utilise its texts.

ii. Rhetoric and pragmatic learning.

For Grafton and Jardine, humanism in the late sixteenth century was emblematic of an intellectual crisis in which pragmatism was replacing genuine learning. Numerous Renaissance pedagogical movements shared an assumption about the aims of classical education: ‘to produce effective writers and active participants in civic life, rather than original scholars and philosopher kings.’¹⁶⁷ Most emblematic of this crisis was that ‘the once-tight bond that had held philology and pedagogy together had been severed.’¹⁶⁸ Rhetorical study based in a profound understanding of ancient texts had been replaced by selective reading without context or an understanding of the “individuality” of classical texts. This was, once again, a question of what was considered to be useful:

A [Justus] Lipsius, who needed to make the ancient world look useful, had to adapt and modernize its image. But a [Joseph] Scaliger, who insisted that scholars should not teach practical politics, had to confine himself to staggeringly complex technical problems which offered personal satisfaction but no obvious practical awards.¹⁶⁹

Smith is certainly more of a Lipsius than a Scaliger, but it is perhaps unfair to judge Smith, and other later sixteenth-century readers, for repudiating genuine learning (“humanism”) in favour of pragmatic or mercenary learning (“the humanities”) simply because they were reading selectively. For some reason, Grafton and Jardine appeared opposed to the idea – and this is where modern scholars of the history of the book and the history of reading have objected – that book use could be unified with “practice” without some loss of intellectual integrity. This meant that the systematic annotation practices of a reader like Smith could never be indicative of broader, deeper intellectual

¹⁶⁷ Op. cit. Grafton and Jardine (1986), p. 197.

¹⁶⁸ Ibid., p. 199.

¹⁶⁹ Ibid.

interests, especially when their apparent aims were intensely practical or (worse) political.

Perhaps the most self-evident truth about Smith's reading is that he used ancient texts to validate or confirm the information provided in modern texts, and vice versa. Smith's copy of Livy's *Decades* is lost, but we know that he kept it in mind when reading his *De rebus gestis Gallorum* by Arnoul Le Ferron (1515-1563), issued with Paolo Emilio's (c.1455-1529) *De rebus gestis Francorum* and a chronological table by Jean Du Tillet (d. 1570), the *Chronicon* (Paris, Vascosanus, 1550-1554).¹⁷⁰ When Hannibal wintered at Capua he made a terrible mistake, according to Livy, because his army degenerated into licentiousness and lost its discipline;¹⁷¹ the same mistake was then implicitly repeated by the French king, Charles VIII in Le Ferron – according to Smith's interpolation – when he wintered at Lyon and became distracted by the beautiful women there (“1494 ... Lugdunu[m] regi ut Capua Annibali” (fp. 4v)). Smith notes this with his characteristic sketch of a city (see Fig. 3.1): *nunc Lugdunum adiens, pulcherrimarum mulierum amore tenebatur* (ibid.).¹⁷² In the text, this point is then co-opted into another, which is the formidable nature of Charles's sister, Anna of France (“Anna soror” (fp. 5r)), portrayed with Smith's characteristic sketch of a woman (see Fig. 13.1), who admonishes her brother in a letter: *eoque loco ab Anna sorore magno ingenio muliere admonitus, resipicere coepit, voluptatumque occasiones bellicis cogitationibus occupationibusque fallere* (ibid.).¹⁷³ Smith was clearly not going to be drawn here on whatever aspersions Le Ferron may have been attempting to cast on

¹⁷⁰ G.3.19(2); A28.

¹⁷¹ Livy, *Decades*, 23.18.10-16.

¹⁷² ‘Now coming to Lyon, he was delayed by the most beautiful of women.’

¹⁷³ ‘And in this same place [i.e. Vienna], having been admonished by his sister, Anna, a woman of great intellect, he began to reconsider and to frustrate the opportunities of pleasure with warlike thoughts and occupations.’

Lyonnaise women, no matter how beautiful they were (most likely Le Ferron was trying simply to enliven his text with titillating details), a fact in which Smith is simply uninterested, despite Livy's specific mention of "prostitutes" in the Hannibal story (*scortis impliciti*).¹⁷⁴ Indeed, Smith is also apparently uninterested in any instructive contrast between such women and the formidable, persuasive Anna; her marriage is the pertinent point here ("Petrus Borbonius" (fp. 5r)): *Ibi Petrum Borbonium qui Annam sororem in matrimonium duxerat* (ibid.). Smith, despite his perspicacity in correcting what is an obvious omission by Le Ferron (at least to any keen reader of Livy), is apparently missing the main element of the story, which is that Anna, famously a woman of great temperament, snapped Charles out of his dalliance with the unsuitable Lyonnaise women by writing him a letter. Smith's only interest, it seems, is in the reference itself; a good example, perhaps, of how selective reading could be considered a lesser engagement with the text. The best explanation for this omission, perhaps, is that in Livy there was no sister of Hannibal playing a comparable role. Indeed, in this sense, the classical text in the background takes precedence over the modern text that Smith was actually reading.

One reason for Le Ferron's omission of the reference to Livy is that he is not particularly keen on classical comparators in general, noting at one point that historians corrupt their accounts with hyperbolic numerical figures for rhetorical effect (a typical criticism levelled at earlier humanist chroniclers, as noted by Eric W. Cochrane).¹⁷⁵ Le Ferron is specifically taking issue with the historian Girolamo Aleandro (1480-1542), court historian to the French king Louis XII, who delighted in reading Aleandro's

¹⁷⁴ *Decades*, 23.10.15.

¹⁷⁵ Erich W. Cochrane, *Historians and Historiography in the Italian Renaissance* (Chicago: Chicago University Press, 1981), p. xi.

translation of Caesar's *Commentaries*, though it was riddled with errors (according to Le Ferron).¹⁷⁶ Le Ferron criticises Aleandro's hyperbolic exaggeration of historical statistics ("Xerxes exercit[us] (i.e. "army"); Semiramide" (fp. 45v)): *Aleandroque Xerxis numerum terrestrium copiarum referente, quas fuisse CLXX myriades: & Semiramidis Assyriorum Reginae, cui fuerat peditatus centum millia, equitatus centum millia* (etc.).¹⁷⁷ King Louis, as Le Ferron describes, was swayed by such numbers, and gave Aleandro a stipend for lecturing on Cicero at the Sorbonne, as Smith notes ("Aleandro Motte[ns]ii (i.e. of Motta) ... V.C.V. stipendiu[m] praelectori publico" (ibid.)). The king also, however – along with Livy, notably – bemoaned the contemporary historical method:

Elegantia venustateque verborum abundantes exteros, historiae veritate aiebat transgressos: tantumque abesse ut aut quae de Xerxe aut Semiramide scripsissent, vera sibi esse persuaderet, ut & in probatissimis historiis corruptos interdum numeros bellatorum vereretur: quos & a Valerio Antiate vanissime auctos Titus Livius passim fatetur...¹⁷⁸

The figure of 1,700,000 for Xerxes' army can be found in Herodotus, so in ascribing this error to Aleandro, Le Ferron might well have been missing the allusion once again. This time, however, Smith either also missed it or was simply uninterested. He is, however, drawn on the issue of historians fabricating evidence or using it for hyperbolic effect, something Livy was evidently aware of when using his sources. Selectivity

¹⁷⁶ *Delectabatur & commentariis Julii Caesaris in linguam patriam eversis potius quam versis, ita erroribus scatebant...*; 'He delighted in the *Commentaries* of Julius Caesar, which were not so much as turned into his own language as overturned, since they were so abounding with errors...'

¹⁷⁷ 'And with Aleandro, he numbered the land forces of Xerxes at 170 million (i.e. 170 times ten thousand (*myriades*)); and those of Semiramide, Queen of Assyria, at 100,000 footsoldiers, 100,000 cavalry (etc.).'

¹⁷⁸ 'He [i.e. Louis] said that the foreigners, with their abundance of elegant and graceful words, had strayed from historical truth, and that they had strayed so far from this in what they had written about Xerxes and Semiramide, he was persuaded that the same was true, so that even in the best histories he was sometimes awed by the corrupt numbers; which Titus Livius confessed had been inflated at every turn by Valerius Antias.'

therefore introduces its uglier cousin, which is pragmatism: the chopping up of the classics for figures and *bon mots* that will enliven one's text. Such a rhetorical parcelling of classical authors is really what Le Ferron is interested in: the *utility* of the classics in relation to the learning and oratory of the French kings, demonstrated by their own engagement with classical texts. Smith's passage through Le Ferron therefore pushes him, perhaps against his better judgment, into behaving like a fragmentary, commonplace reader.

As Le Ferron and Smith were aware, rhetoric is not only a device used by historians (and sometimes a perfidious one), but also a characteristic to be observed in historical figures, such as Henry VIII's great rival Francis I: "Franciscus Poeta gallicus ... Franciscus Orator" (fp. 101r). Francis's oratory is evidently reliant on a "humanities" education, i.e. a humanist education in the classics, or *literae humaniores*. The evidence for this French royal project can be seen in the paratextual elements of Smith's books: in the printer Michael Vascosan's (dates unknown) epistolary dedication in his edition of Emilio's chronicle of the medieval French kings, he refers to the "Gallic Hercules", symbol of French eloquence, praising both his author and Francis as (respectively) the most eloquent of historians and French kings: *nihil mea quidem sententia aptius fieri potuit, quam rerum Francicarum scriptorem disertissimu[m], Francorum regi Francisco, ut in caeteris omnibus, ita in eloquentia eminentissimo, consecrare* (fp. a3r).¹⁷⁹ The same figure of the Gallic Hercules appears, emblematically (*Typus eloquentiae*), at the bottom of the woodcut title-page border in Smith's copy of the French jurist Claudius Cantiuncula's (c.1490-1549) *Topica* (Basel, Cratandus,

¹⁷⁹ 'To my mind, nothing could be more fitting than to dedicate (*consecrare*) the most eloquent of writers on French history to Francis, King of the French, who (as in all other things) is pre-eminent in eloquence.'

1520),¹⁸⁰ where an eager crowd rushes forward, chained by their ears to the mouth of this personification of the mother-tongue. Francis's reign was dedicated to promoting such eloquence; Le Ferron describes how Cicero's works were translated into French under the aegis of Francis, though again (like Caesar's *Commentaries*), not very well: *Libros Marcus. Tullius. [Cicero] de Officiis, Catonem maiorem, Laelium, Paradoxa, oratiunculas aliquot in Gallicam linguam, etsi parum fideliter versa, summo opere exosculabatur* (fp. 45r).¹⁸¹ Francis, as Le Ferron notes, was brought up on Cicero's maxims in admonishment of Julius Caesar; the latter, as Smith noted earlier, was a firm favourite of Francis's father-in-law, Louis XII, not least for Caesar's cynical use of mercy ("Clementia Caesaris temporaria" (fp. 45r)).¹⁸² Smith has dutifully underlined some Ciceronian maxims on royal mercy (*misericordia*):

Valde delectabatur M.T. dicto, quo Caesarem admonuerat, nullam de virtutibus eius plurimis nec admirabiliorem misericordia: homines ad Deos nulla re proprius accedere, quam salutem hominibus dando: nihil habere nec fortunam Regiam maius quam ut possit: nec naturam melius quam ut velit conservare plurimos: eaque Francisco genero saepe inculcabat, conducere arbitratus, talibus aureis eius vocibus undique circunsonare (ibid.).¹⁸³

Such a classical education bore fruit. Le Ferron notes Francis's use of classical examples to turn disaster into victory: the ignominious flight from Italy of the French

¹⁸⁰ H.2.25(2); A75.

¹⁸¹ 'He greatly admired the books of Cicero, *Cato Maior de Senectute*, *Laelius De Amicitia*, *Paradoxa Stoicorum*, and some other brief oratories, though these were not not very faithfully translated into French.'

¹⁸² ... *laudanteque Hieronymo Aleandro clementiam Caesaris, ipse quidem laude non indignam, caeterum temporariam & alliciendis Romanis ostentatam aiebat, exemplum afferens ex Vexeloduni deditione* ...; 'and praising, with Girolamo Aleandro, Caesar for his clemency, he also acknowledged that it was not unworthy of praise, but rather was temporary and was a show to entice the Romans, citing as an example the surrender at Vexelodunum (etc.).'

¹⁸³ From Cicero's *Oratio pro Q. Ligario*: 'He was very pleased by Cicero's saying with which he admonished Caesar: of his many virtues, none was greater nor more admirable than his mercy. Men never come closer to the gods than when they must give deliverance to others; and a prince has no greater fortune than to be able to do so, nor any greater nature than wishing to preserve others. And these were frequently inculcated by him in his son-in-law, Francis, to profit by this teaching, such golden voices resounding on his every side.'

army under Guillame Gouffier, who was eventually killed at the Battle of Pavia in 1525, was spun by Francis into a glorious fighting retreat worthy of classical heroism (“Gounferii fuga ex Italia, ~~et~~ laudabilis cessionio appellata” (fp. 107r)). Smith has underlined a long section here, in which the *Anabasis* of Xenophon is co-opted into Francis’s rhetoric:

... atque ita res eius gestas commendabat, ut laudabilem eius ex Italia cessionem, quam hostes fugam vocabant, cessionem illi nobilissimae Graecorum, qui Cyro juniore militabant adversas Persas, Xenophonteque imperatore non sine laude ad suos redierant, multis superatis hostium & vitibus & insidiis, conferret (fp. 107r).¹⁸⁴

Le Ferron’s inclusion of such rhetorical flourishes emphasises the classical humanist curriculum of education that was required to produce them. Indeed, in his history he was providing the necessary tools to participate in such a curriculum: his chronicle was evidently useful to Smith as a storehouse of rhetorical maxims, or *apophthegmata*. Repeatedly we see Smith marking Latin maxims with this Greek term in Le Ferron (though strangely he varies the spelling: “apophthegmata ... apophthechmata” (fp. 46r)). Ancient sayings, especially those maxims derived from classical authors, were worth noting down, and this is another example of Smith’s reading of modern texts in conjunction with ancient ones, an act of commonplacing that is so strongly associated with the traditional model of pragmatic reading. However, as we saw in the case of dangerously inflated historical figures, such “apophthegmatic” reading raises the question of what good historical evidence is: what more can we say about this reading except that it is somewhat lazy, with the strong possibility for the misuse of ancient sources by modern authors for rhetorical gain?

¹⁸⁴ ‘... and in this manner, Francis praised his deeds so highly, that he compared his honourable retreat from Italy, which his enemies called a flight, to the most noble retreat of the Greeks, who had served under Cyrus the Younger against the Persians, and who returned to their own under the leadership of Xenophon, not without praise; having overcome a numerous enemy, and their vices and plots.’

Such fragmentation of the text, however, might also be evidence of Smith's deliberate systematisation, which reflects a deeper intellectual engagement, as well as an engagement *between* texts. The quotation of rhetoric is one way, for example, in which Le Ferron's text is organised, both narratively and visually, so that any direct quotation from an oration or letter is marked typographically with quotation marks in the margin, a device that Smith repeats in manuscript when he feels this is required (Fig. 3.1; fp. 53v). This was, as Grafton noted, a problem with histories and historians, both ancient and modern: the Roman historian Curtius was criticised by one humanist for stuffing his narrative with invented speeches.¹⁸⁵ What is so pertinent about Smith's manuscript addition of a standard typographical device used in the text is that here, rather than direct speech (as is usually the case), Smith is noting something that he evidently feels should be considered in rhetorical terms: a royal proclamation (*Rex quoque passim tota Gallia prohibuit* etc. (ibid.)). This, as we shall see throughout this thesis, is highly relevant to what Smith considers to be "useful" evidence: legal texts, especially royal or imperial *leges*. Such texts can be either ancient or modern, but they are noted interchangeably, with the repeated use of the same "tablet" symbol; this is rather like Smith's approach to historical texts in general. Smith's approach to evidence is borne out by his repeated use in Le Ferron of this characteristic annotation: in one instance the tablet is elongated to follow the text of a treaty – which the printers have marked out as though it were a speech – but only, apparently, for as long as the text interested Smith (Fig. 3.2; fp. 121v). This is not only the fragmentation of this single textual moment into a "useful" gobbet for Smith, therefore, but is evidence of his more sustained response to one of the organisational principles of Le Ferron's text: the signing of diplomatic treaties. Clearly this held a practical appeal for Smith as

¹⁸⁵ Op. cit. Grafton (2007), p. 9.

Ambassador to France. However, such a systematisation of Smith's annotation – not only within this text, but beyond – is evidence of a much broader intellectual interest, which is the validity of textual evidence itself. Indeed, the tablet is a good metaphor for the process I am trying to describe, representing not only the literary text – since we imagine the text being transcribed onto the abstract space of the tablet, rather like a blank margin – but also its material or typographical qualities: stone or marble inscriptions in place of ink on paper.

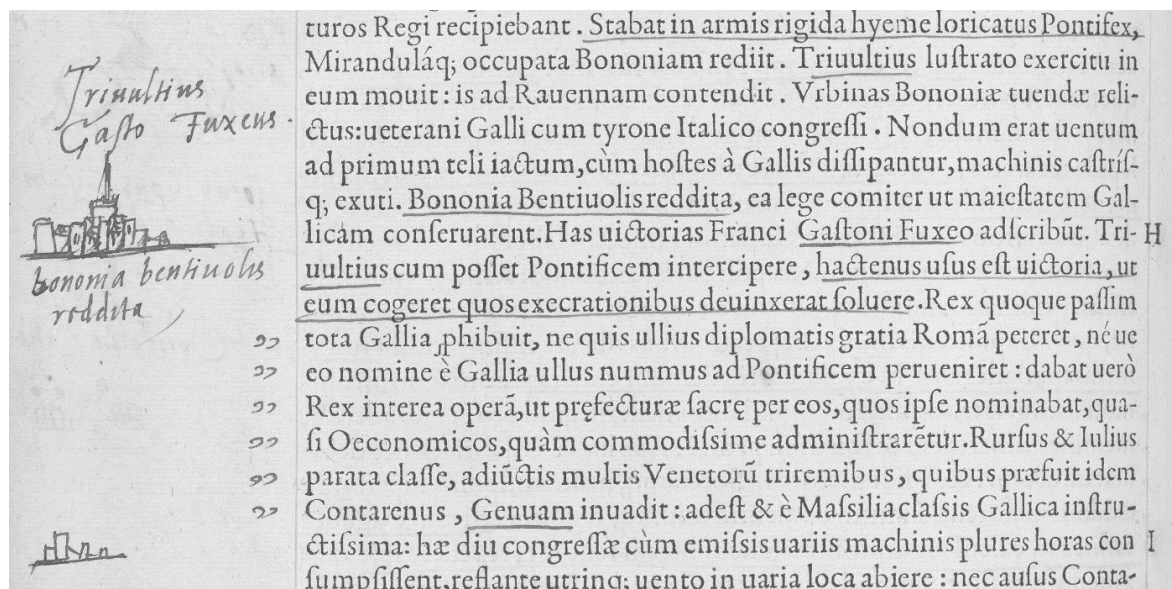


Fig. 3.1. Le Ferron (1554).

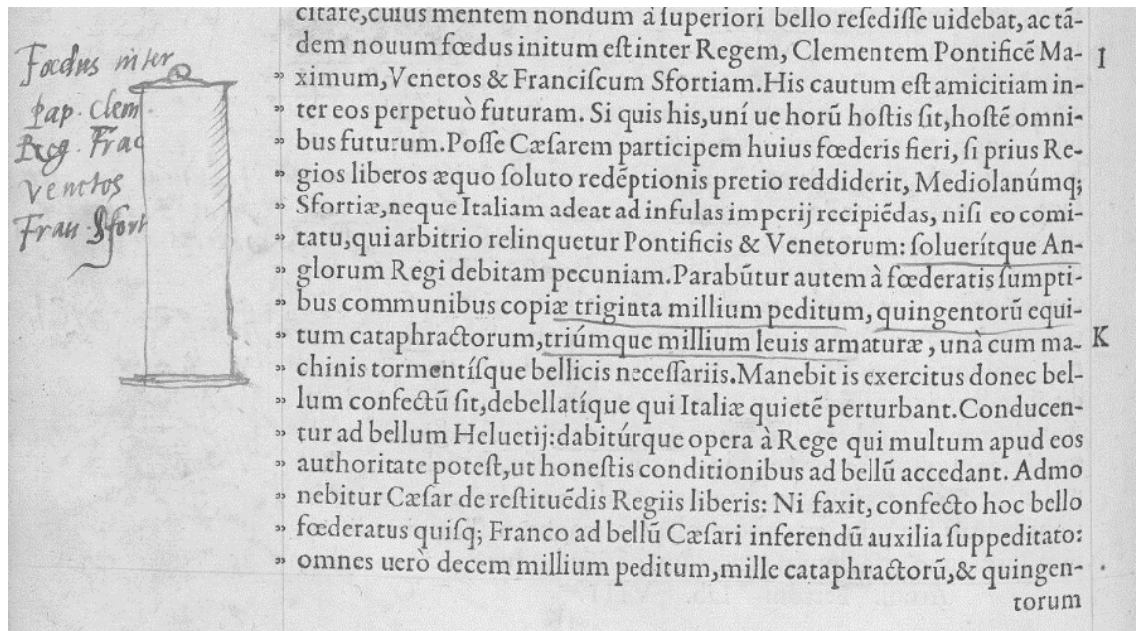


Fig. 3.2.

iii. Tabular arrangements: chronology and geography.

Any discussion of synchronic and diachronic annotations will necessarily reflect the deeply humanistic interest in time and systems of chronology; this was an obsession of humanist historiography, with debates over opposing chronologies really being concerned with the nature of historical evidence itself. When the infamous forger, Annio of Viterbo (1437-1502), presented the “lost” works of the ancient Babylonian historian pseudo-Berosus in 1498,¹⁸⁶ he was not only forging a new historical origin story of the European peoples and nations, but also suggesting what a good historical account should be.¹⁸⁷ Smith was aware of at least one trusted ancient authority who claimed to preserve fragments of Berosus (though these were of questionable provenance), namely the ancient Roman-Jewish historian Flavius Josephus, as Smith

¹⁸⁶ *Auctores vetustissimi, nuper in lucem editi* (Rome, Siber, 1498); also published in Venice by Bernardinus Venetus in the same year.

¹⁸⁷ Anthony Grafton, *Forgers and Critics* (London: Collins & Brown, 2019), pp. 104-105.

noted in his copy of the *Joudaikes archaiologias logoi* (Basel, Froben, 1544), now in the University Library, Cambridge:¹⁸⁸ “Berossos” (p. 8). Annio utilised chronological tables in order to advance his arguments, thereby engaging with a manuscript tradition that most likely originated with the ancient historian Eusebius’s world history, the *Chronicon*, which had used chronological tables depicting events occurring simultaneously within various geographical and dynastic spheres.¹⁸⁹ The sixteenth-century controversy over Annio’s pseudo-Berosus, and Annio’s influence, is evident in Smith’s books, most notably in the paratextual, tabular arrangement of chronological events. Like Smith’s annotations, the use of tables was very much systematic and visual in character; it was also highly spatial (chronology and geography being the “two eyes” of classical history). Annio’s account revealed a seemingly endless vista of chronological space, stretching into Biblical history and beyond; his practice of digging up inscriptions (which he had himself buried) in his native Viterbo, as physical evidence of a deeply ancient European past, prefigured the sixteenth-century discovery of natural-historical evidence that conjured an epically distant past of Biblical (post-diluvian), or even deep-time proportions. As Smith noted in his copy of Torello Saraina’s (1475-1550) history of Verona, *De origine et amplitudine civitatis Veronae* (Verona, Putelleti, 1540), now in the Bodleian library,¹⁹⁰ this Italian city had recently seen the discovery of “Lapidei pisces”, i.e. stone fish or fossils (fp. 6v).¹⁹¹ The discovery of such fossils in Saraina’s locality forced him to confront the topographical

¹⁸⁸ C*.4.9(B); A101.

¹⁸⁹ Anthony Grafton and Megan Hale Williams, *Christianity and the Transformation of the Book: Origen, Eusebius, and the Library of Caesarea* (Cambridge, MA: Harvard University Press, 2008), p. 140.

¹⁹⁰ N.1.5. Jur. Seld. (1-3); A88.

¹⁹¹ *Aliud etiamnum mi Torelle, mihi subivit miraculum, quum eodem in monte foderetur, spectabantur Echini lapidei, Paguri, Conchae: Cocleae, Ostrea, Stellaeque pisces: Avium rostra & id genus alia passim multa ...* (fp. 6v). “Another marvel has also occurred to me, Torellus, which is that when [these caves] were being excavated on the mountain, there were seen stone sea urchins, crabs, shells, snails, oysters and starfish, beaks of birds and many other things of that kind everywhere.”

incongruity of finding fish on the side of a mountain, a phenomenon that found explanation either in spurious natural history, i.e. that fish could be generated within rocks, or in the Biblical Flood, but sometimes in even earlier – unthinkable, heretically early – geological events.¹⁹² By looking at how sceptics and supporters of the pseudo-Berosian, post-diluvian narrative chose to arrange their ancient timelines in spatial terms, we will see how the typographical arrangement of texts crossed the factual divide between these two groups, precisely because such methods of arrangement were so useful for conveying historical, textual evidence.

We will begin with the simplest possible visual arrangement of historical facts, which is the chronological table.¹⁹³ One of Smith’s books was, in fact, simply comprised of one enormous chronological table: Paulus Phrygio’s (1483-1543) *Chronicum regum regnorumque omnium catalogum* (Basel, Hervagius, 1534).¹⁹⁴ This sets out a tabular series of chronologies of various dynasties and empires, so that the book’s pages (initially rather empty) soon become crowded arrangements of kings and events, an extraordinary feat of typography; these tables might have been easy for readers to digest but were by no means simple for printers to compose. Phrygio relies heavily on the Babylonian, pseudo-Berosian origin of the European royal dynasties, so that while his tables begin in the 1788th year after Creation, with ancient Eastern history – the Assyrian line of Nimrod and the Hebrew line of Phaleg, a descendant of Noah – the

¹⁹² Smith noted one theory, which was that sea creatures could be born from inside rocks, and were sometimes left behind: *a quo saepe vera animalia maritima fiunt & quodadmodo genrantur ut est in Dactylis videre quod in mediis saxis nascentur* ... (fp. 7r); ‘... from which true sea creatures are often made and somehow generated, as is seen in *Dactyls* (a kind of mollusc?) which are born in the middle of rocks.’ For the Flood interpretation, and the possibility of Saraina’s interest in primordial flooding, cf. Ivano Dal Prete, *On the Edge of Eternity: The Antiquity of the Earth in Medieval and Early Modern Europe* (Oxford: Oxford University Press, 2022), pp. 1-5.

¹⁹³ Anthony Grafton and Daniel Rosenberg, *Cartographies of Time: A History of the Timeline* (New York: Princeton Architectural Press, 2010), especially pp. 26-28 and 44-49.

¹⁹⁴ C.13.15; A13.

first stated reference to Berosus can be found only ten years later, when the chronological thread of the Roman dynasty begins, Noah's grandson Comerus arriving in the kingdom which will later be called Italy (Fig. 4; p. 1). Smith, admittedly, did not really engage with his copy of Phrygio. There are a few marks made in "blind", i.e. without ink; these are very straight, and so were possibly made using a small knife, rather than the easier but often-criticized alternative, the thumbnail.¹⁹⁵ Such marks appear throughout Smith's historical books, frequently accompanied by ink annotations apparently made after the fact. In Smith's Phrygio they mark out only a few events, which include the founding of Oxford (p. 409), the beginning of the degeneracy of the papacy (p. 411), and the death of the German Reformer, Oecolampadius (1482-1531) (p. 515). In Phrygio's chronological table, therefore, history becomes polemic, with his Protestant agenda – the fulfilment of scriptural history in terms of Protestant scholarship and Catholic decline – being ratified by the sheer scale of the historical evidence at hand.

¹⁹⁵ Op. cit. Smyth (2019), p. 65.

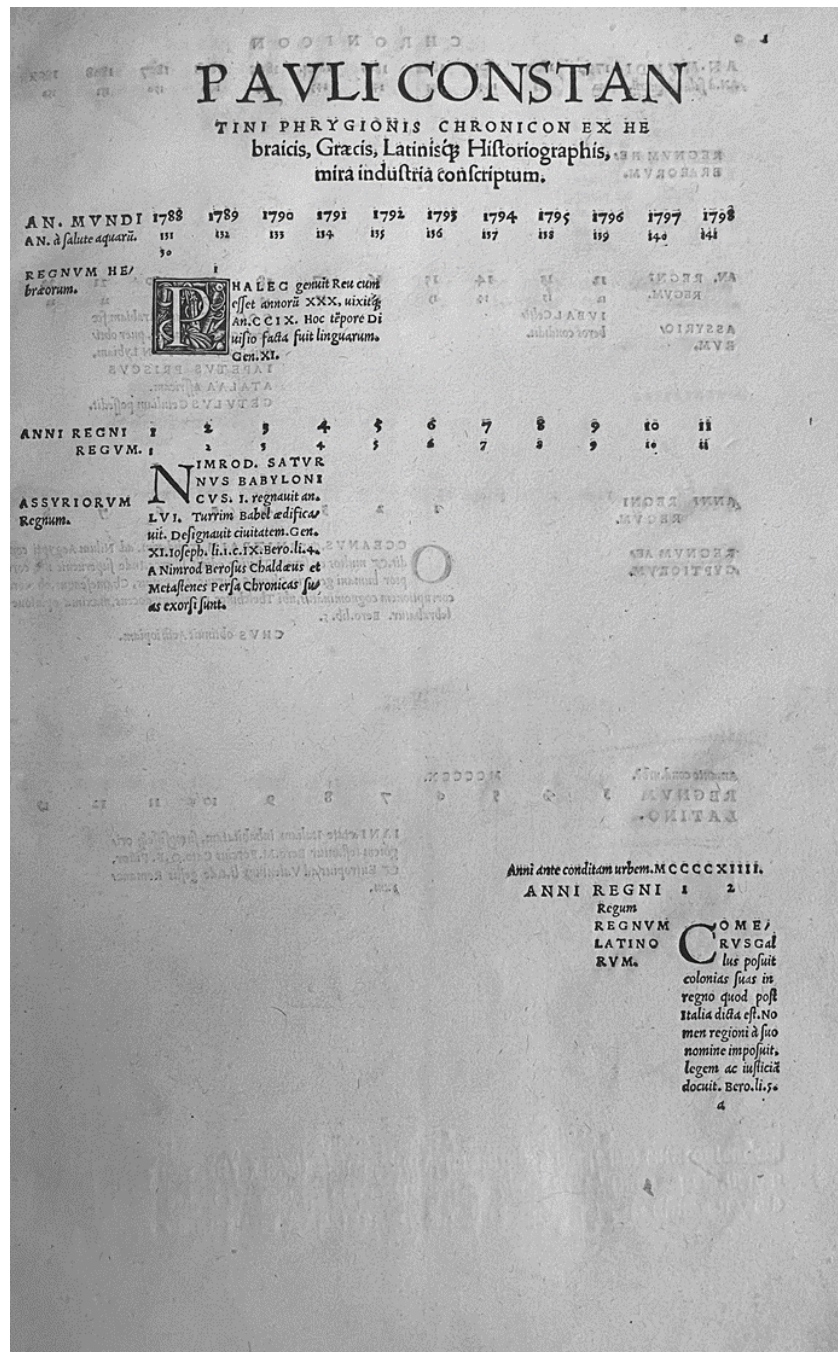


Fig. 4. Phrygio (1534).

One aim of historiography in the Renaissance was to elide ancient history with Biblical fact as a method of textual exegesis, in which European history was made to fit with the post-diluvian, Old Testament series of events. This was not, of course, limited to Protestants; many of the authors that will be discussed here were Roman Catholics. Indeed, the attempt to imbue modern history with Biblical significance involved the use

of the same methods by historians of both persuasions, generally attributing a Babylonian origin to European dynasties, as we have seen, often via the Trojan war, with the Trojans being given their own Biblical origin in the dispersal of peoples after the fall of the Tower of Babel. Annio's pseudo-Berosus was the chief authority for this theory, but he was not trusted by everyone, as shown by the chronological table of Jean Du Tillet, which appears in Smith's copy of Emilio and Le Ferron. Du Tillet, a bishop, is not to be confused with his older brother of the same name, who also died in 1570, and who wrote the *Recueil de roys de France* (Paris, Du Puys, 1578), a work which rejected the Babylonian and Trojan origin story in favour of a model following the ancient historian Tacitus, in which the French were said to be German.¹⁹⁶ The younger Du Tillet evidently shared his elder sibling's opinion: he even edited the Salic law, symbol of French legal independence,¹⁹⁷ and refers to its foundation in the *Chronicon*, where it is in fact the second event in the table, preceded only by the beginning of King Pharamund's reign, in 420 AD: *Lex salica hoc tempore condita fuit* (fp. A2r). By beginning the table here, therefore, Du Tillet implicitly rejects the Berosian chronology as well as staking a claim for the antiquity of French common law. In the preface he writes: *Francorum gens ex Germanica nobilitate in Galliam veniens, regnum condidit* (Fig. 5.1; A1r).¹⁹⁸ This preface opposed the Romans to the Franks and the Germans (*Ea prima toti pariter Germaniae imperavit: quam neque Romani, neque alii quantumvis potentes, non modo domare, sed nec vicere potuit* (ibid.)),¹⁹⁹ as part of what has been

¹⁹⁶ The elder Du Tillet's aim seems to have been to argue against Roman influence in French history by making Charlemagne more German, and in doing so to argue that the French should not be under Roman law (*mos gallici*) but Salic law; Smith almost certainly did not own a copy since he died the year of publication. Cf. Donald R. Kelley, "Jean Du Tillet, Archivist and Antiquary" in *The Journal of Modern History*, 38.4 (1996), pp. 341 and 343.

¹⁹⁷ Ibid., p. 350.

¹⁹⁸ 'The French people, coming from the German nobility into Gaul, founded a kingdom.'

¹⁹⁹ 'The French will rule over all of Germany, which neither the Romans, nor any others (no matter how powerful) could conquer or overcome.'

described as ‘the growing Italophobia of French historians,’²⁰⁰ which led Louis Le Caron (1534-1613), another author in Smith’s library,²⁰¹ to declare to Charles IX that he was subject neither to the laws of the Greeks nor the Romans.²⁰² The main force of Du Tillet’s opprobrium in his preface was, however, directed towards pseudo-Berosus (could the woodcut initial that begins the preface, showing an ape catching a *putto*, represent the folly of the French who believed in Berosian fables?):

*Nullum porro in Europa florens ac nobile regnum est, vel principatus, qui non ut olim a Troianis originem ducere nobilissimus quisque gloriabatur, ita a Francis sanguinem trahere sejacter, & liliorum insignia circumferat. Reges quos Berosus ordine commemorat, sciens praetermitto, nolens quicquam literis mandare, quod non incorruptis rerum gestarum monumentis sit traditum. In primis enim operam dedi, & id maxime studi, ut quae adhuc immensis voluminibus, & veteribus fabulis dispersa jactabantur, ea paucis & certo ordine comprehensa, verissimaque, quantum fieri potuit, in lucem emitterem (ibid.).*²⁰³

Smith did annotate Du Tillet’s table, but rather than focussing on the Berosian debate, he was mostly interested in Catholic theology – the first cardinals, the abolition of priestly marriage or concubinage, and the founding of new religious orders like the Dominicans, which he illustrates with a portrait of their eponymous saint (“S. Dominicus” (Fig. 5.2; fp. C3r)) – returning us to the idea of chronology as historical polemic. Indeed, Smith’s engagement with theological history shows his personal

²⁰⁰ Op. cit. Kelley, p. 338.

²⁰¹ See A95.

²⁰² Op. cit. Kelley, p. 338.

²⁰³ ‘There is no longer any flourishing and noble kingdom or principality in Europe that does not, as in ancient times the noblest boasted of tracing their origins back to the Trojans, in the same way proudly draw their lineage from the Franks, and wear the badge of the fleur-de-lys. I omit mentioning the kings that Berosus commemorates in order, being unwilling to record anything in writing that has not been transmitted by the incorruptible monuments of deeds performed. In the first place I have devoted myself most studiously to the task of bringing forth, as clearly as is possible, what was scattered in immense volumes and ancient fables, into a brief and certain order, so that they might be most truthfully understood and brought to light.’

understanding of the polemical import of Du Tillet's chronology, which was that the French were legally independent from the Romans, a point that Smith followed up in the texts for which Du Tillet's table formed a paratextual illustration. Smith noted in Emilio, for example, that the French claimed an indivisible kingdom ("Regiu[m] Imperiu[m], & Jura, minui, dividi non licere" (fp. 201r)): *Regium summumque apud Francos dominatum, Regiaque jura, minui dividi non licere, non posse: neque ... a scepto nostro avelli Lege Salici incolumni posse* (ffp. 201r-201v).²⁰⁴ Similarly, in Le Ferron, as we have already touched upon, the rejection (or acceptance) of Roman law took on a legal-textual significance, with the exchange of French and Imperial territories in treaties, as we have already seen – following defeats or victories in the Italian wars – requiring the overturning of French Salic law (since the supposedly indivisible *imperium* was being divided): *Si quid conjunctum est Francis sceptris, sive id lege Salica, seu alio jure, quatenus hoc foedere id comprehensum, leges abrogantor* (fp. 171r).²⁰⁵ For Du Tillet's brother, author of the *Recueil*, the Salic Law was only one of the most significant elements of the French royal prerogative; the other was the independence of the Gallic Church from Rome.²⁰⁶ The rejection of Roman law in favour of the ancient rights of a Frankish *imperium* would therefore have made sense to Smith, who had witnessed the abolition of Roman Catholic canon law in England during the 1530s when he was a young fellow at Queens', buying up books of canon law from the shop of the Cambridge stationer Garrett Godfrey (d. 1539). Chronological tables were therefore not merely an adjunct to the main text, but part of its narrative and ideological

²⁰⁴ 'The royal and supreme dominion among the Franks, and the royal laws, cannot be diminished or divided; neither [can the parts of the kingdom] be removed from our sceptre by the Salic law while unharmed.'

²⁰⁵ 'If anything is connected with the Frankish sceptre, whether according to Salic law or any other law, as long as it is contained within this treaty, those laws are repealed.'

²⁰⁶ Op. cit. Kelley, p. 352.

structure, and provided Smith with a peg on which to hang his own interpretation of the text.

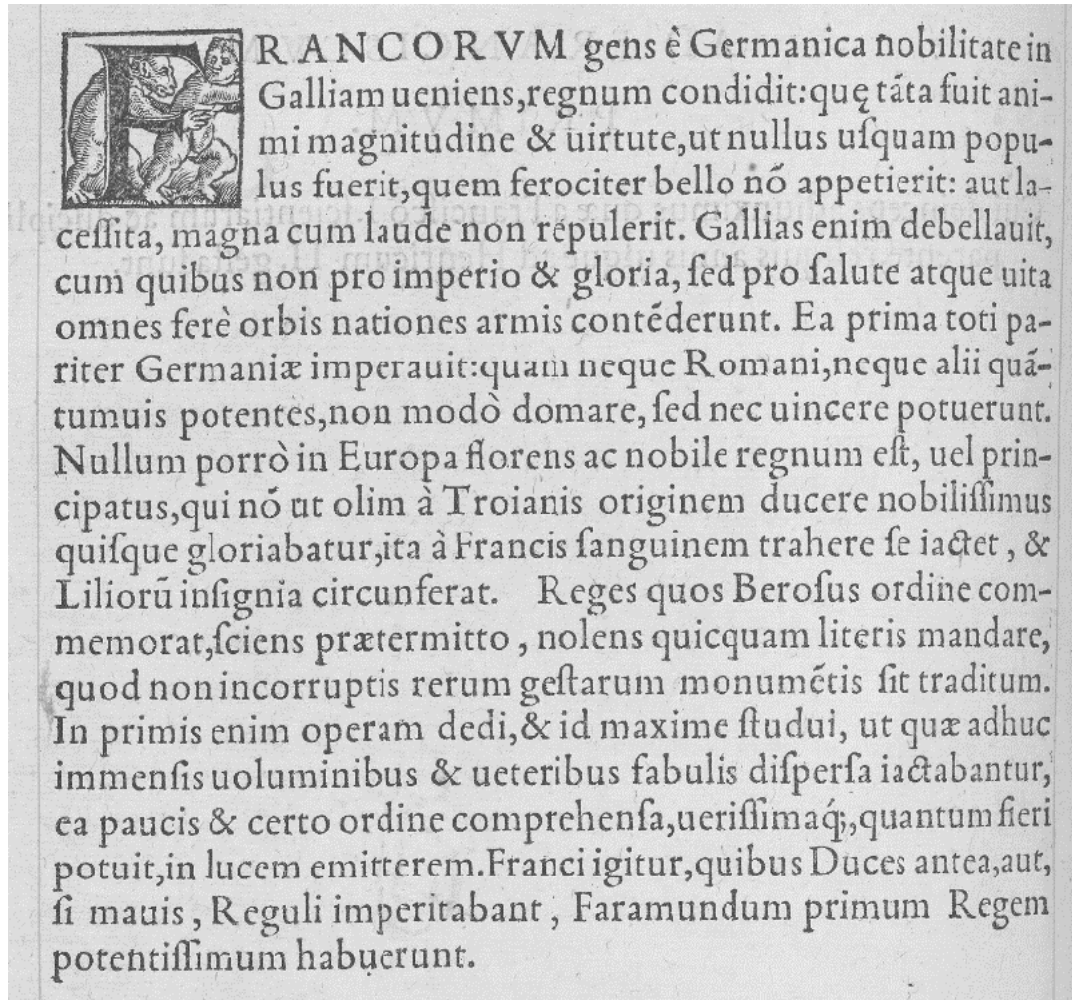


Fig. 5.1. Du Tillet (1550).

CHRONICON			
Anni Christi	Anni Regni		Anni Mundi.
		paucis post diebus coniunctis copiis expugnauerant. Mauricio Parisiorum episcopo D. Virginis templum adificatum. Margarita Flandriae Comes.	
		Crassante per exercitum peste Rex maiori parte suarum copiarum, et Odone Burgundiae dace praeore relicto, in Galliam Rufino Volta Genuensi nauarcho comitatus, obiter Papam cum inuississet, circa Natalem Christi domum reuertit. Ricardus Anglus in Syria mansit.	
1192	12	Ricardus Cypri regnum Vidoni Lusiniانو uendit, quod ad nostra ferè tempora seruauimus posteri, quoad illic imperitaveeperunt Veneti.	5153
1193	13	Augustus Balduinum Flandri locum munitis ab eo occupatis repente deturbat. Antequam de Germania liberari potuisset Ricardus, ubi carcere continebatur, Augustus Gislebertum occupat cum uniuersa Margarite sororis dote, ab Anglo repudiatam, quam postea Pontiuensi Comiti uxorem dedit.	5154
1194	14	names	5155
1195	15	Pace ineunt Philippus rex, et Balduinus Flandriae Comes. Comitatus Atrebatii creatio, cui regis filio traditur. Ludouicus primus Atrebatii Comes. Rex uxorem ducit Gelbergam Dani regis sororem, quam intra tertium mensem repudiatam, et in Stamparum arcem coniectam asseruari iubet: mense Iunio sequenti Mariam ducis Morauiae filiam accipit.	5156
1196	16	Iudaei à Philippo in Galliam reuocati. Bellum inter Gallos et Anglos, eorumque socios ac federatos uariis. Legatus Pa-	5157
1197	17		5158
1198	18		5159
1199	19	pe circa D. Michaelis festum in Diuionensi concilio ob secundam regis matrimonium toti Franciae factis etiam interdicunt. Quia sententia promulgata, Rex uehementer iratus, qui concilio interfuerant, persecutus, eos grauiter ultus est.	5160
1200	20	Fax inter Philippum et Ioannem Angliae regem. Ludouicus regis filius Blancham Adelphorum regis Castulonensis et sororis Ioannis filiam uxorem ducit.	5161
1201	21	Aliis deinde Legatus Papae ad Suesiones concilium habentibus, rex Gelbergam recipit, eodem seum equo insidentem reducit. Octavianus Cardinalis alter Legatorum, perpetuus in Gallia mansit Legatus. Maria uxor posterior doloris impatentia, et animi indignatione apud Pontiacum interit. procurante tamen rege Innocentius Papa, quos ex ea liberos susceperat, Philippum qui postea Comes Bononiensis est factus, et Mariam quae Comiti Louanensi nupsit, legitimos pronuntiauit.	5162
1202	22	Ioannes rex Anglus Arthurum Britanniae ducem suum filium, cum quo cõredebatur, et qui iam magnas uires acquisierat, in Pictouensi agro opprimit, eumque aliquantulum in custodia asseruati necari iubet. Rex conatur Angliam persequi, Arcturumque necem et parricidium ulcisci.	5163
1203	23	Tota Normannia Augustus recepit anno 250. (270. A. emyl.) postquam Rholoni data fuerat. Ab uniuersa quae in Gallia habebat possessione, sua culpa et ignauia Anglus penè depulsus est. Galli Graecorum Imperium pridie 1d. April. Byzatio recepto, tenet, a uenetis et quibusdam alijs socijs adiuti, quibus impensas refundunt. Balduinus Flandrensis imperator Constantinopolitanus, Graecorum ecclesiam Romanam audientem et concordem reddit.	5164
1204	24	Henricus Balduini frater Graecorum Imp. Augustus.	5165
1205	25	Ioanna Comes Flandriae.	5166
1206	26	D. Dominicus Tolosates et Albios adit hereticorum confutandorum gratia.	5167
1207	27	Almaricus Carotenensis hoc tempore uir eruditus, seu haereticus, cuius sequaces Lutetia cum eiusdem osibus refohis postea sunt uisti.	5168
1208	28		5169
1209	29		5170
1210	30	Simo Comes à Monteforti bello aduersus Albios hereticos profectus, Biteras, Carcaffonem et Albios occupat, et quaedam alia circum oppida.	5171
1211	31	Ferdinandus Lusitanus Ioannam Comitem Flandriae uxorem ducit.	5172
1212	32	Bellum Flandricum.	5173
1213	33	Albiorum strages, in qua Petrus Tarraconen. rex eorum auxiliarius necatur. Fortunam et uictoriam persequitur Simo à Monteforti.	5174
1214	34	Pugna Bouinensis. Rex Augustus uincit pridie Non. Iun. (aly VII. Cal. Aug.) Otho fuga salutem petiit. Captiui ducuntur, Ferdinandus Lutetiam in arcem Luparam recens adificatam: Reginaldus Bononiensis Peronam: Salebriensis Comes Anglus ad Fanam Quintini. Otho, et nonnulli eius sectatores, impij, et ecclesiae hostes à Papa iudicati erant. In actie multum Rex periclitatus	5175

S. Dominicus



Fig. 5.2.

We have seen how chronological tables could form books in themselves; we have also seen how the paratextual chronological table can contain the polemical argument that

is established within the main text of the book. Another work from Smith's library at Queens' to use chronological tables was Antonio Bonfini's (1427-1502) *Rerum Ungaricum* (Basel, Oporinus, 1568);²⁰⁷ this was edited by the Hungarian humanist János Zsámboki ("Sambucus") (1531-1584), who was court historian to the Habsburg Holy Roman Emperor Maximilian II. The chronological tables, which in this instance are packed with textual information, were clearly appended to Bonfini's text by Sambucus; they chart the Christian kings of Hungary from early medieval times to the time of Maximilian, who is the dedicatee of the prefatory letter, with the final date given being 1599 (this must be an error for 1569, which was the year after the publication date of the book). Here, therefore, the paratextual chronological table was being employed as an extension of the dedicatory letter, showing the inheritance (by Maximilian and by the Habsburgs), of an ancient and independent Christian monarchy within Hungary. A similar aim was behind the use of tables by an Italian historian, Onofrio Panvinio (1530-1568), a monk who wrote histories of the ancient Romans and medieval papacy, as well as (sometimes fraudulent) histories of noble families in exchange for payment. His genealogical chronicle of the Roman kings and emperors, *Romanorum principum* (Basel, Petrus, 1558),²⁰⁸ was dedicated to Maximilian's successor, Charles V, and showed the descent of the modern Holy Roman Emperors from their ancient Roman antecedents; this copy is almost certainly part of Smith's library, though it bears no obvious signs of Smith's ownership or reading.²⁰⁹ Like Bonfini, who asserted the descent of the Huns from the nomadic Scythian tribes, Onofrio implicitly rejected the Berosian narrative (the invocation of the nomadic

²⁰⁷ G.3.4; A29.

²⁰⁸ D.9.10; A22.

²⁰⁹ The binding also has no evidence of a chain staple scar (it was probably rebound in the late sixteenth or early seventeenth century) but a copy does appear in Smith's 1576 library inventory as "Onuphrius de imperat[orum]. rho[manorum]" (MS49, f. 91r), and in the context of Smith's related books at Queens' it seems almost certain to be his.

Scythians was a sure-fire sign that a historian was sceptical of Annio's sources), and, like Du Tillet, provided a genealogy of the French kings beginning with Pharamund (p. 321). The genealogies are, like Phrygio's chronological tables, a feat of typography, being laid out both within the main text and in additional family trees, which are printed across bifolia (i.e. folded sheets forming double spreads) and inserted into the foliation of the book. There is a visual element to the tables which seems to have influenced Smith's annotation: Onofrio uses small typographical symbols of "crowns" to represent kings and larger woodcuts of crowns to denote emperors (Fig. 6; p. 307), the crown being a symbol used frequently by Smith in his books of history and law – with a similar visual distinction – to indicate royal or imperial authority. Genealogies were an extension of the chronological argument of the text: simply by beginning their tables either with the Berosian narrative or with a more recent chronology, historians demonstrated their acceptance or rejection of Annio's textual sources. However, regardless of the author's polemical intent, the ultimate argumentative aim, on both sides, was the invocation of antiquity and a semi-mythical past, which was a common humanistic urge. Smith also owned a copy of Giovanni Boccaccio's (1313-1375) *Genealogia Deorum* (Paris, Hornken, 1511),²¹⁰ in which the genealogical origins of the Greek gods, which had also appeared in early manuscript copies of this text, were reproduced using woodcuts (a fact advertised on the title-page (*arborum effigiationibus*)), like the one showing the descent of Saturn (Fig. 7; fp. 60v). As with the appropriation of Eusebian-style chronological tables in Annio's forgery, an earlier manuscript tradition had found its way into print. In Bonfini, therefore, genealogies were used to document and advance imperial power by documenting the descent of

²¹⁰ E.9.2; A38.

antiquity, while also rejecting what he saw to be a fraudulent historical record; typographically and textually, therefore, this was a spatial-visual appeal to the antique.

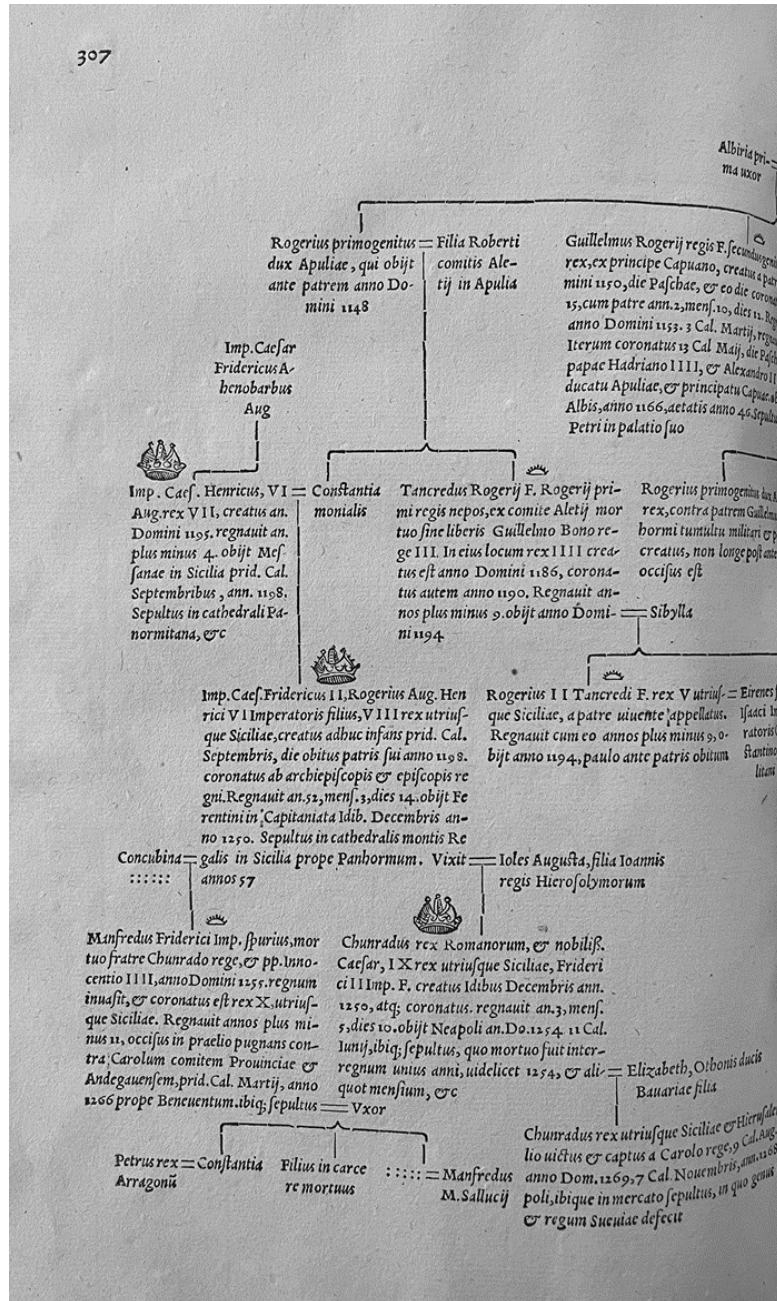


Fig. 6. Onofrio (1558).

century has margins full of stock woodcut portraits to denote characters in the text.²¹¹ Strikingly, the use of the margins for woodcut illustrations does not occur in any of the books in Smith's library; the closest thing to this intra-textual use of portraits in Smith's surviving books is the series of portraits in his sammelband of Estienne-printed works, now in Middle Temple Library,²¹² concerning the Italian Wars between France and the Holy Roman Empire, and the highly controversial Franco-Ottoman Alliance of 1536. The final work in the volume, a French translation of Paolo Giovio's (1483-1552) history of the Visconti Dukes of Milan – identifying the French royal family's connection with the Visconti of Milan and therefore emphasising French rights to control of the city – contains imaginative portraits of various medieval Visconti Dukes set within the text. Smith's burgeoning interest in heraldry is also in evidence here; he draws the Visconti badge – a serpent devouring a flayed child (*devorant un enfant escorché* (Fig. 8.1; fp. a4r)) – next to a section describing its historical origins, when the Crusader Count Otho took the device from a Saracen lord, “Volux”, who he had defeated; the same device then appears in several of the portraits later in the text, such as the one of Luchinus (Fig. 8.2; fp. D4r). Heraldry was similarly used by Wolfgang Lazius (1514-1565) in his *De gentium aliquot migrationibus* (Basel, Oporinus, 1557)²¹³ to embellish imaginative portraits and as an invocation of antiquity. In the depiction of two Swedish warriors illustrating the Swedish royal genealogy – one from before 400 AD, the other from before 1000 AD – the later, medieval warrior has apparently “invented” heraldry, since he bears a shield with the royal arms (Fig. 9; p. 352). Onofrio, meanwhile, chose a number of illustrative methods for conveying royal genealogy within the textual portions of his history, besides the woodcut crowns

²¹¹ Basel, [s.n.], 1601.

²¹² L(B) [RBR(B)]; A94.

²¹³ G.3.3; A25.

mentioned above: for the kings of Rome he uses empty shields, showing, as it were, the presence of heraldry despite the absence of any specific heraldic information (bringing Smith's legal tablets to mind); for the Carolingian kings he reproduces their distinctive monogram signatures, i.e. those which would have ratified legal documents (and recalling Salic law); and for the ancient Roman emperors, Roman majuscule type was used to reproduce ancient inscriptions bearing their names. As we have seen, inscriptions were interchangeable in modern histories with the legal texts of treaties, the latter being synonymous with Smith's interest in rhetoric. The typographical devices used by Onofrio were therefore part of his argument, which was the derivation of modern Habsburg authority from Carolingian and ancient Roman ancestry, expressed through legal textual documentation, just as good rhetoric was derived from ancient literary authorities. In Onofrio, we see the same conflation of legal texts and inscriptions in the illustrative register of the work, and, moreover, in the combination of typographical and textual elements, wherein woodcuts (in the case of monograms) and type (in the case of inscriptions) are employed to create an accurate visual representation of the historical evidence for imperial continuity. This is something that humanists had played around with in the past: deliberately broken type (or rather type cut to give the appearance of being weathered) was used in later editions of Konrad Peutinger's (1465-1547) printed reproductions of Roman inscriptions unearthed in Augsburg.²¹⁴ As we have seen previously, the use of typographical devices transcended the boundaries of humanist historiographical debates. Onofrio's genealogies were implicitly anti-Berosian, but his use of Roman inscriptions was a typographical commonplace that can be found in many humanist texts, appearing in two other works

²¹⁴ *Inscriptiones vetustae Romanarum et earum fragmenta* (Mainz, Schöffer, 1520); first published as *Romanae Vetustatis Fragmenta* (Augsburg, Ratdolt, 1505).

of history in Smith's collection at Queens', one of which (like his Onofrio) he did not annotate, Johannes Aventinus's (1477-1534) *Annalium Boiorum* or history of Bavaria (Ingolstadt, Weissenhorn, 1554),²¹⁵ and one of which he did, Wolfgang Lazius's *Commentariorum Reipublicae Romanae* (Basel, Oporinus, 1551).²¹⁶ Both subscribed to Annio's Berosian narrative.

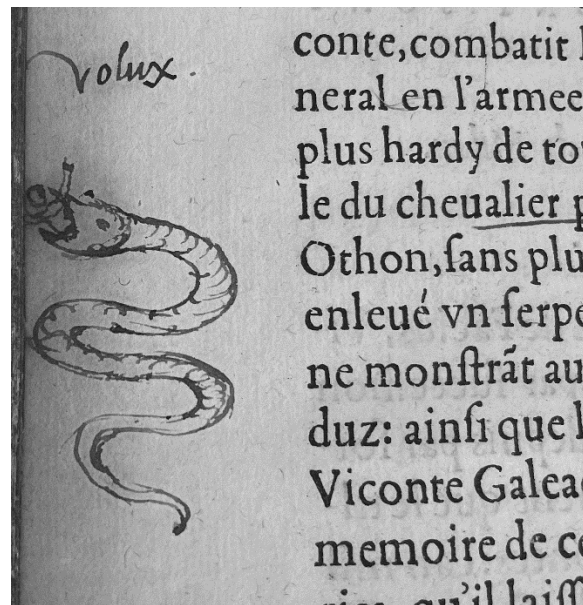


Fig. 8.1. Giovio (1552).

²¹⁵ D.10.7; A27.

²¹⁶ F.3.9; A15.



En l'Eglise S. Ambroise, pres le villaige de Parabi-
biac, derriere le grand autel, que Luchin feit bastir
en memoire de ses victoires, se trouue vne effigie
de luy tout armé, en la facon que voyez cy dessus.

Fig. 8.2.

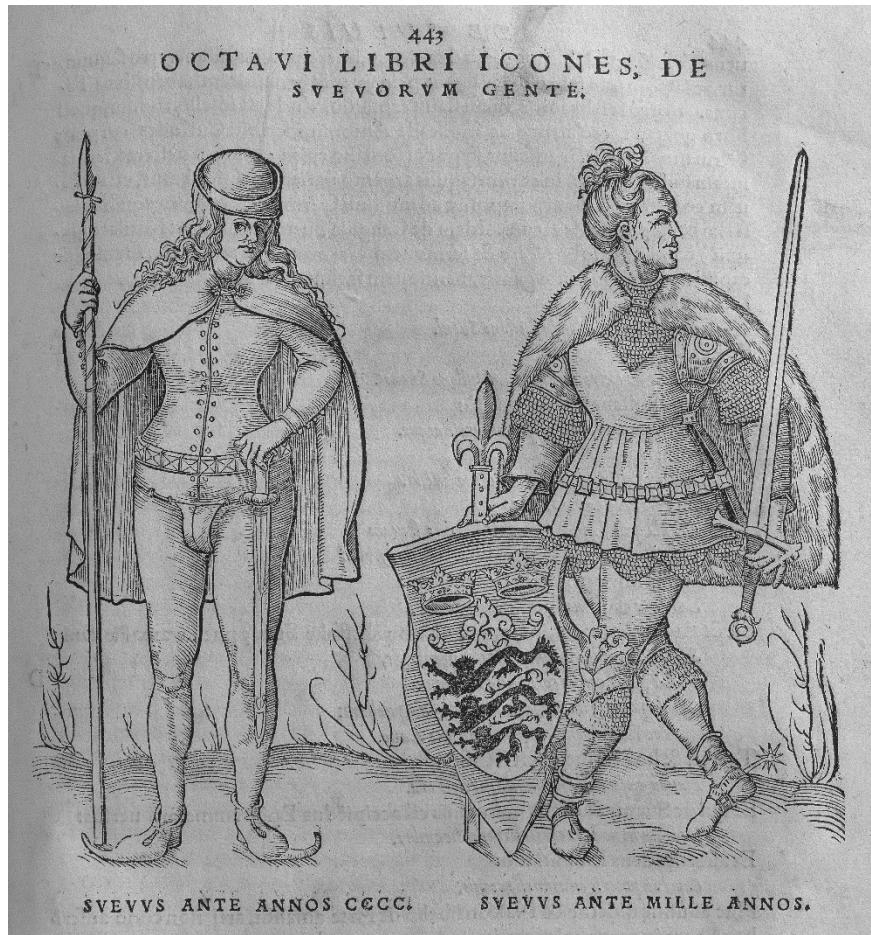


Fig. 9. Lazius (1557).

iv. Law, etymology, and place.

Ancient inscriptions represented good, reliable textual evidence, a point which Smith would make in his work on ancient Greek pronunciation. Typography, the ability to represent these monuments and texts in books, was distinctly connected to the reliability of textual evidence – in a material and literary sense – and therefore to textual authority. In this section we will see how the typographical representation of different languages was a device used to advance the arguments of different texts as being more (or less) authoritative than others. Lazius, court historian to Ferdinand I, Archduke of Austria and later Holy Roman Emperor, holds the unusual honour of having two of his

books represented in Smith's library at Queens'. The *Commentariorum*, with its use of ancient Roman inscriptions as historical evidence, is pertinent to Lazius's *De gentium*, in which the Berosian argument was confirmed by the presence of Hebrew inscriptions (which Lazius had forged) on the tomb of Mardachai, a giant, who was evidently in Austria before the Homeric period.²¹⁷ So, when the Babylonians were settling in Greece, some had already made it as far as Austria. Indeed, as Lazius explains, Hebraic inscriptions and bones were discovered in Vienna, not that distant in time from the foundation of the world:

Sed quod monumenta apud nos eruta sunt, dum difficili ac diuturno opere, urbi nostrae munitiones adiiciuntur, vetustissima quaeque literis Hebraicis contexta, ingentes saxorum moles insolentibus una simul aliquando ossibus inventis: in quibus (incredibile dictu) quam antike annorum numeri a condito (ut habent expresse) mundo subducti ... Adeo, ut constet plane, ante Trojani belli secula Hebraeos, sive potius illorum maiores, in Pannoniis coluisse. Siquidem unum ex his de quibus loquuti suimus monumentis, quod caeteris antiquius videtur, mortuum isthic, hoc est, prope Viennam, atque sepultum Mardachai, de genere Gigantum in gentem, literis ut post videbitur, expressis, numerisque a creato mundo testatur, MMDLX (p. 16).²¹⁸

It was naturally important that Lazius's argument should be backed up by chronology, and it is unsurprising, therefore, that Smith was only really interested in the date here. Indeed, Berosus is quoted directly at this point (*Hactenus Berosus*), providing Lazius

²¹⁷ Arthur Freeman, *Bibliotheca Fictiva* (London: Bernard Quaritch, 2024), 253 (p. 200). Lazius also claimed, in the *De historia certaminis apostolici* (Basel, Oporinus, 1552), to have discovered ancient Hebrew manuscripts in a cave in Austria, supposedly written in the first century AD by Abdias, the first Bishop of Babylon (111, p. 152).

²¹⁸ 'But monuments have been uncovered in our own territories, during the long and difficult labour of fortifying the city walls (i.e. of Vienna), including huge, remarkable lumps of stone, with the most ancient things inscribed in Hebrew characters, likewise with some bones found here and there. In which (incredible to relate) was written the number of years, as is clearly expressed, since the foundation of the earth. And so, evidently, the Hebrews, or rather their ancestors, cultivated Pannonia before the time of the Trojan war. For one of these monuments of which we have spoken, near to Vienna, which appears older than the rest, is a tomb and a sepulchre for Mordechai, of the race of giants, and on which is written (as will be described later) the date of the creation of the world: 2560.'

with a crucial date: “131 a diluvis” (p. 17), i.e. 131 years after the Flood. This, says Berosus, was when the Tower of Babel was built and the “Aborigines”, under their mythical originator “Tuisco”, left Asia for Europe and settled in the region between the Rhine and Scythia:

Quae si cum praecedentibus verbis compares, repieres ab exordio conditae Babylonicae turris, multiplicatis linguis, istam Tuisconis ex Asia in Europam, ad sedes quaerendas occupandasque inter Rhenum & Scythiam, factam fuisse profectionem, seu potius navigationem. Id quod contingerat anno post diluvium CXXXI. Scribit enim idem Berosus (etc.) (ibid.).²¹⁹

The etymological significance of Babel in this passage – when one language became many – is evident and was, importantly, supported by Biblical authority. Similarly, Lazius’s use of inscriptions in his work on Roman history was largely concerned with the usefulness of etymology in unlocking Roman civil law, something which deeply interested Smith, and an idea to which we will return in Chapter 4. Furthermore, Lazius’s work on Roman inscriptions established a clear link between geography and chronology – Roman military tombs being evidence for the ancient origins of Habsburg territories²²⁰ – reflected in Smith’s note in this work of the various kinds of boundary-markers used in ancient Roman society: “Limes; terminus; via” (p. 21). The conflation of law with physical territories and with the stone markers that delineated them was more fully developed by Lazius in relation to the Salic Law, which, as we have seen, represented not only French links to an ancient Roman (Carolingian) past, but also the independence of French law and a supposedly indivisible kingdom, both abstract and

²¹⁹ ‘So that if you compare these with what has come before, you will find that from the time of the foundation of the Tower of Babylon, and the multiplication of languages, Tuisco came from Asia into Europe, seeking to occupy the territory between the Rhine and Scythia; so was made this departure or navigation. This is what passed in the 131st year after the flood. Berosus himself relates this.’

²²⁰ Op. cit. Freeman, who notes that in the *Commentariorum*, ‘genuine, partially mistranscribed or altered, and entirely fictitious lapidary inscriptions are indiscriminately mingled’ (252.1, p. 199).

physical. As Smith noted, Lazius equally saw the Salic Law (“Lex Saliqua” (p. 525)) as evidence of an ancient Roman inheritance (and therefore less independent than the French might like to think), linking an injunction of the Salic law to the military oaths (*pollices*) sworn by ancient Roman legionaries, and named after the upraised thumb (*pollex*) with which they were taken; deserters (*murcos*) – according to the ancient Roman soldier and historian Ammianus Marcellinus – therefore cut off their thumbs to nullify the oath (*ibid.*). Lazius was making a point about the reception of ancient Roman civil law into modern legal systems of common law, which in the French case was known as the *mos gallicus*: *Recepta est ea & co[n]suetudo & lex apud Francos postea, qui Gallis successerunt, quorum lex Saliqua talis legitur: Si quis alicui pollicem absciderit, cum 12 solidis componat* (etc.) (*ibid.*).²²¹ The stone way-markers and boundary-posts (for which Roman military tombstones sometimes served) were therefore not only evidence of purely antiquarian information about the wages of Roman soldiers, but could be shown to be evidence of the ancient Roman origins of modern legal systems, with which claims for legal independence so frequently contended.

The importance of establishing the tribal origins of the modern European nations was partly a question of legal jurisdiction, as we saw earlier in the case of Le Ferron. Lazius’s theory of the origin of European peoples, based on the Berosian account of the Hebrew origins of the German tribes, was designed to show the precedence of an Ancient Eastern culture in Pannonia (one of the Emperor Ferdinand’s modern territories, as well as a former Roman colony), which predated even the Trojan war,

²²¹ ‘This custom and law was eventually adopted (*recepta est*) by the Franks, who succeeded the Gauls; their Salic law reads as follows: if someone cuts of another’s finger, they shall be fined twelve *solidi* (etc.).’

when the progenitors of the Romans came to Italy: *Adeo, ut constet plane, ante Trojani belli secula Hebraeos, sive potius illorum maiores, in Pannoniis coluisse* (p. 16).²²² This was also a linguistic matter, in which etymology and textual authority were explicitly linked. In his copy of Lazius, Smith notes the etymology of Tuisco, whose name was taken by the Germanic peoples (“Tuiscos, Dodescos, Duicz” (p. 17)). In this typography was related to place: Smith notes the final German word in an imitation of gothic black-letter type, used in Lazius for German. Lazius’s proof of this Berosian etymology is the reappearance of Tuisco’s name in the name of a German city, *Duicziburgum* (Düsseldorf), which he founded after arriving from Asia, though even Lazius seems unsure about this myth (*quod primum conditum a Tuiscone, post illam ex Asia navigationem, credendum est* (ibid.)).²²³ By mimicking the black-letter type, Smith was participating in a textual tradition, as seen in Lazius’s etymological glossary of “Gallo-Greek” words brought by Greeks arriving from Asia, and Latin terms brought with the Roman conquest, which he translated into modern German printed in black-letter (Fig. 10.1; pp. 25-36). This tradition was also expressed in Smith’s copy of Albert Krantz’s (c.1450-1517) chronicle of the Scandinavian kings, *Chronica regnorum Aquilonarium* ([S.l.], [s.n.], 1561);²²⁴ here the printers provided a glossary of Latin terms (mostly place names) with their German equivalents printed in black-letter (Fig. 10.2; fp. Ttt54-6r). A similar connection between type and place in Smith’s Lazius was his notation of the etymology of the Hebrew word for *Dominus*, i.e. Lord or God, “Marani unde” (p. 22). As with Annio’s forgery, Lazius’s analysis of the Hebrew derivation was supported by “real” textual evidence, in the form of his ancient Hebrew inscriptions discovered in Vienna, which Lazius reproduced in typographical facsimile

²²² ‘I put it, as is plainly the case, that before the time of the Trojan war, the Hebrews, or rather their ancestors, farmed the Pannonian pastures.’

²²³ ‘Which, it must be believed, was first founded by Tuisco, after his journey out of Asia.’

²²⁴ D.10.22; A26.

(Fig. 11; p. 23).²²⁵ An interest in Hebraic etymology was characteristic of Berosian historians, as shown by Smith's copy of Guillaume Postel's *De orbis terrae concordia* (Basel, Oporinus, 1544), a world history that attempted to synthesise the origins of various peoples, which Smith had bound with a commentary on civil law by Johannes de Blanasco.²²⁶ Smith, once again, has not annotated his Postel, but there is evidence of reading in the form of blind striations, which, as we have seen, appear in other of Smith's books. Postel advanced similar theories of linguistic change to those employed by Smith in his work on ancient Greek pronunciation, noting that while language (i.e. names) differed, the *nature* of things essentially remained the same: *Quod alii universum, alii quicquid id est, appellant: vocabulis, non rebus differunt* (p. 4).²²⁷ If you could identify the Hebrew origins for words (*verba*) – from which all language had descended, or so Postel believed – this was a route to understanding constant or eternal things (*res*), such as God. Postel argued, however, that God could never truly be comprehended through language (*eius exprimi nunquam possit* (p. 12)), which was corruptible, and which could be used by heretics to deny God: *verbis e suo coelo quidam deiiciant*.²²⁸ Postel's aim for a synthesis of intellectual and spiritual knowledge relied, therefore, on the consensus of various religions: Christians, Jews and Muslims. A common Jewish or Babylonian heritage, i.e. the Berosian narrative, was a useful means of conveying such a consensus, as well as a clear textual trajectory in the tradition of Biblical translation from Hebrew via Greek to Latin.

²²⁵ Peutinger mounted medieval Hebrew gravestones on the exterior of his house alongside ancient Roman inscriptions (cf. Franny Moyle, *The King's Painter: The Life and Times of Hans Holbein* (London: Abrams, 2021), p. 52).

²²⁶ L.10.23(2); A9; Johannes de Blanasco (1230-1281), *Commentaria super Titulum de actionibus in Institutis* (Mainz, Schoeffer, 1539).

²²⁷ 'What some people call *universum* [i.e. the "universal" or "general"], others "whatever it is"; they differ in words, not in substance.'

²²⁸ 'By words they throw him from his heaven.'

A



ORRO nec illud transcendendum silentio est, Gallogræcos, utpote Germanos, simulatque in Græciam profecti fuissent, ut posthac in transcurso sermonis ostendemus ex Pausania & Athenæo, ductoribus Brenno, Acichorio Belgio, Cerethrio & Bathanatio regibus, à Græcis multa hausisse, suoque idiomati uocabula impiscuisse, quæ in hanc usque diem nostra in lingua Germanica supersunt. Quippe cum diris Apollinis ob eius templum spoliatum agitati, alij in Asiam, alioque terrarum traiecissent, Bathanatum regem Athenæus in Dipnosophistis refert, cum non minima Galatarum manu rediisse in Pannoniam ad Istrum. Inde ad Pyrenæum usque, & ultra, in Germaniam sedes mutasse, Appianus Alexandrinus, in libro cui titulum fecit Illyricus, memoriam prodat. Id quod cum & libro sequente prolixè doceamus ex historica ueritate, & ubi de Cimbris tractamus libro tertio prosequamur: tamen libet æquo lectori syluam quorundam uocabulorum præ oculis ponere, quæ cum Teutonice sint communi ac quotidiano usu, tam si introspicias, uel Græcam uel Latinam originem referunt: nimirum à Gallogræcis, cum ex Græcia rediissent, spoliato templo Apollinis, hausta: uel à Romanis, cum uictis Germanie populis, hi cœpissent iura dare, ac legiones cohabitantes accipere coacti fuissent, accepta, usque confirmata.

EX GRÆCA LINGUA
quæ Gallogræci in suum idioma
transulere.

EX LINGUA ROMANA;
quæ Galli & Teutones à legionibus li-
mitaneis mutuarunt.

ΑΥΤΑΡ, authar / ubera.
B ἄττε, atte / id est vatter.
ἀνίς, ain meyd / ancilla.
δυνν, dunnen / unda.
ἐσθ, esth / tunica.
ματήρ, tutten / mammilla.
στρως, straus / struchio auis.
ἐσθ, heurig / hornum.
σθ, scheyrn / horreum.
λακκη, lakhen / palus.
λαγ, lagel.
νιδ, nider / nier Belgicè.
μητήρ, mäter.
αἶς, saiz.
αἶς, holz / sylua.
λακκ, lother / nebulo.
λαρ, lars / persona.
λιν, leyn / linum.
λογ, luge / mendacium.
σθ, stuben.
μαχ, messer / chinss.
νυξ, nux, nacht / nox.
μυ, muthen.

Templum, templ.
Symbolum, boletle.
Suauis, süß.
Fenestra, fenster.
Pirum, pyrn.
Rapum, rüb.
Nasus, nas.
Cantarus, fanten.
Vulgus, volth.
Tapetes, teppich.
Cacabus, kachel.
Pixis, püren.
Tabula, tafel.
Vrina, harn.
Xenia, schenth.
Vmbilicus, nabl.
Vetula, vettel.
Barbo, barb.
Puer, püb.
Puxus, purbaum.
Trepidatio, truppl.
Trux, trazig.
Vadum, wad.

μυς,

c

Tripus,

Fig. 10.1. Lazius (1557).

Fabarium. Pfeffers.	Lunæ mons. Luneburg.
Francia Orientalis. Francken.	Lugdunum. Lyon.
Francia Occidentalis. Frankreich.	Laudanum. Laon.
Cepidæ. der Gothen anstösser.	Laurissa. Loisch closter.
Gethæ. Gothen/Sybenbürger.	Lupinum. Meyenfeld.
Gothia. Gothland. Gütland.	Laureacum. Lerch.
Grünland. Skonland.	Letuania. Litrow.
Glessaria insula Succinum ferens.	Magnopolis. Deckelburg.
Gratianopolis. Granobel.	Marcomanni. Märcker/Behem.
Gades. Erythrea Insula Hispaniæ.	Mare mediterraneum. das grossz mör/ mittel mör.
Germanni. Garman. Teutschen.	Mare Balticum. Belt.
Geñ. 10. Garmania.	Martiana sylua. Schwartzwald.
Hannonia. Dennegaw.	Martinopolis. Merßburg.
Harelungi. Brißgawer.	Menapij. Gellerischen/Cleuischen.
Hedui. Burgunder.	Misia, Moesia. fley Scythia.
Hermunduri. Moravi. Merher.	Moldavia. Moldaw.
Heruli. Sclauer.	Montifalco. Monteflascon.
Hercynia sylua. Harzwald.	Mons pessulanus. Montpelier.
Hibernia. Iriland.	Mons Sempronius. Simpelberg.
Hister. Thünaw.	Moravia. Merhen.
Histria. Nistrich. Ermland.	Mosa. die Mos.
Hollatia. Volsatz. Volssteyn.	Mosella. die Mosel.
Hafnia. Kopenhagen.	Moscovia. Moscoviter.
Hamo. Hamburg.	Moscu. die Mosco. fluius.
Hyrcanum mare. das Caspisch mör.	Moscha. ciuitas inibi.
Hesperia. Hispanien.	Munus datum. Mundat.
Heluetij. Eydgnoßen/Schweitzer.	Maurimonastrum. Moßmünster.
Hydruntum. Dront.	Nagnia. Narnia.
Iburinga. Oberlingen.	Narbonensis Gallia. Langen docken.
Iaurinum. Rab.	Nemetes. Speirer.
Ihuri. hynder Hungeren.	Neugardia. Newgard in Litten.
Illyria. Wyndisch marck.	Neustria. Normandey.
Insubria. Meyland.	Nicopia. Nicopynt.
Iulia. Jytland.	Nidrosia. Drunthym in Mor.
Iurassus. Jurtenberg. propè Bernam.	Nicea. Nissen/oder Nissa.
Isthmus. Syffel/oder eingang im land	Nitria. Neutrach.
Iuuania. Salzburg.	Norici. Norgäwer/Beyer.
Lacus Podamicus. Bodensee.	Nuithones. Nüchtländer.
Lacus Lemannus. Losanner see.	Nouientum. Eberßheim münster.
Lacus Benacus. der Garth see.	Oborriti. Deckelburger/darumb Wismaren.
Lacus Venerus. Selter see.	Obrinca. die Mosel.
Leopolis. Lewenburg.	Odera. die Oder/Eyder. fluius.
Liburnia. Croacia alijs.	Oceanus. das bodenloß mör. ult. Hispa.
Licus. der Lech.	Olrana. die Tolder.
Ligeris. die Loere.	Oximum. Ochßenfurt.
Licopia. Licopint.	Oenotria. Italia.
Liuania. Lyfland.	Padus. der Po. fluius Italia.
Londinum. Londen.	Pannonia superior. Osterreich.
Lubeca. Lübeck.	
Ludocia. Newloß.	

Fig. 10.2. Krantz (1561).

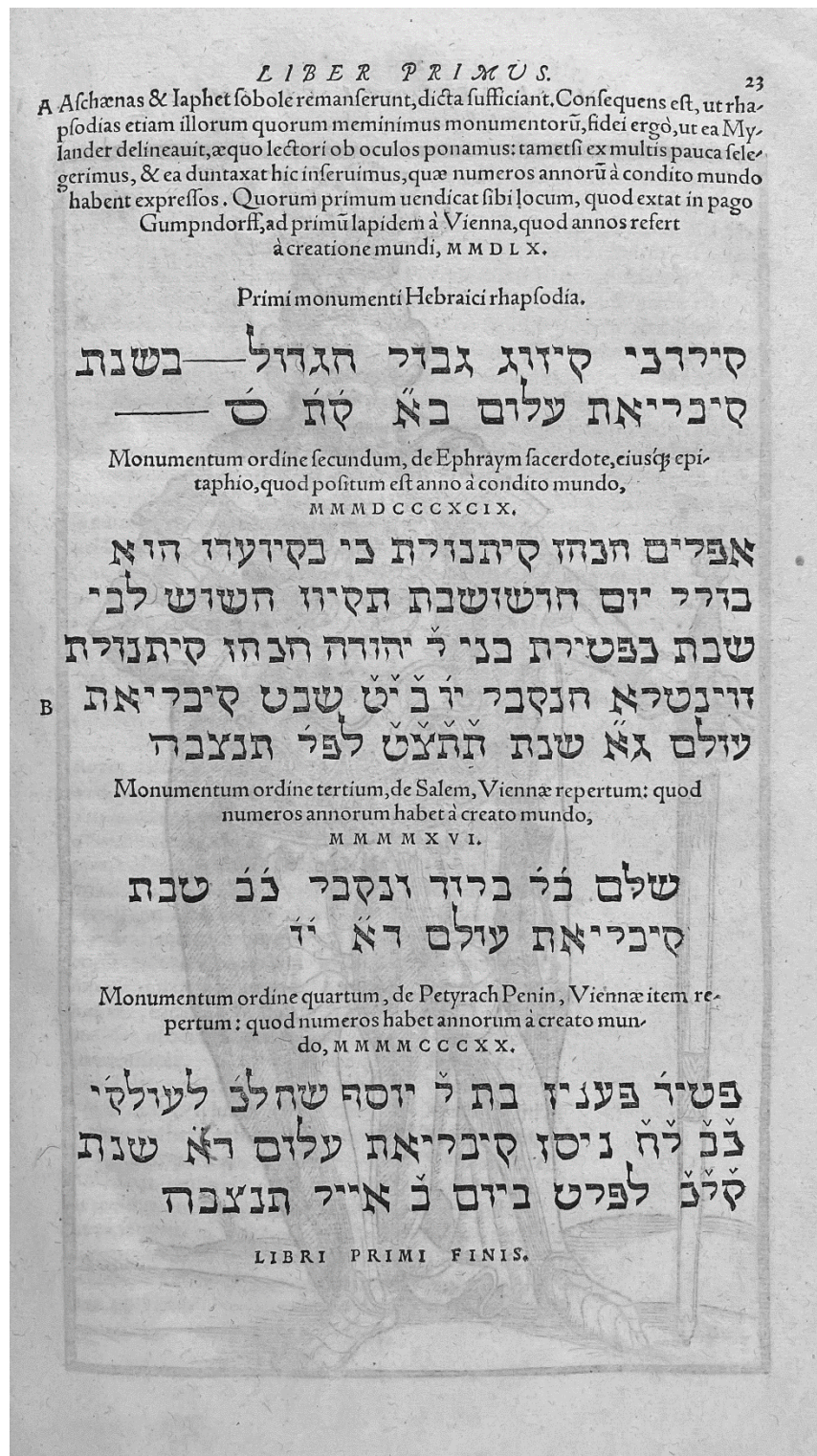


Fig. 11. Lazius (1557).

Postel was, in fact, hostile to Islam, and his projected consensus assumed the correctness of the Biblical texts, based on a correct understanding of Hebrew. Smith

was evidently interested in good Latin Biblical exegesis, since his copies of Sébastien Châteillon's (1515-1563) Latin commentary on the Bible (Basel, Oporinus, 1551)²²⁹ and Andreas Osiander's (1498-1552) gospel harmony, *Harmoniae evangelicae* (Basel, Froben, 1537),²³⁰ have both survived at Queens'. Richard Simpson has also observed the possible comparison between the Roman civil legal *corpus* and Biblical texts in Smith's understanding.²³¹ As in his Postel, Smith has not annotated either his Osiander or his Bible, but both Postel and Osiander display evidence of reading in the form of blind striations. In the latter, the reader's (most likely Smith's) etymological interest is not in Hebrew but in Greek, Osiander describing how he had to learn Greek to attempt the harmony; the Greek and Latin texts appear in parallel, a useful tool for novices, but presumably by the late 1530s (when Smith was lecturing on Aristotle's *Politics*) he no longer saw the New Testament in terms of a treasury of relatively simple Greek. Certainly, Osiander's project aimed at more than just good translation from Hebrew into Latin, involving instead the synthesis of chronology and etymology, with the chronological events of the four Gospels being unified into one temporality; this relied, like the chronological tables we have seen previously, on tabular arrangements of the Gospel texts, demanding impressive feats of typography (Fig. 12; fp. A2r). Such a project was also aimed at strengthening the historical authority of the Biblical textual tradition. Osiander does not mention Islam in the preface to his work, but his exegetical project (like Postel's) was based upon hostility to those who denied the Biblical texts. The Islamic corruption of Biblical authority (or so these scholars believed) was especially offensive precisely because the Qur'an was built on the foundations of Biblical scripture.

²²⁹ H.9.22; A6.

²³⁰ M.24.13; A11.

²³¹ Op. cit. Simpson (2021), p. 87.

Smith's interest in Islam – and in the easily corruptible translation of legal-textual traditions – is observable in his copy of the Qur'an, which also contained a compendium of texts on Islam edited by the orientalist Theodore Bibliander (c.1505-1564), *Machumetis Saracenorum Principis* (Basel, Brylinger and Oporinus, 1543).²³² Significantly, Smith treats the text of the Qur'an as he would a legal text, and his annotations evidently belong to the same period, contemporaneous with the publication of this book, in which he was annotating the texts of the *CJC*. In places where the text refers to Islamic laws concerning women, such as the imposition against marrying outside of Islam (*Alterius legis foeminas in uxores nec ducatis, nec filias vestras viris alterius legis nubere permittatis* (Fig. 13.1; p. 17)),²³³ Smith has added a sketch of a Muslim woman in stylised headgear, just as he did in his *Codex* when noting a similar injunction against Jewish women marrying Christian men, and vice versa, where the woman's headgear clearly marks her out as Jewish ("Christiana[m] Judaeus; Judaeam Christian[us]" (Fig. 13.2; fp. 27r)): *Ne quis Christianam mulierem in matrimonium Judaeus accipiat* (etc.) (ibid.; 1.9.6). Despite Smith's use of the same symbol (though slightly augmented) for both legal systems, these laws are evidently specific to Islam; Smith notes, for example, that Muslim men can marry up to four women ("Quatuor uxores" (p. 30)), as well as the punishment for adultery, which is not death (as it would be in Roman law) but rather permanent incarceration at home ("Carcer perpetuus domi" (ibid.)). Throughout the text, printed marginal *lemmata* provide parallels with the texts of the Old and New Testaments, demonstrating that the Qur'an was not only a derivation of the Bible but also a corruption, as shown by Muhammad's incorrect allusion (*Alludit inepte*) to Matthew 19, in which Jesus says that it is easier for a camel

²³² L.9.21; A10.

²³³ 'You will not take women from another law as wives, nor will you allow your daughters to marry men of another law.'

to pass through the eye of a needle than for a sinful man to enter heaven, as Smith notes (*paradisve patebit aditus, usquequo camelo pervius per acus foramen gressus pateat* (p. 53)).²³⁴ As Postel might have said, the substance is the same but the meaning has changed; in the context of Biblical authority this was clearly not acceptable. We should not forget, however, that Bibliander's edition is a Latin translation of a text originally written in Arabic, being compared with a text originally written in Hebrew or Greek, the "official" Catholic version of which (the Vulgate) was in Latin. Translation of different languages and legal traditions was always possible, as demonstrated by one of the works in Bibliander's compendium, the account of a fifteenth-century Hungarian Christian, Georg "Captivus" Septemcastrensis, of his enslavement by the Ottomans, in which medieval Ottoman poetry by Yunus Emre is first transliterated from Turkish into Roman script, and then translated into Latin (Fig. 14).

²³⁴ 'Shall the entrance to paradise be revealed so long as a camel can pass through the eye of a needle?'

§ ELENCHVS SEV INDEX GENVINI ET
IVSTI ORDINIS, RERVM A QVATVOR EVANGELISTIS
traditarum, in concinnanda Harmonia Evangelica summa industria
deprehenſi, & admiranda ſimplicitate obſervati.

E L E N C H V S L I B R I P R I M I			
MATTHAEVS	MARCVS	LVCAS	IOHANNES
1 5 Liber generatio- nis Ieſu Chriſti con- textitur, 6 Iosephus, Mariã coniugem ſuam è ſpi- ritu ſancto grauidam non repudiandã eſſe admonetur.		PRAEFA- tio ad Theophilum. 1 Angelus Gabriel Zachariã filium na- ſciturum annunciat. 2 Maria Gabriele annunciante Chriſtũ concepit. 3 Maria uiſitat Eli- zabetham, & ambo prophetant. 4 Iohannes bapti- ſta naſcitur, & pater eius Zacharias pro- phetat.	
		2 7 Chriſtus naſci- tur Bethlahemæ: id- eſt angeli nunciãt pa- ſtoribus. 8 Paſtores pergũt Bethlahemã, uident, prædicant. Chriſtus oſtãua die circunci- ditur. 9 Chriſtus in tẽplũ adducitur. Simeon & Anna agnoſcũt eum parentes eius reuer- ſi ſunt in ci- uita- tem ſuam Naz- areth. 12 Ieſus duodecim annorum, amiſſus à parentibus reperitur in templo.	

A 2

Fig. 12. Osiander (1537).

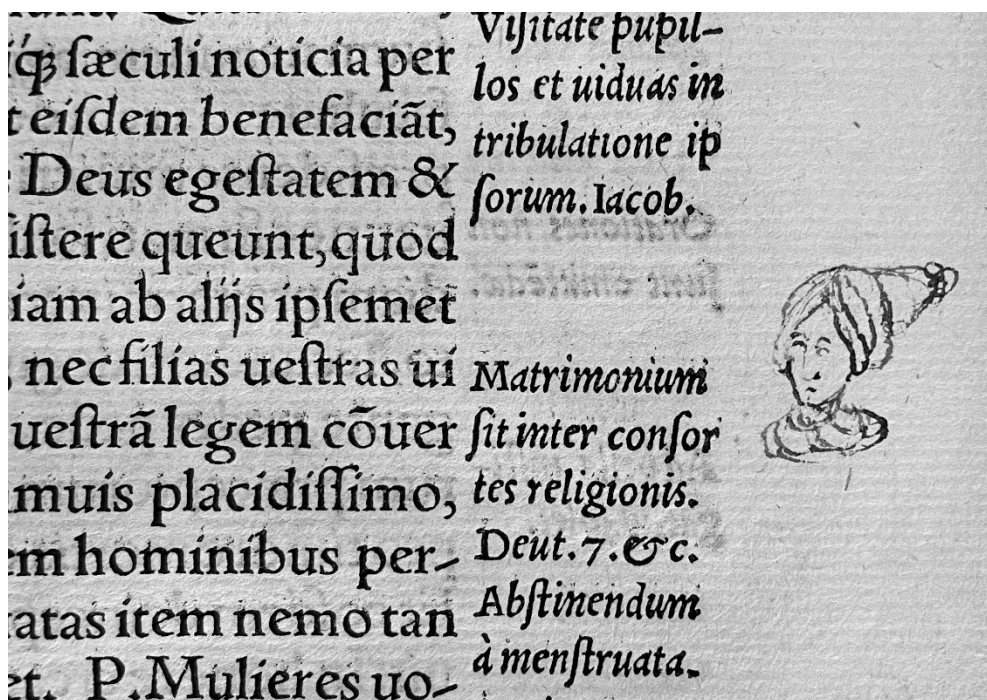


Fig. 13.1. Bibliander (1543).

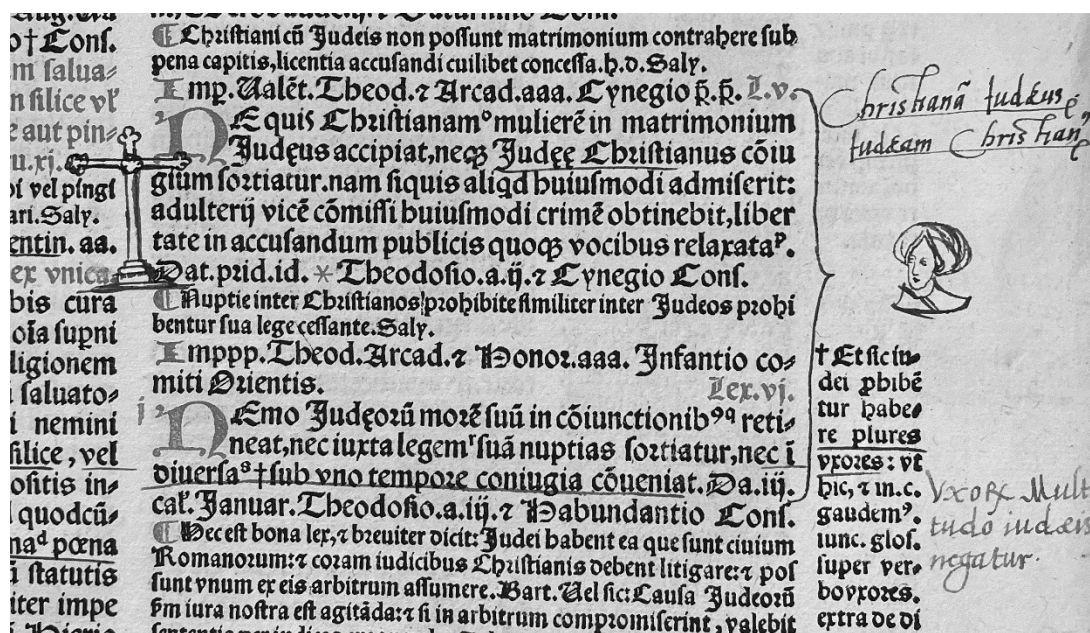


Fig. 13.2. Codex (1540).

Detur igitur maioris experientie testimonium, cum euidenti ratione: & ego meis
postpositis, suis assertionibus indubitanter cum ceteris fidem adhibebo.

ISTI SVNT DVO SERMO-
nes in vulgari Turcorum.

C Affil olma aths goelsingi, halinga bakoeleni, gore ruenelit itma doenuede,
yafu derung deleni goer, nitscheler uatir duesse beni, girnulam tistheyā ues-
suebemi Czuem uekleri tsassa beni tsthur beni olā guer. Kym ach iduep kilir za-
ri kuenethdur ellinde uuari. Gutsthmisth yatir kari giri miczkij nueri guueleni
goer czorma hallyn kynczene uuarma yeramāczine Kymczini goef deczini uul
sub gyeni iulani goer. Hantz Meheknimet mustafa, huekym itti kastā kaffa. Do-
enne kyme kildi bafsa, aldaniben galani goer, Aldanma maladanuara kulukey-
la, haka iar, Seuigile bile uuara baki iotafsch glani goer Ionus bñ czusteri tsattar
balka moriffer fatar Gendiczine hadar dutar czoledigi ialani goer.

Iana itsthim goner olim bon oelim angitstac, olim endestherczin host, uulurara
dantstihag. Oliczeris belli beangisfi itsthimis olor eam, tenesthir usthine konp, hal-
kunginde iuunt sthad, htsch hilmeccen ben nitge iden, hanke ianna, czaffaridē,
yacaffis don geemgidē, bachsisatta binnitstheg. Gelle bāga kauum gardasth ola
czim degi iotasth. Kim olaczar bāga halasth ben czinin do egalitstheg, galā ben
amalimla hernitgeczij halimla. Gide kauū guule guele, efdē iāga donitstheg. Sā-
ga aidirem ai passā, nelergelliczor bafsa. Kimingiczi dem bagir pissche, Kim schra
ba anitstheg, yarrin cziazzar guria tschumla galeik derle. Kime inir czeuuan
herle, kiming iczidem iantstheg amal uuer unda tsthooap amallisa olor hedep,
schol biffschia olmaczhezzep, bunda azat olitstheg, yonus emdi kiliarak ut an-
meaczin dogri bak. Tschumla galeik derle atli atlia czaijt litschag.

INTERPRETATIO SERMONVM
prædictorum in Latino.



O LI esse incautus, aperí oculos, & considera conditionem tuam,
quia mortalis es. Et noli iniquè agere in hoc seculo, sed de commis-
sis poenitentiam agere cura. Considera multitudinem morientiu,
& dispositionem eorum in sepulchris, & deformitatem, quomodo
pleni uermibus & serpentibus, facies deturpata, phlegmate pleni,
omni putredine & foetore. Iusti in hoc seculo cum timore uixerunt, & cum do-
lore mortui, & non comparent. Et miseri peccatores rident & consolantur, creden-
tes se mortem euadere posse. Noli igitur argumentum quærere ab aliquo, uel ra-
tionem. Nec contrarium dicentibus uolueris credere. Quotidiana morientiu ex-
perientia & conditio de hoc te certum reddant. Vbi est Mahomet Mustafa? qui
fuit tantæ authoritatis, ut cœlo & terræ imperare uideretur. Et si huic mors nō pe-
percit, quem non seducat mundana uanitas? Non ergo blandiantur temporalia
& caduca, sed exercete in cultu diuino, & associare spiritualibus rebus, quæ tibi in
extremis possunt esse refugiu. Ionus has sententias copulat, uendens populis mer-
cimonía spiritualia, cuius sermonu ueritate meliora facta testimonio esse possunt.

Timor mortis exterius, sed magis interius, eius me conturbat memoria. Sed
quia omnibus commune mori scio, aliqualem mentis releuationem habeo. Cer-
tum est quòd omnes morimur, sed horam mortis tunc solum experiemur, quan-
do super feretrum positi, incipimus coram oculis omnium lauari. Quid faciam?
aut quòd me uertam nescio, quando omnia mihi prius chara me solū derelinquunt.
Tūc pannus quo inuoluar, & tabula cum qua efferar, mihi ex omnibus remane-
bunt. Sed fortè amici mei & proximi cōpatientes usq; ad tumultu erunt mihi socij.

ee 4 Quem

Menhent nim-
stafa.

Fig. 14. Bibliander (1543).

Smith would have understood that the legal systems represented by the Qur'an and by the New Testament were essentially incompatible, despite their common origin in the Biblical texts; this was especially true when following a Berosian line (which Smith wasn't necessarily). The fifteenth-century Ottoman Sultan Mehmed II certainly was when, in his (purported) reply to a letter from Pope Pius II (this exchange also appearing in Bibliander's compendium), he invoked the resurgence of Trojan blood in the form of the Ottomans attacking the Byzantine Greeks. Why, Mehmed asked, should two nations both descended from the Trojans (Turks and Italians) be at war (fp. ii2r)?²³⁵ Mehmed also claimed to have inherited the ancient Roman Empire immediately after his capture of Byzantine Constantinople in 1453.²³⁶ Language therefore "united" these different religions in the form of Latin letters, as did their shared ancient origins. However, in the sixteenth century, the Turks represented a real existential threat to Christianity, which, for Smith, was a geographical proposition as well as a linguistic-legal one. Smith's fascination with the Ottoman sieges of Rhodes in 1480 and 1522 is evidence of this, Emilio's description of the siege being littered with Smith's portraits of turbaned Turks (fp. 86r) and chorographical depictions of the island, both two- and three-dimensional; one such sketch shows the defeated city of Rhodes under the Ottoman flag (with the island stretching out behind), along with the familiar legal tablet denoting the treaty that confirmed the Turkish victory (Figs 15.1-2; fp. 98r). Places

²³⁵ *...eo quod ipsi & ipsorum magnalia & parentes a Troianorum sanguine processerunt, quorum autorem fuisse scimus veraciter Antenorem & Aeneam de sanguine Priam procreatos, in cuius locum ducturi sumus imperium in partibus Europae, secundum repromissiones a diis nostris, quas patres nostri habuisse noscuntur, & Troiam magnam intendimus restaurare, & ulcisci sanguinem Hectoris, ac Illionis ruinam, nobis Graecorum imperium subjugando, & injuriis deae nostrae Palladis factis eosdem punire in transgressorum haeredes; '... that [the Italians'] ancestors and great deeds proceed from the Trojan blood, which we know that Aeneas and Antenor, born from the blood of Priam, were the founders, and we are to lead their empire in parts of Europe, following the things promised to us by the gods, which our forefathers are known to have received. And we intend to restore Troy to glory, and to avenge the blood of Hector, and the ruin of Ilium, by subjugating the Greeks to our empire, and punishing the heirs of the same transgressors for their offenses committed against our goddess Pallas.'*

²³⁶ Su Fang Ng, *Alexander the Great from Britain to Southeast Asia: Peripheral Empires in the Global Renaissance* (Oxford: Oxford University Press, 2019), p. 65.

changed hands, after all, as did the names of cities, as in Smith's copy of Krantz, in which Smith notes the modern and former Vandal names of cities: "Oritrici n[unc] Megelberg" (p. 4). Once again, there was a polemical, historiographical argument behind Krantz's vision of Vandal origins. In his disquisition on the origin of the Huns ("Hunni" (p. 74)), Krantz accepted the Berosian argument – i.e. that the Huns had originated in Europe from Tuisco – in favour of the medieval historian Saxo Grammaticus's assertion that they came from Scythia or "Tartary", which is in Asia.²³⁷ Krantz was therefore advancing a Germanic origin for the Scandinavian royal houses; similarly, in his *Wandalia* (Cologne, Heil, 1519),²³⁸ Krantz had argued that the Poles were Germanic, conflating the Vandals and the Slavic Wends on etymological and geographical lines. Krantz's argument was strongly rebuffed by the Polish historian Marcin Kromer (1512-1589) in his *De origine et rebus gestis Polonorum* (Basel, Oporinus, 1555),²³⁹ which Smith possessed but did not annotate, and which argued for an anti-Berosian theory of Sarmatian or Scythian origins.²⁴⁰ No surprise, then, that in *DLG* Smith compared bad Greek pronunciation with the damage done to the classical languages by barbarian or heathen incursions, including the Turks, Scythians and Vandals, amongst others:

²³⁷ *Hunos super Russos ad Orientem olim habitasse, Saxo noster ostendit ... Nam per Russos Danis, & vicissim Hunis erat transitus, cum invicem belligerarentur ... vastam illam dica regionem, quam olim Sauromatae, nunc Tartari tenant, tum, ut diximus, Huni gens effera tenuere ... Accedit locupletissimus testis Berosus, quod Europaei sunt Huni, non Asiatici. Nam Hunum fuisse ex primis Tuisconis filiis, ut Suevum, & Vuandalum, ille commemorat* (etc.) (p. 74); 'Saxo showed us that the Huns had once lived beyond the Russians in the East ... For through the Russians, both the Danes and the Huns had passage while they were at war with each other ... the Hunnish people held that vast and desolate region which was once the Sarmatians', and is now the Tartars' ... But it appears by that most reliable of witnesses, Berosus, that the Huns are European, not Asian. For he records that the Huns were first derived from the sons of Tuisco, such as the Swedes and the Vandals.'

²³⁸ Smith does not seem to have possessed *Wandalia*.

²³⁹ G.3.17; A23.

²⁴⁰ A reader, possibly Smith, has underlined Krantzian errors concerning the false etymology (*Ven dali falsa etymologia*) conflating Vandals and Wends (p. 9), and the etymology of the name "Slav" (p. 13). Cf. Stefan Donecker, "Re-inventing the 'Germanic' in the Early Modern Era: *Omnes Germani sunt, contra fabulas quorundam*" in Matthias Friedrich and James M. Harland, eds, *Interrogating the "Germanic": A Category and its Use in Late Antiquity and the Early Middle Ages* (Berlin: De Gruyter, 2020), pp. 80-81.

Ad extremum Turcae, & Scythae, & Gothi, & Wandali, & Quadi, & Heruli, & illa tota colluvies Barbararum gentium, tanquam hyemis procella, Boreaeque crudelior flatus irruens, stirpem utraque & radicem & totum truncum evertit (fp. 9v).²⁴¹

Turkish had been especially harmful to the Greek language, as Smith noted: *Ergo si vetustum, hoc est verum & germanum Graecum, non ut illi antiquitus, sed quemadmodum recentiores protulero, non hercle Graecum Graece, sed Graecum loquar semi turcice, certe barbare atque extranee* [sic] (fp. 14r).²⁴² Smith's elision of the barbarian tribes with the Scythians in *DLG* is possibly the strongest indication that he was opposed to the Berosian theory; he even called the Normans a "Scythian race of Danes" (*Normani Scythica Danorum gens* (fp. 37v)). Regardless of where he truly stood, however, Smith's linguistic-legal theories contain a strong chorographical element, which I suggest is based in his reading (and apparent rejection) of authors like Krantz on the historical movement of ancient peoples.

²⁴¹ 'At last the Turks, Scythians, Goths, Vandals, Quadi, and Heruli, and all that torrent of barbarous nations, pouring in like a winter storm and the cruel blast of the North Wind, destroyed ... stocks, root and branch' (p. 47). Smith returned to this point later: *victoriam autem nullam videre, nisi qualem Gothi olim ac Wandali de Latinis literis, Turcae ac Gepidae de Graecis habere potuissent* (fp. 27r); 'There is no victory to be seen, unless it is of the kind that the Goths and Vandals might have had over Latin letters, or the Turks and Scythians over Greek' (my translation).'

²⁴² 'If, therefore, I utter ancient, i.e. true and genuine Greek, not as those of old did, but as modern Greeks do; I shall not be speaking Greek in Greek fashion, but half-Turkishly (*semi turcice*), at all events in a barbarous and foreign fashion' (p. 65). See also fp. 38v, where some modern Greeks are said to be half-Turkish (*semi turcici*) or "obscure" (*obscuri Graeci*).

tum Stephani (ubi mos nunc diu iacer ab
 miliario ab urbe abest. Habebat pluribus
 rios homines Dambussius, qui in speculis
 e, primi aduentu Turcicae classis tumul-
 interea est consulto ab hostibus, ut impe-
 bussium opprimeret, Mahometem oc-
 is esset factus, & per alios quorsum ema-
 de pristina cautione. Misachus Paleclo-
 i ad se iubet Antoniū Meligalum. Is pau-
 didique uermibus, tetroque odore como-
 ; fidem implorans, quos ea perfidia im-
 n, quiritas in mare à nautis præcipitatus
 lim aliis renunciatum est. Vocari deinde
 eoque; ueluti interprete, & itinerum duce
 quintiles equitatus Turcarum in monte
 minas æneas, testudines apparatusq; aliū
 parte collocarūt: ita apte, ut ob montis
 onspici nō possent. Deinde alię copię su-
 tea delata quoq; urbis præfectura, Anto-
 tus fuerat, hac tamen oratione uocatos
 obsidionis incōmoda hortatus est: Tan-
 ai, quod & literis multorum & sermone
 is anhelantes Turcas perniciem nostram:
 a nostra uiolare paratos: uastitatem urbi
 ulis nobis moliri: fortunas omniū, uitā,



Anto. Meligalus
Ὁ ἑσπέριος . α x
ἰνέτης



Demetrius
icus.

Dambussij Oratio

Fig. 15.1. Le Ferron (1554).

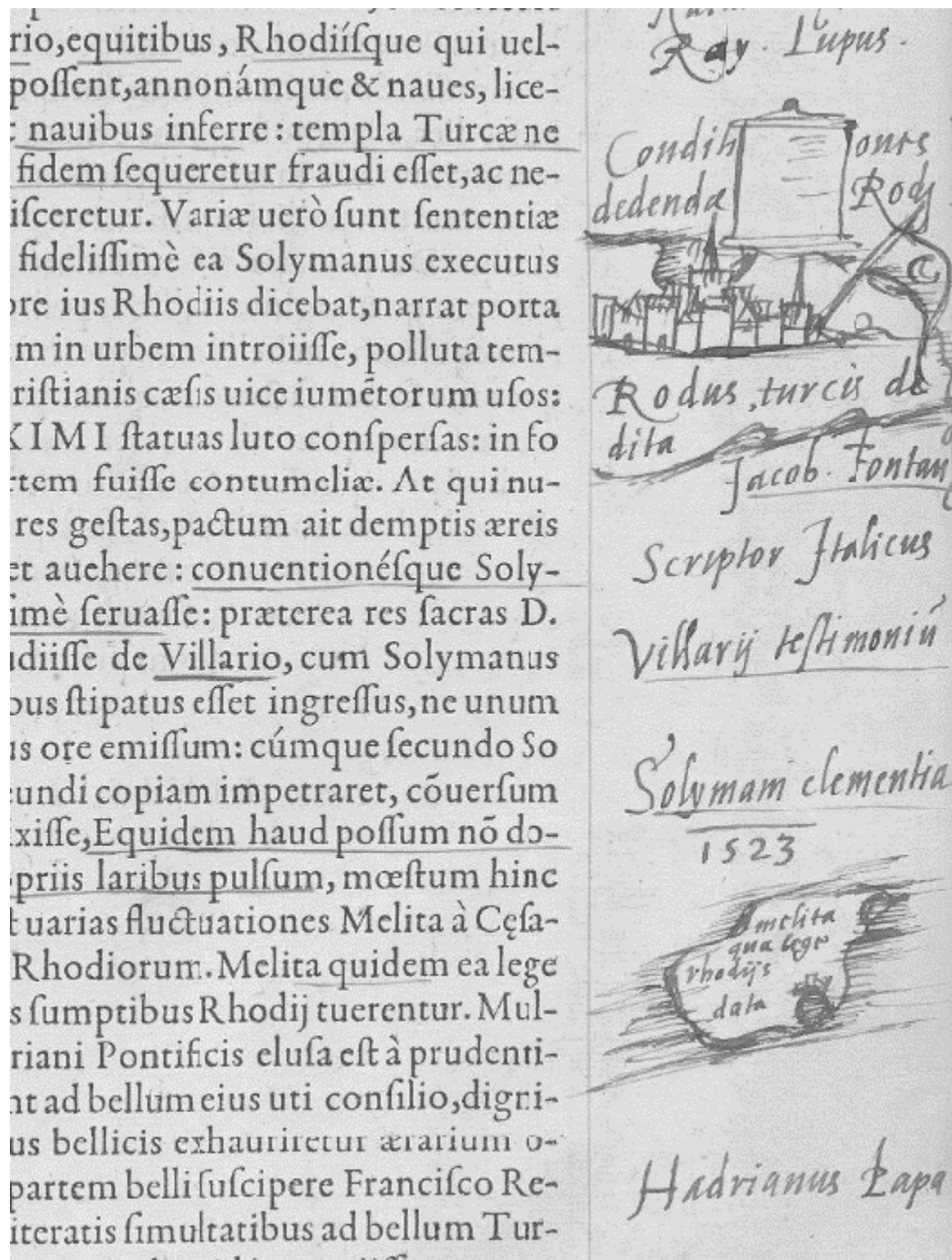


Fig. 15.2.

v. The chorography of the text.

I have argued that Smith's reading practices were a direct response to the methods that authors and printers used to convey opposing chronological and historiographical

arguments, and polemical debates concerning textual authority. In this final section I will argue that the spatial, typographical elements of Smith’s historical books – genealogies and chronological tables (even when there is no evidence of his direct engagement with these paratexts) – contributed to his highly spatial and “marginal” annotative response to historical texts, both ancient and modern. Furthermore, Smith’s response to the thematic arrangement of texts, especially through indexes, was expressive of his desire to “map” texts through his annotations and make them easily navigable, not only within single texts but between texts: paratextual and intertextual. This was, to some extent, a pragmatic response: indexes were just one of the methods described by Ann Blair for coping with information overload in the Renaissance, though she admitted that their existence since the medieval period complicated any claims for a reading revolution introduced by printing.²⁴³ Onofrio Panvinio, whose work we discussed earlier, used Roman inscriptions – and the typographical convention of providing their “facsimiles” in Roman majuscule – to form an index of the emperors mentioned in his work (Fig. 16; fp. x4r). Krantz’s work contains a prefatory letter by Heinrich Eppendorff (1496-1551), in which Eppendorff picks up on the arrangement of the narrative around a series of individual combats or *monomachia*. Eppendorff lamented the decline of this tradition, which had previously been used to decide wars (& *quod apud priores Regnorum tuorum Reges speciem quidem justi habebat, monomachia Bellum dirimere* (fp. a2v)),²⁴⁴ because of the miseries brought about by general war (*commune Belli malum* (ibid.)); Eppendorff’s own experience of the Peasants’ War of 1524-1525, when he was 25 years old (or so he thought), is alluded to in a marginal *lemma*: *Anno 25. aetatis nostri* (p. 692). Eppendorff’s argument was

²⁴³ Op. cit. Blair, p. 16.

²⁴⁴ ‘That which, among the former kings of your realm had the semblance of justice, which was to settle war through single combat.’

part of a common trope that rulers were as much subject to the vagaries of fortune as any of their subjects (*expilata plebes, onerati nobiles* (fp. a2v)),²⁴⁵ a point emphasised by the use of Hans Holbein's "Dance of Death" woodcut alphabet initials throughout Krantz's work, in which kings, bishops, noblemen and noblewomen are surprised by their skeletal deaths.²⁴⁶ Smith arguably responded to this in his Krantz with sketches of inverted crowns to mark the depositions or deaths of kings (Fig. 17.1; p. 357), as he did in Le Ferron (Fig. 17.2; fp. 25v), which are redolent of the woodcut crowns in Onofrio's genealogies, which we saw earlier. Eppendorff (and the printers of Krantz's text) further united the structural arrangement of the printed book with its literary argument when they provided two indexes (in addition to the main subject index) at the rear of the work: one for victories achieved by (or against) kings, nations and cities (*Victoriae regnum, nationum, & Civitatum* (fp. Ttt3v)), and another for the duels or single combats that take place in the text (*Duellum* (fp. Ttt4v)) (Fig. 18.1). These were advertised to the prudent reader (*Ut vero prudens Lector sciat* (fp. Sss6v)) at the end of the main text as a catalogue (*catalogus*) of all the deeds of the kings, princes and dukes contained in the text: *Id quod & Index, & Regum ac Ducum Catalogus, in Principio operis totius, clarem indicabit* (ibid.; Fig. 18.2).

²⁴⁵ 'The commoners plundered; the nobles burdened.'

²⁴⁶ Holbein's alphabet was first printed in Urbano Bolzanio, *Grammaticae Institutiones* (Basel, Curio, 1524).

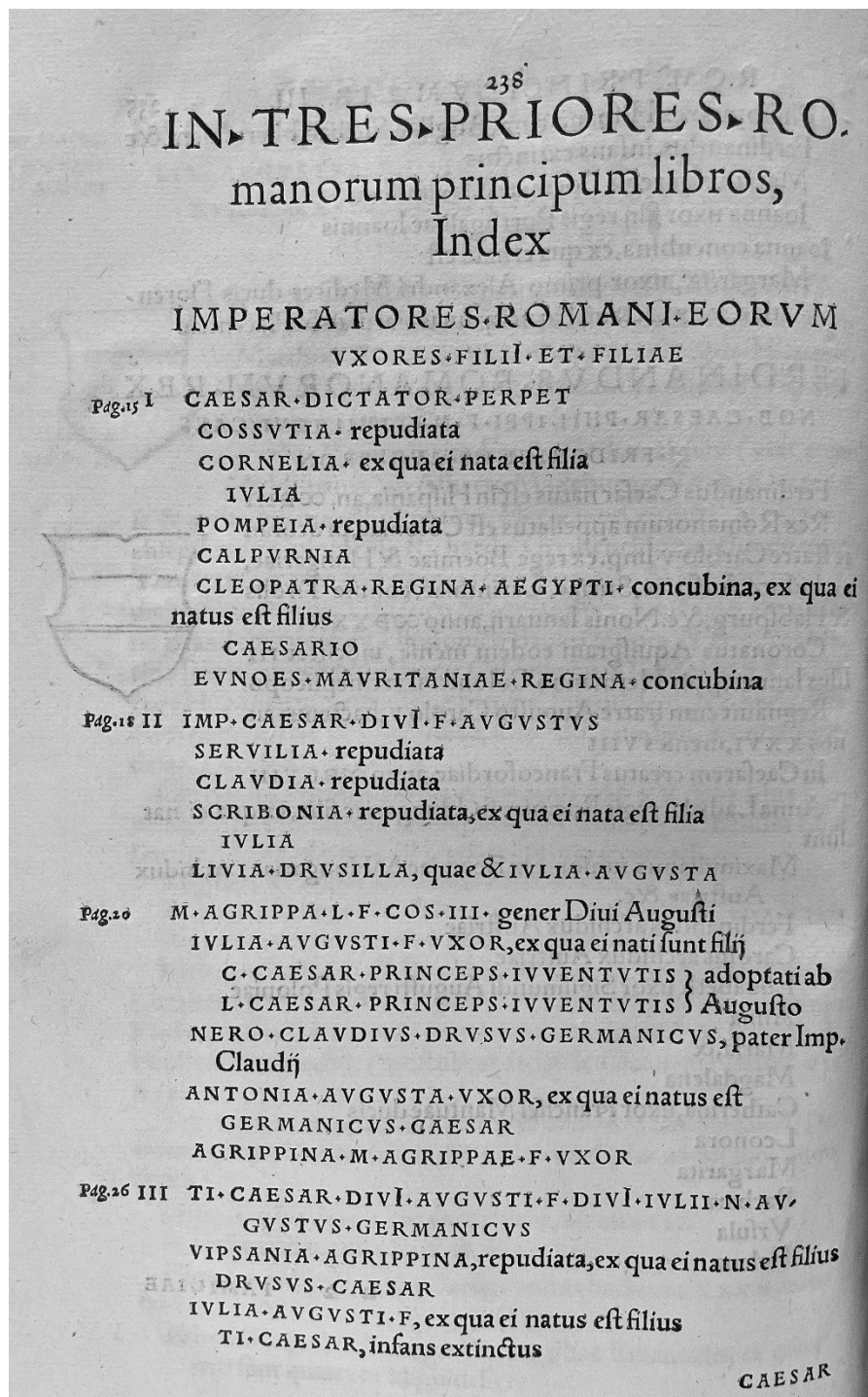


Fig. 16. Onofrio (1558).

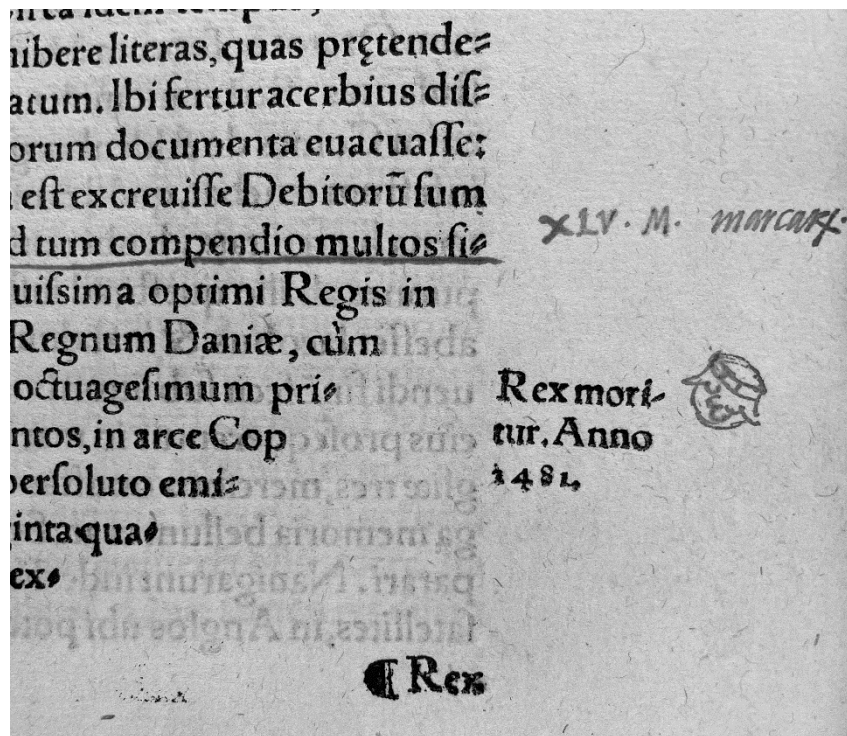


Fig. 17.1. Krantz (1561).

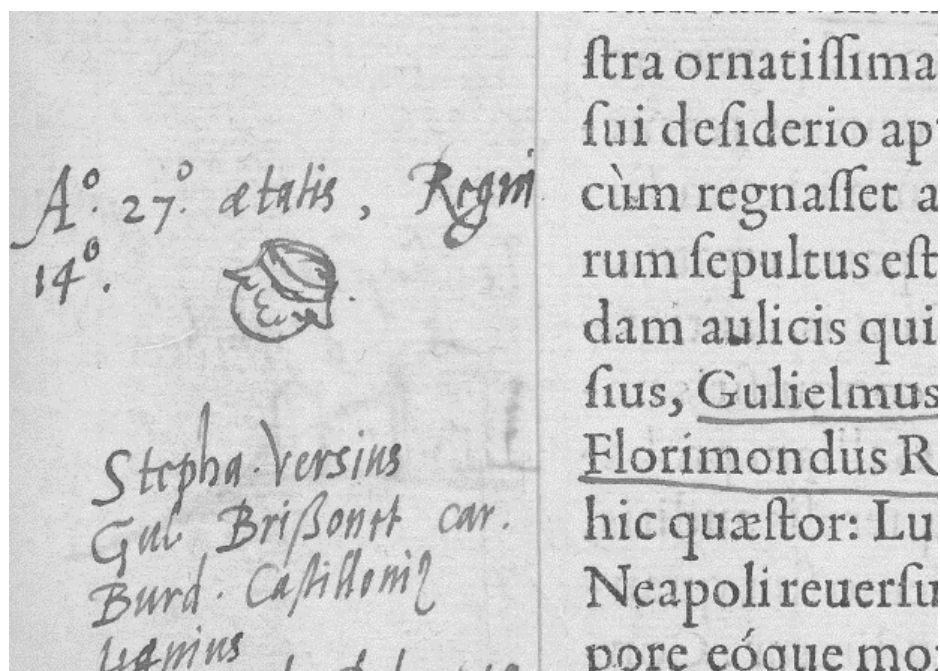


Fig. 17.2. Le Ferron (1544).

VICTORIAE ET DVELLI	
Ottonis Marchionis contra Danos	290
P	
Philippi contra Gotos	399
Piratarum erga Danos	259
R	
Regneri contra Frotonem, I.	16
Eiusdē contra Fro, Suecorū Regem	627
Regneri alterius contra Britannos	135
Contra Hellesponticos & Scythas	137
Contra Hesbernum & Vbbonem	138
Ringonis contra Haraldum, III.	60
Roberti contra Anglos	701
Eiusdē contra Alexium & Venetos	720
Rogeri erga Fratres	721
Rolfonis contra Atislum	19, 388
Rolfonis contra Francos	654, 656
Eiusdē contra Pictavos	656, 657
Romanorū contra Gotos maxima	428, 429
per Val. Aurelianum, in 320000	430
Et contra Cannuabam	431
Eorundem contra Rhadagafum	455
Eorundem contra Atilam	465
Rorici contra Vuandalos	21
Rugianorum in Danos	233
S	
Siualdi, I. contra Regnaldum	51
Siualdi, II. contra Haconem	54, 416
Siuardi, II. contra Ringonem	133
Siuardi, III. & Biconis in Danos	140
Snionis contra Suedos	71
Skioldi contra Alemannos	8
Stralesiundiorum contra Ducem de Lou- enburg	310
Suecorū contra Christiernū	339, 353, 355, 386
Eorundem contra Danos	442
Suenonis, I. contra Olauum	154
Eiusdē contra Adelredum	694
Eiusdē contra Frisios	208
Suenonis, III. in Kanutū	203, 204, 206, 207
Suenotonis contra Suedos	680
Eiusdē contra Haraldum, Saxones, at- que patrem suum.	679
Sundenfium contra Danos	334
T	
Theodosij cum Vuifigotis	453
Theodorici, II. contra Riciarium	468
Theodati contra Mauritium filium, & de inde Ducē Mundū, patrē suū	494, 487
Theobaldi contra Richardum	688, 689
Thomiris contra Cyrum	395, 396
Torismundi contra Atilam	467
Totilas contra Romanos	507, 508, 516
Eiusdē contra Neapolitanos	510
Triumphus Aureliani	431
Trondo contra Ruslam sororem	624
V	
Venetorum erga Robertum	717
Vffonis contra Haddingum	596
Virigis contra Bellisarium	497
Eiusdē in Romanos	496, 499, 502, 503, 504
W	
Waldemari, I. in Suenonem	226
Eiusdē in Vuandalos Tribufanos	253
Eiusdē in Scanienfes seditiosos	280, 281
Eiusdē secundo in Scanienfes	284
Waldemari Ducis in Adolphum Holfati- ensem	291
Wandalorum contra Siuardum, I.	64
Eiusdē contra Suenonem, I.	151, 152
Eiusdē contra Danos	250, 182, 183
Eiusdē contra Ericum, VI.	200, 201
Wicleti contra Amblettum	24
Wilhelmi contra Haraldum	707
Wilhelmi Ferrabachij erga Gracos, Sicili- am atq; Apuliam.	713
Wifigoti contra Francos	479
D V E L L V M.	
Arngrini cum Scalco	407
Atisli, II. cum Frouuino	391
Collerus cum Horuuendillo	600
Emundi cum duobus	63
Eri cum Alrico	407
Fridleui, II. cum Anone	38
Frogeri cum Frotone	601
Frotonis, I. geminatum	16
Frotonis, II. cum Frogero	28
Gram octuplex	381
Haldani, III. cum Grimmone	48, 614
Item cum Ebbone	49
Haldani Gunnari cum. xij.	55
Item cum fratre Hildigero	56, 419
Item cum undecim	419
Item cum Siualdo & .7. filijs eius	413
Item cum piratarum Principi	60.
Olonis cum duobus	61
Eiusdē cum duodecim	619
Omundi cum duobus	624
Regneri cum tribus suis filijs, s. sternit	114.
544	
Skioldi	

Fig. 18.1. Krantz (1561).

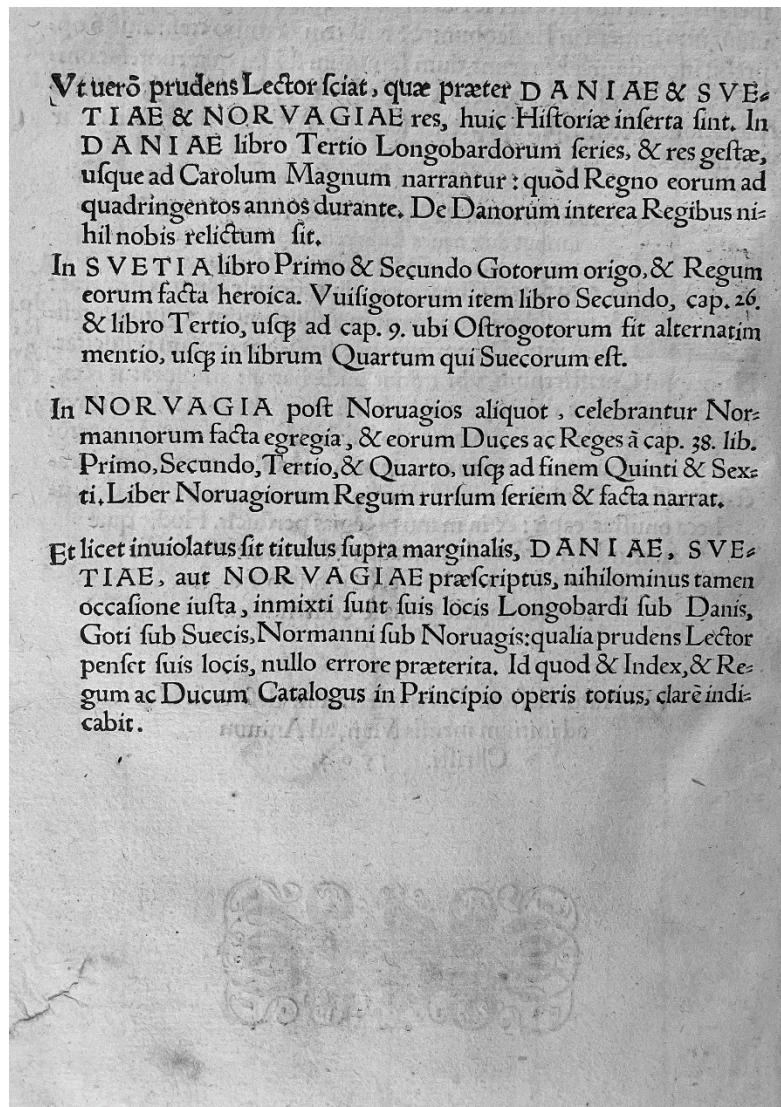


Fig. 18.2.

Smith was engaging in the same process of factual and thematic organisation when he added a manuscript index to a blank leaf at the rear of his copy of the *Rerum Gestarum* or *Historia* of Ammianus Marcellinus (Fig. 19.1), an ancient Roman soldier in the army of Emperor Julian the Apostate, which was published with the ancient historian Suetonius's *Twelve Caesars* and the compendium of histories (some of them bogus) known as the *Scriptores Historiae Augustae*, and edited by Erasmus (Cologne,

Cervicornus, 1527).²⁴⁷ Smith made an index of the military ranks that Ammianus mentions throughout his text, which Smith clearly felt was the most useful way of organising the narrative. Moreover, this is a highly important facet of the text from the perspective of what Smith would have considered to be reliable historical evidence, because it speaks to Ammianus's personal experiences as an ancient Roman soldier; the military tombstones that made up Lazius's work on Roman history were a similarly reliable source. The attainment of ranks that drives Ammianus's narrative is also emblematic of a crucial concern within historiography (as Eppendorff pointed out), which is the agency of fortune in the fate of men, a pagan conceit readily invoked by humanist chroniclers. Ammianus uses a Greek model, citing the goddess Adrastia or Nemesis, as Smith notes in Greek ("Nemesis thea" (p. 443)), who controls the changes of Fortune ("fortuna"); Smith added an enigmatic sketch of an orb, which may simply be the wheel that turns beneath Nemesis's feet (*subdidit rotam* (Fig. 19.2; *ibid.*)). Smith also appended two sketches of crowns, one of which is inverted (as we saw in Krantz and Le Ferron), to mark the examples of mutable kingship given by Ammianus: firstly, Agathocles of Sicily, who was born a potter but became a king (*ex figulo regem*), and secondly, the tyrant Dionysius, who ended his days as a schoolteacher at Corinth (*Corynthis litterario ludo praecepit*) (*ibid.*). Indeed, this whole section is inspired not only by the emperor Gallus's justly deserved death, but by the deaths of his overreaching servants, such as Barbatio, who desired to be more than master of the foot-soldiers, a rank that Smith underlines: *ex magisterio peditum altius niti quorundam susurris incusaretur damnatus*.²⁴⁸ Smith's interest in rank is therefore more than a demonstration of his antiquarian interest in the Roman military, and more than simply

²⁴⁷ F.2.15; A18.

²⁴⁸ '... charged by the whispers of certain men of aiming higher than the mastership of the infantry...'; *History*, trans. J.C. Rolfe (Cambridge, MA: Harvard University Press, 1950), I, p. 145.

a desire to effectively organise the text. Smith was, in this case, engaging with a predominant intellectual current of his time. Indeed, Smith's reading of his compendium of Cardano's works, which was discussed in the previous chapter, is demonstrative of his commitment to this chronological conception of fate. A slight variation in the seconds, hours, months or years – the units measuring out what Cardano calls "exquisite" ("Tempora exq[ui]sta" (fp. 83v)) or specific time – will not alter the inexorable progress of "universal" time ("Tempus universal[e]" (fp. 84r)). Smith noted this temporal relationship when he enclosed the declination of time within a multi-tiered crown, of which universal time is the base (Fig. 20; *ibid.*). On the other hand, the specific measurement of time – expressed in the movements or "directions" of the celestial bodies through the Zodiac ("Directio" (*ibid.*)) and their positions at one's nativity – can also cause significant problems to the "native" under their potentially malign influence: "debilis; mala; pessima" (*ibid.*). Time, Smith seems to be saying, is ultimately king.

Domestici comites 442
 Scutarii tribunus 442
 Comes largitionum 436
 Advocati primis palatinis rebatur 437
 Curator urbis 437
 Tribunus fabricarum 437
 Protector domesticorum 446
 Varii, Domestici comite } 440
 Agelloni, Tribunus stabuli }
 Scudillones, Scutariorum rectores }
 Bartho comes cu } 442
 Apodemio Agente in rebus }
 Eusebius cubili prapositus, } 442
 Pontadius Notarius, }
 Mellobaudes Armaturarum tribunus }
 Mercurius Salaminiorum Comes 145
 Campi ductor.. 446
 Protectoris pbinia, ibidi
 Silvanus pedestris militum rector. 447
 Actarius Saranaha principis fumentorum rector. ibid
 Eusebio excomite reip. privatae } 448
 Idesio Magni Memoriae
 Magri peditum.. 447
 Rationarius apparitionis armorum mri. 450
 Magr. 459
 prapositus cubicali, 459
 prefectus apparitionis praefectura praetoriana. 460
 Jancto Ursulo largitionum comite, 460
 ad Magistrum peditum. 463.
 Bainobaudes cornuorum tribunus 463
 Primitivus. 484
 Comitatus legatus supremus 486
 Pontadius officiorum Magr 508
 Tribunus centurionum para phala 573
 Tribunus 2^a phala centur 573

post
 cataphracti igitur q^s clibanarii
 vocant 452
 Lupicij Mr. Armis. 501
 Ous Tatis
 Constantinus
 Constantinus
 Maximus
 Maxentius
 Maximinus
 Aliquis autem videtur hunc
 in accidentibus
 Et autem mortuus est.

Nonnulli Magr. sed comes 577
 Valerius frater stabuli suo praefectus
 fecit cu tribunatus dignitate. 576

Fig. 19.1. Ammianus (1527).

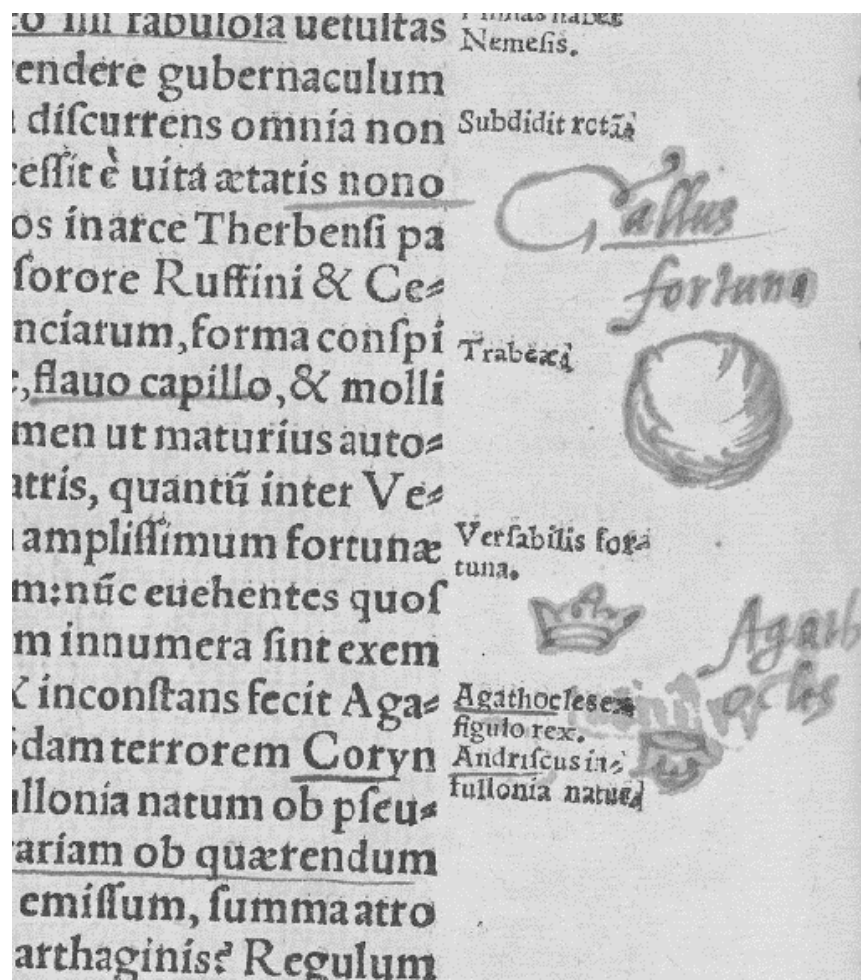


Fig. 19.2.

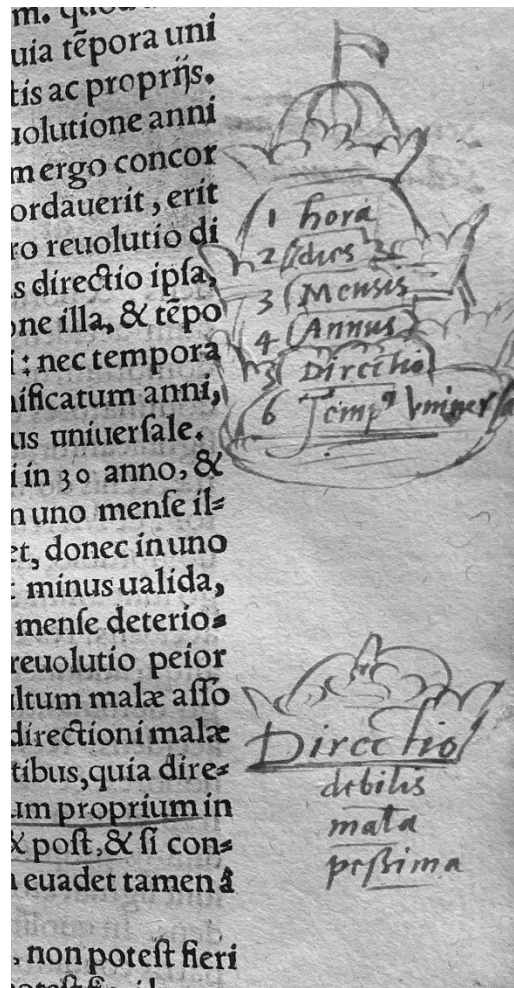


Fig. 20. Cardano (1547).

Since rank is determined by Fortune, which has an ambiguous relationship with destiny, it is possible to predict the rise and fall of historical figures. Ammianus was certainly a believer in divination, as Smith notes (“DIVINATIO ... Auguria; Auspicia” (p. 513)), and was indignant that many had maliciously attributed the emperor Julian’s abilities of foresight to evil practices (*malevoli praenoscenti futura pravas artes assignare*); it was important, Ammianus argued, to understand how such arts could form part of the learned man’s skillset (*unde sapienti viro hoc quoque accdere poterit, doctrinae genus*

haud leve (ibid.)).²⁴⁹ However, such skills were not always reliable. Ammianus seems to hold faith with most of the methods of divination carried out by the “Aruspices”, or augurs, namely the reading of entrails or the flight of birds, but he is sceptical of dreams (“So[m]nia” (ibid.)), which often fail in their predictions: *Somniorum autem rara [recte rata] fides, & indubitabilis foret, ni ratiocinantes conjectura fallerentur fides, & indubitabilis foret, ni ratiocinantes conjectura fallerentur* (ibid.).²⁵⁰ Indeed, Ammianus notes astrological events such as eclipses and monstrous births as examples of portentous signs, which Smith also encountered in his copies of two Italian histories, Bartolomeo Platina’s (1421-1481) *Opus de vitis ac gestis summorum pontificum* (Cologne, Cholinus, 1562)²⁵¹ and Pietro Bembo’s (1470-1547) history of Venice (Venice, Aldus, 1551).²⁵² Smith notes Platina’s inclusion of a comet (p. 242) and an eclipse (p. 301) as meaningful indicators of future historical events (*regnorum mutationem portenderent*, i.e. a change in kings (ibid.)) by drawing them in the margins, as he does in the latter case in his Ammianus (Fig. 21; p. 502). Celestial signs and prognostications are also one of the principal means by which Suetonius organised his narrative of the *Twelve Caesars*, to which Smith responded by recording the details of astrological portents recorded at an emperor’s birth, which he noted using blank “geniture diagrams”, a Renaissance tabular form of horoscope, in the shape of a square within a diamond within an outer frame, on which the positions of the celestial bodies were recorded (Figs 22-23). Such methods of prognostication could equally be applied

²⁴⁹ ‘... [because to the Emperor] malicious folk attribute evil arts (*pravas artes*) for divining future events ... we must briefly consider how this important kind of learning also may form part of a philosopher’s equipment’ (II (1940), p. 93).

²⁵⁰ ‘The faith in dreams, too, would be sure and indubitable, were it not that their interpreters are sometimes deceived by their conjectures’ (ibid., p. 96).

²⁵¹ I.13.26; A14.

²⁵² D.10.19; A34; there is no clear evidence of Smith’s ownership, probably because of rebinding, but he certainly owned a copy, and in the context of the blind markings found in other of Smith’s historical books we can assume that this book was his. See fp. 174v for markings to a monstrous birth of a child with two heads and various other deformities (*puer ... natus est cum duobus capitibus* (etc.)).

to medieval popes, as Smith demonstrated in his *Platina* when he drew such a diagram to mark a prognostication of pontifical office made at the birth of Pope Marcellus II: *Pater ipsius certe Richardus animadverso stellarum cursu, qui tum erat, quum nasceretur, ex earum conjunctione, uti erat eius artis peritus, summum sacrorum principatum filio praedixit* (p. 334).²⁵³ Smith's *Cardano*, which was essentially a series of instructional manuals on the casting of genitures, is evidence of Smith's deep interest in the subject. Cardano's work is illustrated throughout with woodcut geniture diagrams: in one case Smith has amended an incorrect diagram with the information given in the correct text, moving the moon into the fifth *locus* of the diagram (*Luna in quinto loco*), and adding the sign for the house of Aquarius, into which it has therefore moved (Fig. 22; fp. 137r). The visual analogue for Smith's use of the blank geniture is also found in Smith's astrological manuscript at the British Library, which contains abortive horoscopes for Smith's daughter Susanna (i.e. without any celestial bodies), and two ruled geniture diagrams that Smith never used.²⁵⁴ Smith's use of geniture diagrams was another kind of engaged reading, in which textual details were recorded in non-textual formats, as in Smith's legal tablet symbol. In Pomponius Laetus (1428-1498), a Renaissance historian of Rome who is included with Suetonius and Ammianus, Smith has copied the astrological information mentioned within the text *into* the geniture diagram (usually blank in Smith's annotation, but here reflecting its actual function, which was to record the position of the planets and Zodiacal signs). This marked a horoscope cast by the ancient mathematician Valens for the Byzantine Empire upon its foundation at Constantinople, predicting that it would last for 696 years (so until about the year 1000 AD); Smith also located this moment with a sketch of the city

²⁵³ 'Indeed, his father Richard, noting the course of the stars at his nativity, predicted, from their conjunction (as he was skilled in that art), the highest sacred office for his son.'

²⁵⁴ BL MS Sloane 325, ff. 39r-40r.

(Fig. 23; p. 602). Strangely, however, Smith appears to have copied the astrological signs given later in Pomponius's text for a prediction of the death of the emperor Constantius, so that these two different horoscopes, personal and civic, are aligned: "[Jupiter] in fine [Aquarius]; [Saturn] in 25. [Virgo]" (p. 609). However, regardless of where he sourced the specific astrological figures that he used for this annotation, Smith's knowledge of history would have indicated that Valens's horoscope was incorrect: the Ottomans captured Constantinople in 1453. Indeed, while the huge Christianised church building on the left of Smith's drawing is no doubt the Hagia Sophia, the smaller tower with a rounded top on the right was almost certainly intended to be Ottoman,²⁵⁵ making this the perfect example of a diachronic annotation. Smith also found reference to the Turkish conquest in Viglius Zuichemus's preface to his edition of Theophilus's Greek paraphrase of the *Institutiones* (Basel, Froben, 1534),²⁵⁶ part of the *CJC*, which was addressed to another claimant to the inheritance of the Roman *imperium*, Charles V, Holy Roman Emperor: *Porro Constantinopolis usque ad patrum nostrorum memoriam (octaginta enim tantum sunt anni quod in immanissimi Turcae proh dolor dominationem tyrannidemque venit) literis omnibus, & in primis disciplina vigit).*²⁵⁷ So here the very foundation of Roman law is contrasted with the terrible rise of the Turkish menace, with Viglius locating both in one place: Smith has drawn a much less distinctive cityscape to mark the fact.²⁵⁸

²⁵⁵ It is doubtful whether Smith would ever have seen an accurate depiction of Constantinople, let alone an Ottoman mosque; the Hagia Sophia, after all, never resembled a Gothic European cathedral. For a strikingly similar depiction of a Muslim building by Smith, see Fig. 52; in his *Bibliander*, Smith also drew the mosque at Mecca as a squat, domed building (p. 13). Melchior Lorck (1526/7-1583), a Danish artist who had travelled to Constantinople, produced woodcuts of Ottoman mosques in the 1570s, but these were only published fully in 1626.

²⁵⁶ H.2.20(1); A65.

²⁵⁷ 'Formerly, according to the memory of our forefathers (and it has even been eighty years, ah me!, since the most painful dominion and tyranny of the most dreadful Turk arrived), it was in Constantinople that all the writings and the discipline [of the law] first flourished.'

²⁵⁸ It is a common conception that the fall of Constantinople in 1453 encouraged humanism to flourish in Italy, with the flow of Greeks and Greek manuscripts fleeing the Turks arriving in Italy; *op. cit.* Seebohm, p. 8.

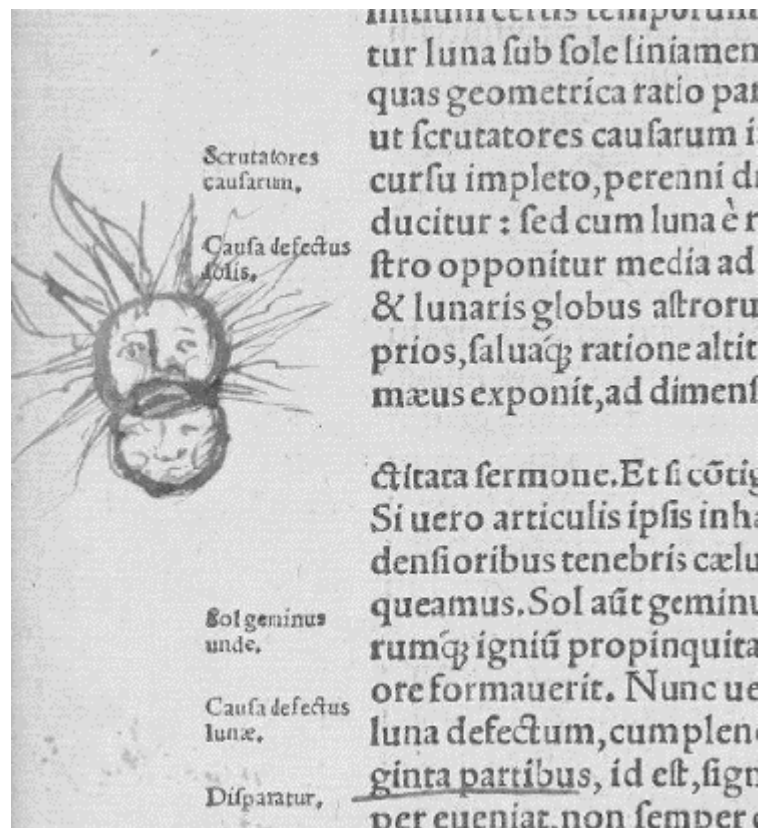


Fig. 21. Ammianus (1527).

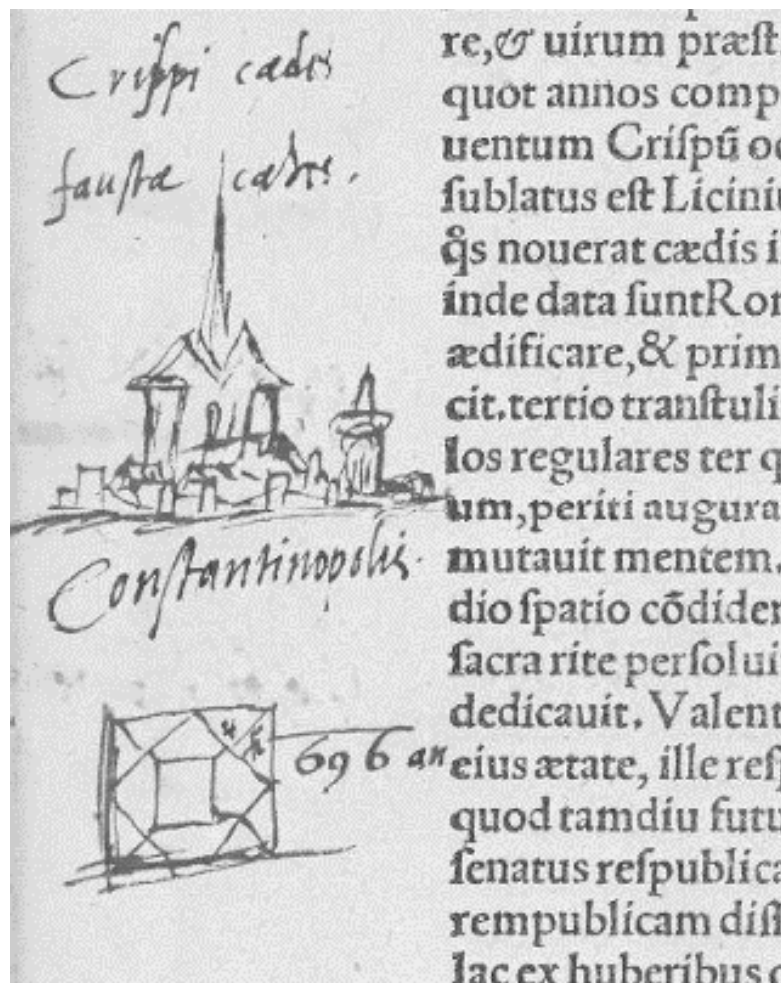


Fig. 23. Pomponius Laetus (1527).

Where you were born mattered, as Ammianus was aware, but this was also by no means a restricting factor if Fortune decides otherwise. Noting that George, Bishop of Alexandria was born in a fullery (for cleansing cloth) (*infullionatus*), Smith also noted the city, Epiphanius, which he marked with a sketch (Fig. 24; p. 533). Smith uses two manicules here, one rather roughly executed, noting a rank mentioned in the text (*tribune scutariorum*), and another more polished, which points to George's place of birth. In this way the arrangement of historical texts around the attainment of rank, according to Fortune, becomes a geographical proposition. One of Cardano's works grouped cities according to the Zodiacal house that ruled them; Smith has noted that "Londinu[m]" is under Gemini (fp. 264r). Smith was reading his ancient texts in

comparison with modern ones by simply transplanting the method of reading he used for one into another: the almost obsessive addition of towns and cities to the margins of the narrative, and the indication of rank using portraits and different kinds of crowns. Smith's chorographical signs for cities and towns are therefore a form of indexing reflecting his interest in rank as a narrative structure and as useful historical evidence. The fullest expression of this reading, as we have seen to some extent already, is to be found in Ammianus and Le Ferron, two authors who were obsessed with rank; in both cases, Smith was literally navigating these texts via the cities and towns they describe. In Ammianus, rank is an equally indexable feature of the text; in Le Ferron it becomes inextricably linked to chorography. In some treaties involving the loss or gain of whole counties, or *comitates*, noble rank is etymologically equivalent to the territorial possessions that come with it, for example, "Comitatus Atrebat[ns]ii", i.e. a county that has been newly instituted as such: *Haec regio Comitatus institutus est, Atrebatiumque Comitatus dictus* (ffp. 123r-123v). As with Giovio's history of the Milanese dukes, such genealogical-chorographical histories were about the ownership of territories, Smith noting in his Le Ferron the distribution of territories at the conclusion of a war with the Venetians, between the French king, the Holy Roman Emperor, and the Pope: "brixia, crema, Cremona, gallis; Ludovico; vince[n]tia, verona, pataviu[m], Maximiliano; functia, rave[n]na, Ariminiu[m], Julio p[ap]ae" (fp. 52r). Indeed, this territorial notation was obsessively visualised by Smith in Le Ferron, every city that is taken by a power being marked with a flag depicting that same power's heraldic symbol, as we saw with the Ottoman capture of Rhodes: a fleur-de-lys for France, an eagle for the Holy Roman Emperor, a serpent for Milan, and a lion for Venice.

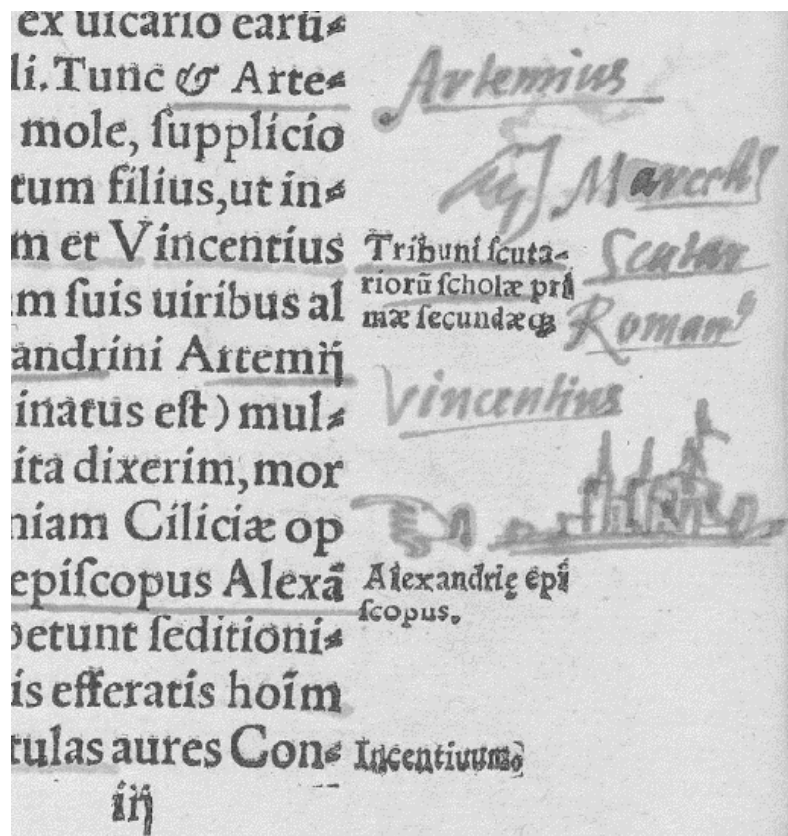


Fig. 24. Ammianus (1527).

Earlier in this chapter I stated that there must have been a relationship between Smith's annotation and a Renaissance visual culture of book illustration, which, I suggest, is especially evident in Smith's chorographical style of annotation. There is a copy at Queens' of Jacob Ziegler's *Terrae sanctae, quam Palaestinam nominant* (Strasbourg, Rihelius, 1536),²⁵⁹ which was a description of the Holy Land and the "frigid regions" such as Iceland, including an alphabetical catalogue of Hebrew place names with their Latin equivalents; once again, Smith does not seem to have annotated this work, and, moreover, all the engraved maps have been removed from the Queens' copy (when this occurred is unclear).²⁶⁰ However, the typography of the Ziegler seems to have

²⁵⁹ D.1.27; A39.

²⁶⁰

influenced Smith's annotations (he did own a copy):²⁶¹ each new section is denoted by pages in which large capitals are loosely arranged in the abstract space of the page (Fig. 25.1; fp. C1r); Smith seems to have imitated this in his copy of Le Ferron, in which the devastation of the region of Aquitaine is marked by the similar arrangement of capitals in the margin (Fig. 25.2; p. 73). Indeed, Smith's chorographical reading of his Ammianus resulted in a similarly abstract arrangement of unlabelled towns, whereby geographical space and distance is signified within the blank space of the textual margins (Fig. 25.3; p. 549). It seems very likely that this arrangement was derived from print, the obvious originator being the Nuremberg Chronicle (1493), which used repetitive, stock woodcuts for portraits and towns, though Smith did not possess a copy. A later illustrated history that Smith did possess, on the other hand (though his copy is lost), was Conrad Lycosthenes's (1518-1561) *Prodigiorum ac ostentorum chronicon* (Basel, Petrus, 1557),²⁶² a world history in which the text is illustrated with repetitive but incongruous woodcuts (i.e. neither part of a single scheme of design, nor by a single artist), with a focus – also observable in Smith's annotations, as we have seen – on prodigious or astrological events. One woodcut, showing a three-dimensional, cartographical perspective of the landscape (not unlike Smith's depiction of Rhodes, which we saw earlier) complete with labelled towns (Fig. 26.1; p. 78), corresponds with Smith's drawing of counties in his copy of Le Ferron, in which Smith utilises frames like those in the woodcuts to denote designated territories, as opposed to loose collections of towns (Fig. 26.2; p. 132). Similarly, Smith seems to have been influenced by the depiction in Lycosthenes of towns destroyed by earthquakes (Fig. 26.3; p. 47), as in his depiction of Antioch in his copy of Suetonius (Fig. 26.4; p. 136). Smith's use

²⁶¹ MS49, f. 92r.

²⁶² MS49, f. 93r.

of such images, perhaps derived from Renaissance visual culture more broadly, was designed to provide a navigable system of signs, demonstrating an almost cartographical desire to map the chorographical elements of the textual, historical narrative.

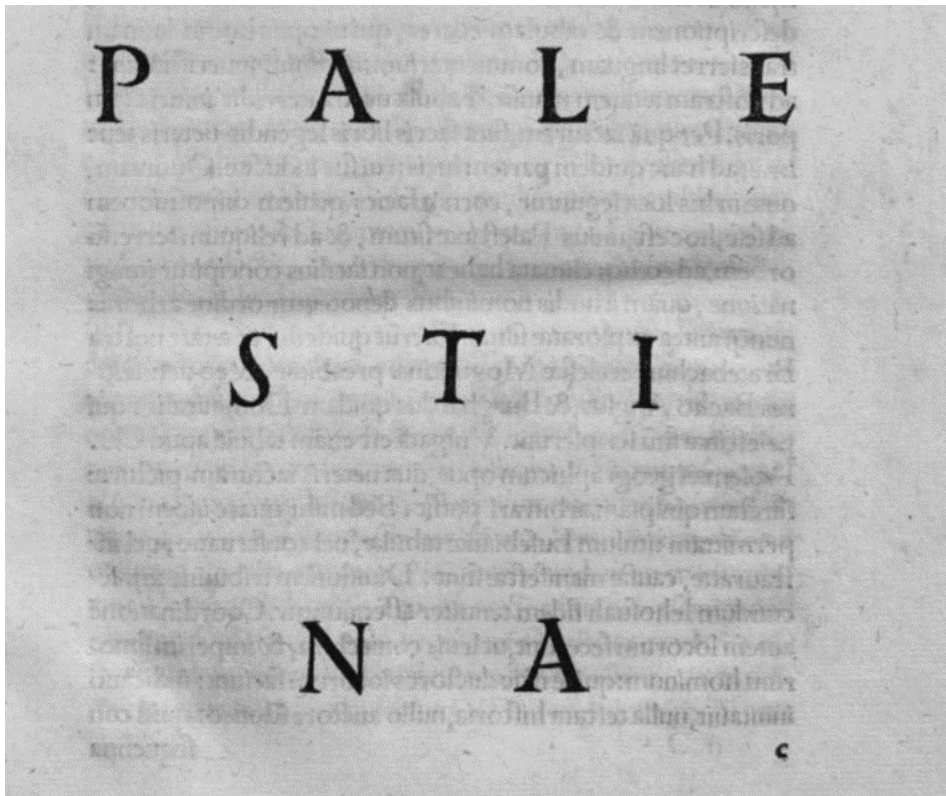


Fig. 25.1. Ziegler (1536).

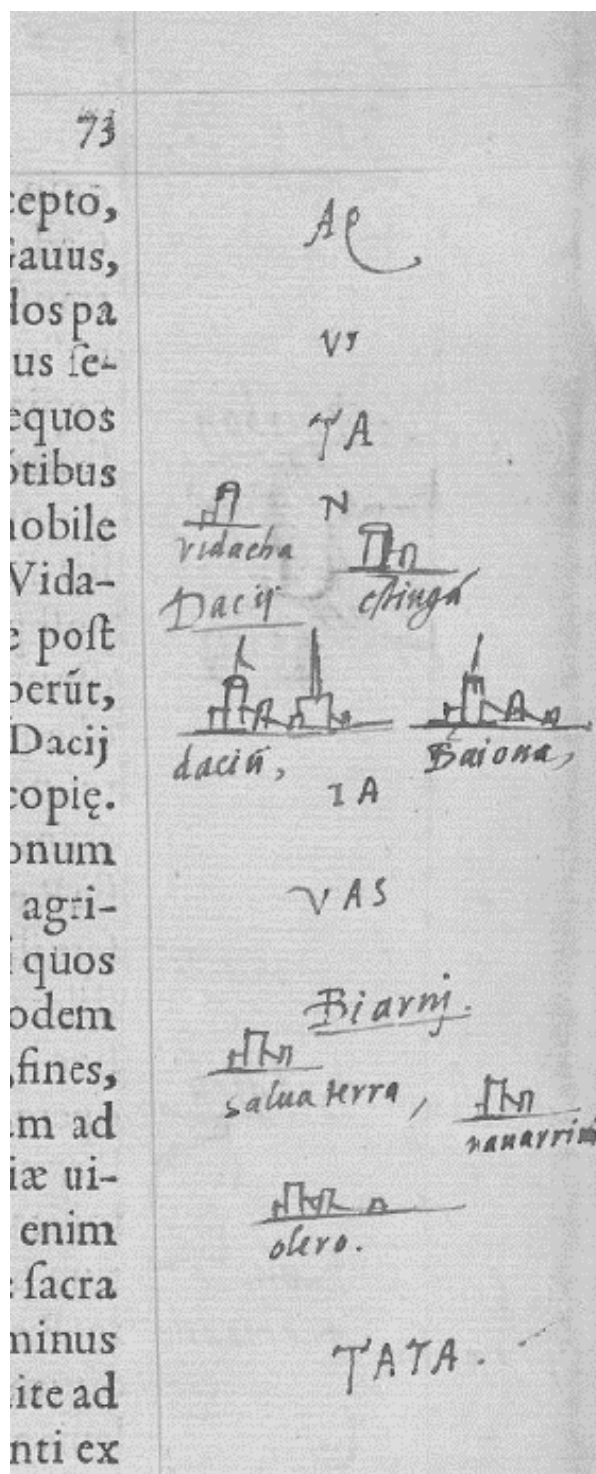


Fig. 25.2. Le Ferron (1554).

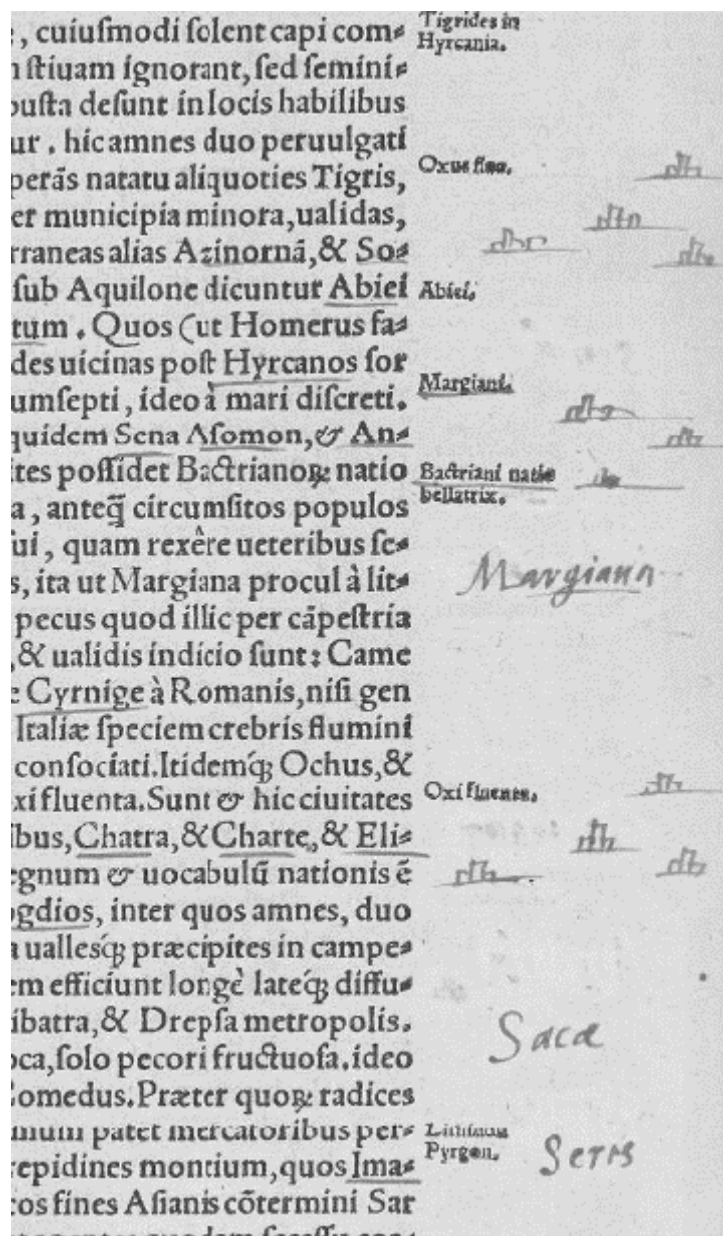


Fig. 25.3. Ammianus (1527).

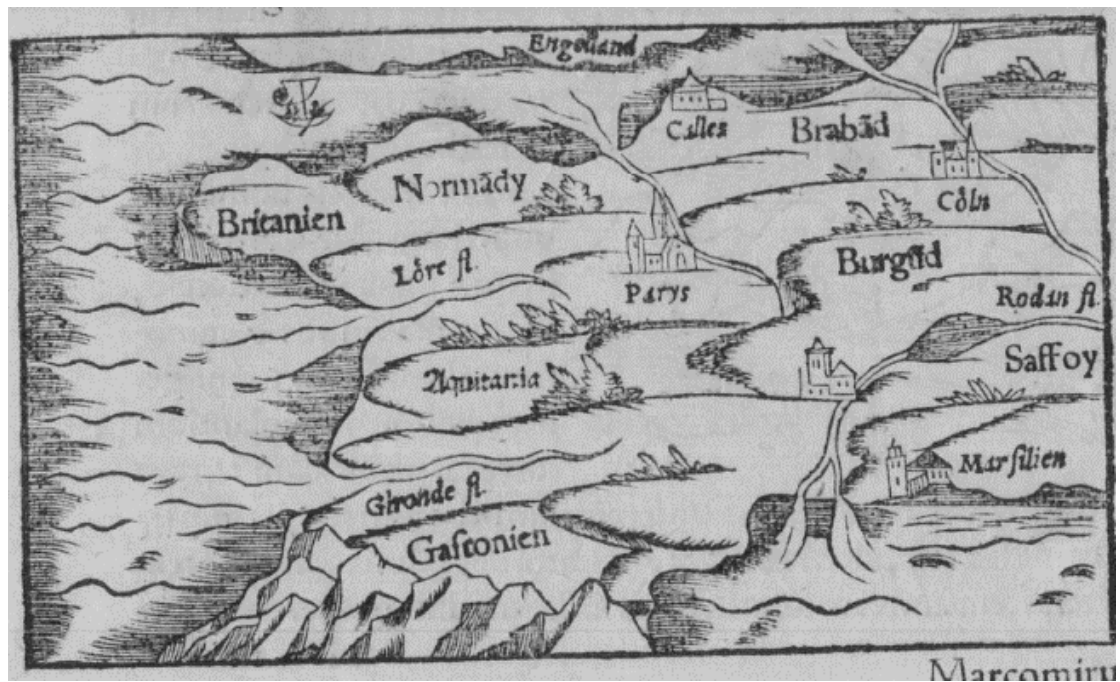


Fig. 26.1. Lycosthenes (1557).

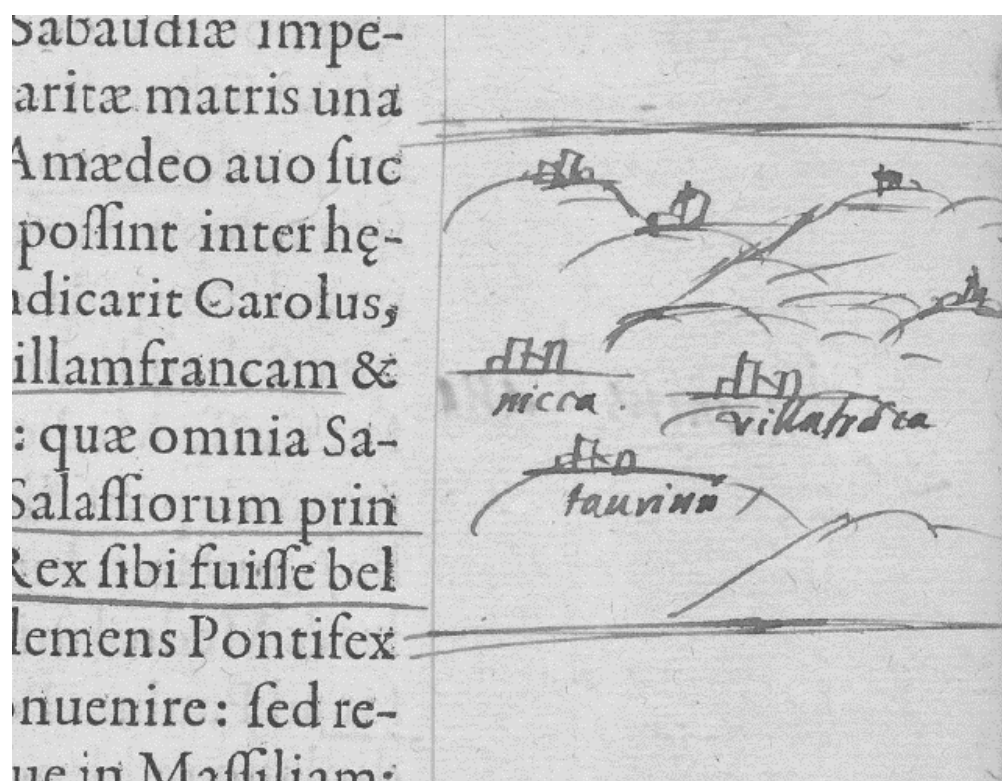


Fig. 26.2. Le Ferron (1554).



Fig. 26.3. Lycosthenes (1557).

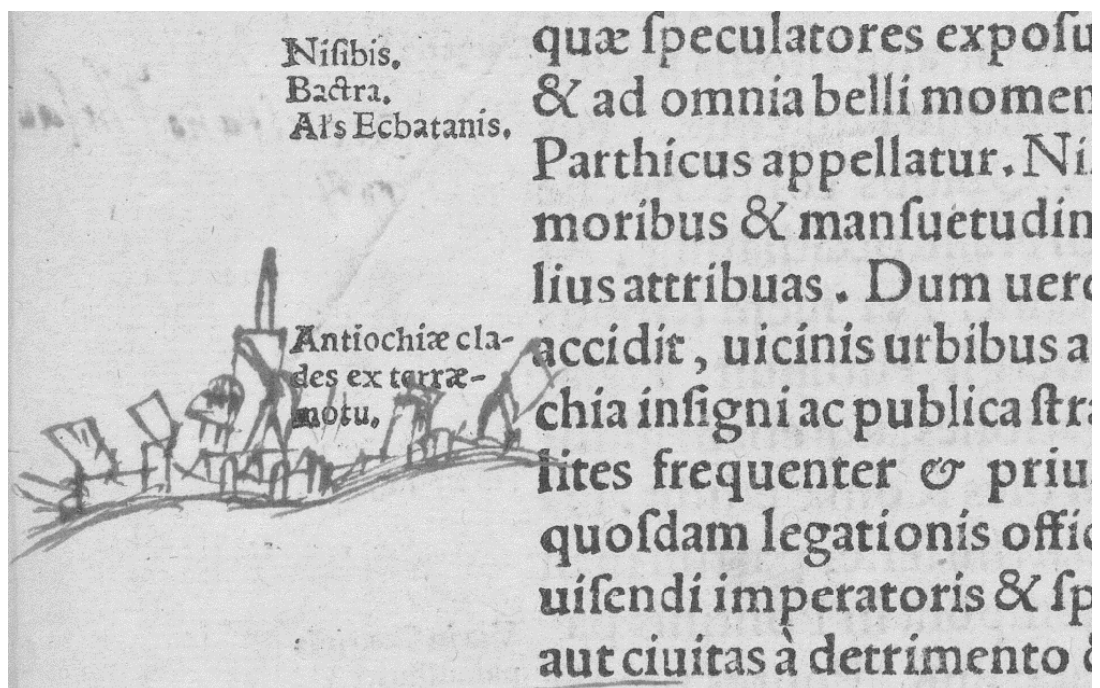


Fig. 26.4. Ammianus (1527).

vi. Conclusion.

Chorography, or the description of place, was vital to the understanding of ancient history. And, as we have seen, the spatial arrangement of texts was equally vital to their comprehension. I began this chapter with a refutation of an earlier scholarly appraisal of humanistic reading as fragmentary, and stated my intention of following a current consensus that such reading should be seen in “literary” terms. I have shown that Smith’s reading was anything but fragmentary: his obsessional use of a system of signs was, I have argued, literary and paratextual, reflecting the polemical force of the various texts that he was reading, regardless of which historiographical argument was being advanced by their authors. In this, Smith showed a clear awareness of the strategies that authors and (perhaps more importantly) their editors and printers used to persuasively structure texts, and to entice potential customers and readers. Smith’s chorographical system of annotation was also, I suggest, a paratext for one of his published works, namely *DRA*, which will be discussed in the final chapter. Throughout this thesis I will strongly emphasise the importance of legal jurisdiction in Smith’s intellectual outlook, especially as a means of organisation and categorisation, and it seems that his chorographical approach to reading history was a continuation of the somewhat earlier reading that Smith carried out in his books of Roman civil law, as we shall see in Chapter 5. Similarly, Smith’s obsession with rank and chorography in *Le Ferron* had a strongly legal, jurisdictional angle. This is entirely to do with legal offices; just as we will see Smith comparing Roman and English legal offices in *DRA*, we see Smith here applying the same notation for “master of the horse” (“M. Eq.”) that appears throughout his annotation of Ammianus to the modern rank of Constable of France: “Carol. Borbon. M. Eq. conestable; Ant. de Prat. jurisp. Cancellarius” (fp. 66r). This comes in

a passage concerning the appointment of legal offices by Francis I, in which Charles Bourbon is made Constable and Antoine Duprat is made Chancellor, a rank also given a Roman legal comparator by Le Ferron, the *jurispraefectus: Rex Carolum Borbonium Magistrum equitum dixit. Antonium Pratianum jurispraefectum designavit*. In the next chapter, on medicine, this urge to categorise things with their classical equivalents will be discussed in terms of the categorisation of *species*, while in later chapters this organisational (or even taxonomical) urge will be framed as the natural arrangement of spiritual and temporal jurisdictions in relation to natural law. Smith's interest in rank and jurisdiction was part of this broader concept of categorisation – things put into their proper place – but it is chiefly in his historical reading that we see Smith responding spatially to such questions of jurisdiction. Indeed, we see Smith responding chorographically – linking place to rank – in his copy of Dionysius of Halicarnassus's *Roman Antiquities* (Basel, Froben, 1527),²⁶³ which we will later show to have directly influenced *DRA*. Here, Smith delineates the *classes* of the Roman Republic in the margins (Fig. 27.1; pp. 162-163), itself a chorographical proposition, since the system of *classes* derived from the three Roman “tribes”, which, as Smith noted, had originally lived in designated parts of the city (*in partes quatuor urbem dividens ... quatuor Tribuum fecit urbem* (p. 160)). Elsewhere in the text Smith draws a map of Italy (“Italia terrarum optima” (Fig. 27.2; p. 21), noting that it was the perfect location for the foundation of a new city, and a chorographical sketch of Rome with the Tiber flowing through it (Fig. 27.3; p. 458). Good for the Romans, certainly, but not for those who lived elsewhere.

²⁶³ F.1.7; A31.

Smith called *DRA* a “chart or map”, a chorographical depiction of England’s legal system set out specifically in opposition to the Continental system of Roman law. In his chorographical depiction of English law, as in the Roman Republic, the classes were arranged according to wealth. However, unlike the Roman Republic, Smith’s England had a monarch. A similar method of jurisdictional mapping appears in Le Ferron, who was a French *parlementaire* or parliamentarian, and whose aim seems to have been arguing for the restriction of the king’s jurisdiction in relation to the local parliaments. Returning to the passage in which Francis installs a Chancellor and a *jurispraeffectus*, we also see the king create a number of new *classes* in the French “Senate,” or parliaments (“XX^{aria} classis” (fp. 66r)), which, as Le Ferron notes, was equivalent to the sale of offices (“venditio Mag[istr]atuu[m]”), something that was never well received by the people (*diu male audiebat apud vulgus*). Le Ferron was interested in the power of the Senate because of the situation in France following the Battle of Pavia in 1525, when Francis I was captured, and France was ruled by its parliaments (“Parlamenta: Lutetia; Tholosa; Burdigala; Rotomagi; Divione; Gratianopoli” (fp. 117r)): *At senatores Gallici, qui Lutetiae (etc.) ... ex veteri instituto juri dicendo praeerant, populum passim admonuerunt, ne animum demitteret, sese colligere potius* (ibid). The jurisdictional and even geographical significance of this is clear: that power can also be located outside of the king’s prerogative. Such discussions, which are at the very heart of Smith’s *DRA*, were always located in ancient history and, moreover, were always framed in spatial or geographical terms, precisely because they were discussions surrounding jurisdiction. Smith’s chorographical reading was never fragmentary, therefore, but pertained instead to the matter at the heart of his whole intellectual project, which was the jurisdiction of the monarchy within the broader jurisdiction of English common law.

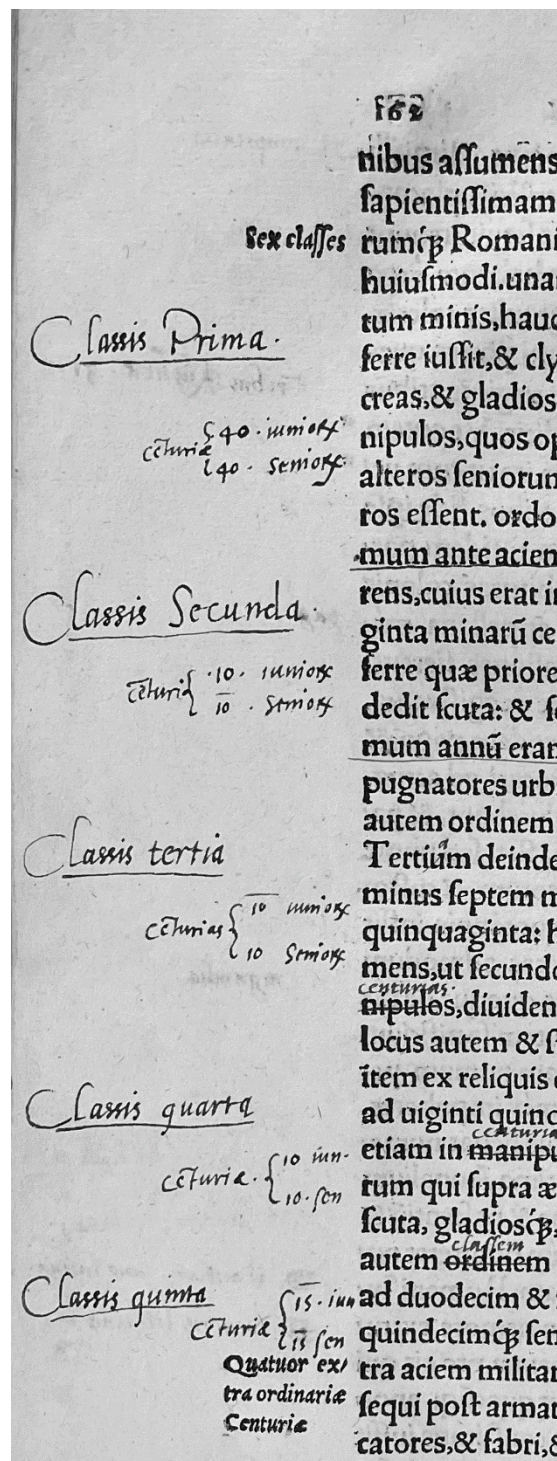


Fig. 27.1. Dionysius (1532).

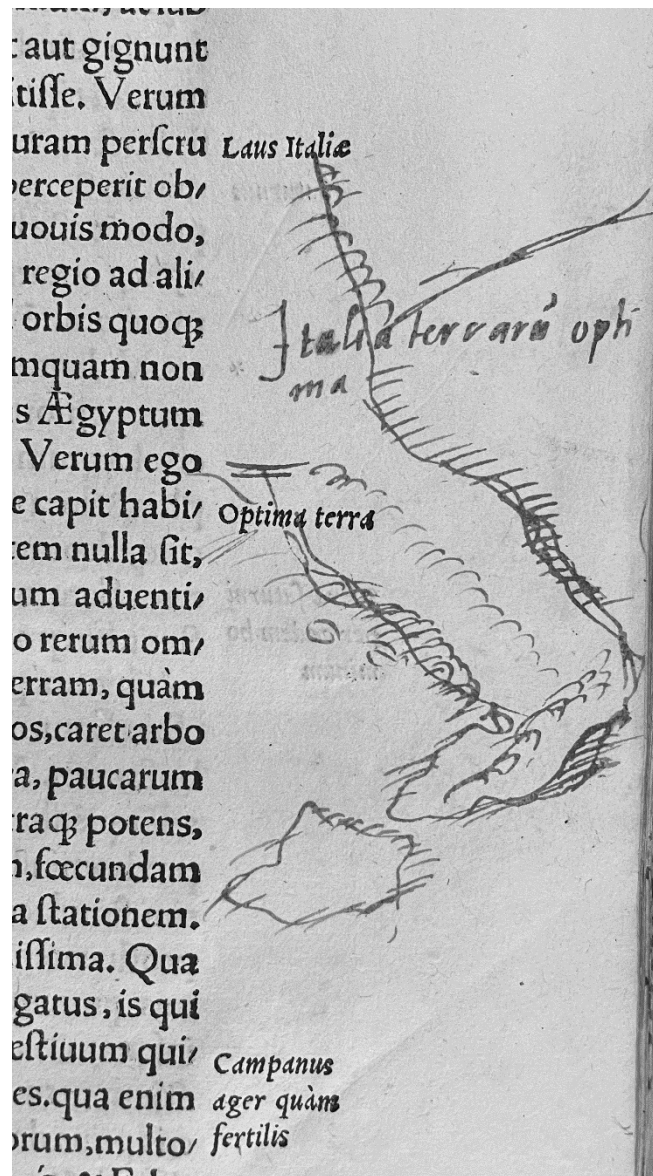


Fig. 27.2.

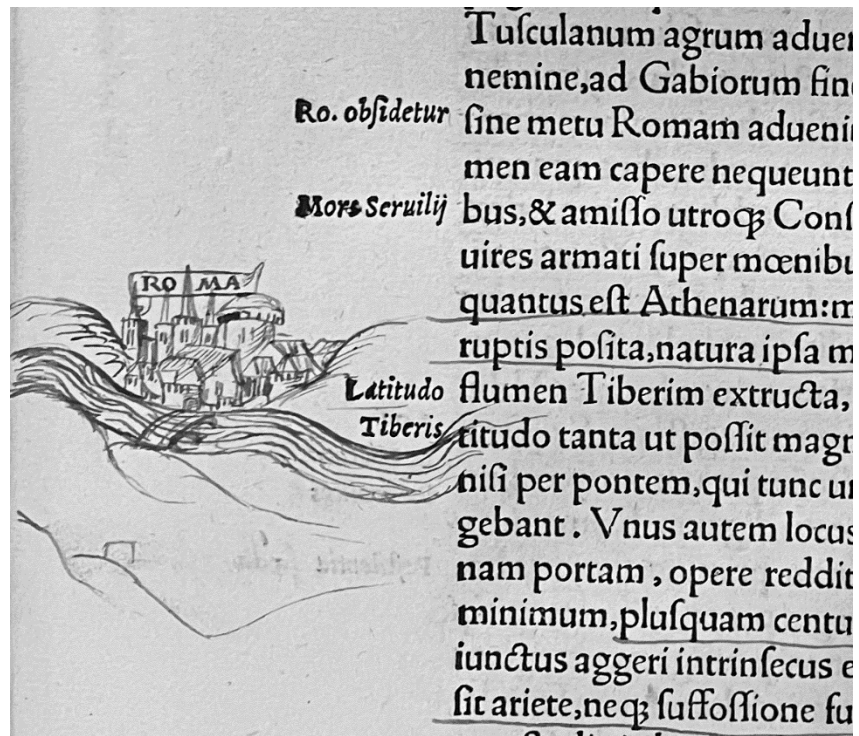


Fig. 27.3.

CHAPTER 3: MEDICINE, AGRICULTURE AND NATURAL HISTORY.

‘In reality, the goal of physiological or anatomical study was, in many instances, a better understanding of texts.’²⁶⁴

Nancy G. Siraisi

‘Medicine, being an art relying on probabilities, facts and inference ... is determined not by dogmas, but by contingent *res*. Thus historical meaning does not really apply, any more than historical intention; the construction of argument and the determination of reference is more important.’²⁶⁵

Ian Maclean

i. Introduction.

In the previous chapter we examined the relationship between historical evidence and the technologies and strategies used in printed books, as well as Smith’s response to these strategies: his own visual register of interconnected signs. Smith treated his books as an extension of the physical evidence, with texts being augmented through annotation to produce a navigable catalogue of facts, akin to the index, that was linked to the historical argument of the text. Naturally this had historiographical implications, with historians using antiquity to further their sometimes nationalistic arguments. The Ian Maclean quotation above describes the different attitudes towards evidence in

²⁶⁴ Nancy G. Siraisi, *Medieval & Early Renaissance Medicine: An Introduction to Knowledge and Practice* (Chicago: Chicago University Press, 1990), p. 80.

²⁶⁵ Ian Maclean, *Logic, Signs and Nature in the Renaissance: The Case of Learned Medicine* (Cambridge: Cambridge University Press, 2002), p. 231.

Renaissance medicine, in which theory was confirmed by practice, and evidence consisted only in what the physician experienced. If the historical context was unimportant, even less so was the intention of the author, which loomed so large in historical books and especially in the treatment of legal texts, which we will address in the following chapter. For medical authors, what mattered was the *process* by which facts were interpreted as being facts: direct observation by the physician was more important than any appeal to authority. In this chapter I will rely, therefore, on the conception of a shift in Renaissance humanist medicine from words to things, and from *genera* to *species*, i.e. from the general to the specific, or from the theoretical to the practical. In doing so, I will attempt to elide Smith's medical reading, and the interconnected use of signs that we observed in his historical reading, to his theories of language; there are no published works of Smith's that concern medicine directly, so Smith's linguistic works will stand in for this absence. The use of language for the identification of *species* – seeing things as they are, which is the ultimate referential form of evidence in medicine – will be related to Smith's works on pronunciation, especially his work on English orthography, *DAS*.

In the previous chapter we observed the significance of etymology as an element of determining historical authority, and in this chapter etymology and language will be seen to correspond to what Maclean describes as the “determination of reference”. This was especially true of legal argument, where there was a highly uncertain relationship between words and meaning, something which Smith applied to his reading of natural history. Maclean's statement, that in medicine one must construct one's argument from observed contingencies, from “contingent *res*”, could equally describe the construction of legal argument. Such contingencies as time and place (*locus*, *tempus*) are crucial to

the case, but the discernment of such facts is usually based on witnesses, and therefore on language or linguistic statements, which are highly fallible and prone to corruption, as indeed is the entire language of the law. Smith's medical reading will be treated in similar terms, which will require some flexibility in what we consider to be "medicine": the early reading of Galen and Avicenna, with their distinctly visual emphases on anatomy and the direct observation of diseases, will give way to a distinctively botanical and zoological obsession with the identification of *species*. The latter had practical uses in medicine, which was closely tied to botany, but also in farming and the management of Smith's estate: knowing what to plant and when to plant it. For Smith, this seems to have been closely tied to his interest in language, expressed in the application of these ancient and modern botanical authors to his English context. Smith's later "medical" reading, concerned with the identification of English fish, for example, still exemplified the confirmation of authority through visual signs and personal experience that had characterised his earlier reading of Galenic anatomy. The later we go, however, the greater the emphasis on the changeability of language, almost certainly a response to his legal reading in the intervening years.

ii. Galenic anatomy.

If there is one contingency which caused anxiety in both Smith's treatment of law and medicine it is how custom determines and changes language, as Smith makes clear in his two 1568 works on Greek pronunciation and English orthography. The linguistic changes introduced through custom can lead to changes in how the law is interpreted and applied; clearly this is not a good thing (as we saw in Smith's copy of the Qur'an), at least from the perspective of understanding the intention of the legislator. In

medicine, however, custom is less problematic, exactly because of the reliance on facts confirmed by observation: a fish will look the same even though its name has changed since ancient Greek times, and the main thing is to avoid being sold a similar-looking but different fish, just as applying the wrong medicine could be harmful to the patient. There is more flexibility concerning custom in medicine than in law because of the emphasis on personal experience as a determination of facts; what one has observed oneself becomes immediately useful. As Maclean observes:

Even though authority is cited in medicine, it is not anything more than the value of experience and reason combined; and even though there is signification through which medicine shares a linguistic structure with juristical inference from words to meaning, and thereby a hermeneutic character ... this is not stipulative; even though there are questions of verbal propriety, ambiguity and obscurity, these are all subordinate to the primary rule of reality ... lawyers depend only on other writings and on words, but doctors must be consistent with things themselves.²⁶⁶

The law makes stipulations to control or even eradicate custom, whereas medicine is far more open, not least linguistically, to customary change. Indeed, in his works on language, Smith compared how the rustics of his own Essex pronounced a syllable (incorrectly, he thought) in comparison with, for example, their Northern fellow countrymen.²⁶⁷ For Columella, the author on Roman farming, which Smith read extensively, it was wrong to expect the rustics to grasp the subtleties of mathematics governing the equinoctial dates, but neither did they really need to: such things can be established by the weather according to rules established by custom. While the appeal to authority is less crucial in medicine than in law, however, there must nonetheless be

²⁶⁶ Op. cit. Maclean, p. 231.

²⁶⁷ *DLG*, fp. 37r: *ut eadem Eurosaxones populares mei rusticiores, nimis pingui & adipato sono, way, day, pay: ut etiam tinnitum illud "i" reddat in fine*; '... just as my rougher Essex countryfolk speak the same words with a too broad and rich sound, way, day, pay, tinkling [perhaps the sense is just emphasising] the final "i"' (p. 157).

a system or authority in medicine on which to base one's observations, such as Galenic anatomy.

In the introduction to this thesis I presented Smith as a Paracelsian reader who – faced with a new school of medicine that was ostensibly contradictory, and was certainly hostile to, the medieval and classical traditions – was engaging with the principles of the text through a cursory exploration of its mechanics. Smith's reading was thereby predicated on borrowing from multiple traditions. The French sixteenth-century lawyers, wrote Ann Blair, were 'noted above all for their role in the development of historicism, and relativism',²⁶⁸ which is to say a consideration of the specificity of laws and customs to a particular place, time and context. This was a problem, because for every *thing* there was also a specific context: '... the endless multiplicity of specific contexts, each with its appropriate institutions, led legal scholars, on the one hand, to the sheer accumulation of historical data, and, on the other, to the search for universal laws underlying them all.'²⁶⁹ This was 'part of a broad trend in Renaissance natural philosophy towards a greater interest in particulars and in empiricism,'²⁷⁰ associated with *experientia*, which Blair saw as part of the shift from logic towards rhetoric and from words towards things.²⁷¹ But a determination to establish universal truths relating to every little thing required the 'eclectic accumulation of authorities and multiple kinds of evidence.'²⁷² There was no sense in which Smith, as a lawyer or otherwise, isolated himself or his reading to a single discipline, let alone to a single school of medicine.

²⁶⁸ Ann Blair, *The Theater [sic] of Nature: Jean Bodin and Renaissance Science* (Princeton: Princeton University Press, 1997), p. 86.

²⁶⁹ *Ibid.*

²⁷⁰ *Ibid.*, p. 97.

²⁷¹ *Ibid.*, p. 83: 'Instead [humanists] favoured a practical orientation, moving dialectic [i.e. argument] away from logic and closer to rhetoric, and a focus on things rather than words, which matched the new Renaissance interest in particulars.'

²⁷² *Ibid.*, p. 87. Cf. Maclean for the eclecticism of Renaissance jurists (*op. cit.*, p. 214).

Smith's reading might therefore be seen in terms of lawyerly eclecticism, with the equally lawyerly desire to establish particular facts in specific contexts, and to confirm them through experience. The problem with all this is that it necessarily involves both authority and intention, two mainstays of legal argument. Lorraine Daston identified the problem with trying to establish the specificity of facts in the context of rhetoric, in which facts 'owe no permanent allegiance to any of the schemes into which they are impressed as evidence. They are the mercenary soldiers of argument, ready to enlist in yours or mine, wherever the evidentiary fit is best.'²⁷³ Indeed, Daston argues, if facts were to be seen to belong to one or another system of belief or argument, they would cease to exist as facts at all: 'in order for facts to qualify as credible evidence, they must appear innocent of human intention.'²⁷⁴ Doctors relied on observation and experience (*experientia*, or even *experimenta*) in the determination of facts – i.e. logical inference – which Smith appears to have upheld, though with a greater allowance (commensurate with his legal training) for custom. For Smith, trial and experience were the driving force behind ideas, which custom then upheld: *id quod non ab omnibus una tanquam per miraculum, sed ab aliquo uno per tentationem & experiendi fiduciam coeptum, in usum hominum & consuetudinum pervenit*.²⁷⁵ Medicine had also, in this way, developed authorities like Galen, whose observations and *experientia* were useful evidence worth following, just as Smith advocated following ancient practice in the pronunciation of ancient Greek.

²⁷³ Lorraine Daston, "Marvelous [sic] Facts and Miraculous Experience in Early Modern Europe" in *Critical Enquiry*, 18.1 (1991), p. 93.

²⁷⁴ *Ibid.*, p. 94.

²⁷⁵ *DLG*, fp. 14v: '... which was not begun by everyone at once, as if by a miracle, but from one person, by trial (*tentatio*) and faithful experimentation (*experiendi fiduciam*), thereby coming into human use and custom' (my translation).

We might identify an example of Smith's eclecticism in the conjunction of Smith's Latin copy of Galen's *De anatomicis administrationibus* (Basel, Cratander, 1531),²⁷⁶ translated by Johann Winter von Andernach (Johannes Guinterius Andernacus) (1505-1574), with his copy of the Greek paraphrase of Theophilus's *Institutiones*, with the Latin commentary of Viglius Zuichemus; these two works were bound together apparently while still in Smith's ownership.²⁷⁷ The fact that the *Institutiones* were intended to be the first step for students in tackling the *CJC* raises the prospect that, for Smith, it was also a useful way of tackling legal Greek by way of transliteration. It is possibly significant, therefore, that a Latin translation of Galen's Greek text has been appended: was this considered a useful tool for cribbing Greek anatomical vocabulary – since the text retained many of Galen's Greek terms in their original script – rather like Smith's Greek *editio princeps* of Dioscorides *De materia medica* (Venice, Aldus, 1499), a legacy of his earlier Greek reading?²⁷⁸ Smith's annotation to his Galen is in a very early iteration of his italic hand, one which is often found in his medical books of the 1530s, so we can assume this reading was taking place in this period, when he was chiefly a scholar of Greek. Smith assiduously underlines the Greek term for medicine (*cheirourgian* *graeci vocant* (fp. 2v)), which is preserved in Greek characters in the Latin text; similarly, when the Greek terms have been transliterated into Latin script in the text, but not translated (because there was no Latin equivalent), e.g. *mesaraeon* and *mesenterion*, i.e. sections of intestine, Smith transliterates them back into Greek in the margins (fp. 48r). We will observe Smith using these same strategies, about a decade later, in his *Institutiones*, in the next chapter. Galen is concerned about nomenclature, but only inasmuch as it is subordinate to his main argument, which is the importance

²⁷⁶ H.2.20(2); A65.

²⁷⁷ The binding appears to be from Smith's lifetime; there is no separate mention of this specific Galen work in his 1576 inventory.

²⁷⁸ F.10.15; A50.

of direct observation – *experientia* – in establishing anatomical fact. Galen is describing how direct and visual observation of the skeletal and muscular systems is crucial to an understanding of how they work: he suggests that students should learn, if possible, from direct observation of human cadavers: *Hoc autem sit opus tuum, hoc studium, ut non librorum modo lectura, verum sedula etiam inspectione, fideque oculata, cuiusque ossis humani speciem accurate perdiscas* (fp. a1v).²⁷⁹ They should therefore go to Alexandria, as Smith notes, since the lecturers there teach with human bones: *Quod quidem in Alexandria multo facilius facies, ubi medici ossium disciplinam auditoribus ante oculos exponunt* (ibid.).²⁸⁰ Other methods for getting hold of cadavers were available, such as tomb-robbing (“Monumentu[m] dirutu[m]” (fp. a1v)), which was Galen’s own experience (*quo ego quoque usus sum*), for example, when a river flooded a tomb and washed out the corpse (*totumque cadaver agminis impetus tractim ductum* (ibid.)). Galen also describes finding a dead brigand (“Latronis cadaver” (fp. a2r)): *Caeterum mihi visum est etiam latronis quandoque cadaver assiccatum*), killed by a traveller in self-defence. To those less fortunate students who have no access to human corpses, Galen recommends getting hold of an ape’s cadaver, which, as Smith had already noted (“Simia” (fp. a1v)), exhibited the greatest similarity of any living animal with human anatomy (*Nam ob illorum naturam binis pedibus incedit, prioribusque ut manibus utitur. Pectus omniu[m] quadrupedum latissimum habet ...* (ibid.)).²⁸¹ Apes are, however, in many ways different (“Quae in simii corpore dissimilia” (fp. 2r)), and so naturally you will want to use an ape that is more like a human: *Proinde eas*

²⁷⁹ Trans. Charles Singer, *Galen on Anatomical Procedures: De Anatomicis administrationibus* (Oxford: Wellcome Historical Medical Museum, 1956); ‘Make it rather your serious endeavour not only to acquire accurate book-knowledge of each bone but also to examine assiduously with your own eyes the human bones themselves’ (p. 3).

²⁸⁰ ‘This is quite easy at Alexandria because the physicians there employ ocular demonstration (*ante oculos exponunt*) in teaching osteology (*ossium disciplinam*) to students’ (ibid.).

²⁸¹ ‘From the nature of [its bones] it walks on two legs and uses its fore-limbs as hands, and has the flattest sternum of all the quadrupeds (etc.)’ (p. 2).

potissimum simias deligito, quae hominis figuram proxime accedunt (ibid.). The reason for all of this is that visual observation is useful not only for understanding, but for the retention of understanding, as Smith notes (“Memoria” (ibid.)): Quod si lectione sola, citra simiarum ossium speculationis usum ac consuetudinem nitaris, haud poteris ita ad amussim hominis cadaver repente visum cognoscere, nec recordari. Siquidem memoria rerum quae sensibus nostris patent, assiduam requirit consuetudinem (ibid.).²⁸² As long as the right kind of ape is being used, there is no question of the student being surprised when encountering a human skeleton: the important thing is the repeated use of direct observation for the understanding of forms.²⁸³

In Andernach’s translation, the Greek occurrences for *memoria*, or memory (*mneme*), and “to remember” (*mnemoneo*), are rendered into “custom” (*consuetudo* (ibid.)); indeed, Smith is only able to note *memoria* in the second, shorter sentence quoted above. Customary usage (*usus ac consuetudo*) is here taken to mean the act of remembering by repetition, but in the linguistic context of this sammelband it is significant that custom – in Smith’s linguistic works the enemy of good pronunciation and of legal language – is the chief part of memory, through the act of repeatedly looking (*speculatio*), which prepares the mind for understanding. Galen’s emphasis on repetition was an attack on the “empirical anatomists”, who believed only in learning from what they observed during surgery on patients (i.e. without prior dissection of cadavers; they especially derided the use of apes), which Galen calls an “accidental”

²⁸² ‘But if you rely on reading (*lectione sola*), without constantly observing these bones (i.e. the bones of apes), and on a sudden come on a human skeleton, you may be at a loss. For to recall observed phenomena demands constant familiarity’ (p. 4).

²⁸³ In the 1930s Oswei Temkin, the Russian-American historian of medicine, demonstrated the procedures of Galenic anatomy by reading aloud from the *Anatomical Procedures* while a student performed dissections on the bodies of a pig and an ape; Oswei and C. Lilian Temkin, “Some Extracts from Galen’s *Anatomical Procedures*” in *Bulletin of the Institute of the History of Medicine*, 4.6 (1936), p. 466.

methodology: *Hoc pacto neque decantata illa Anatome, graece kata periptosin* (in Greek script, lit. “falling downwards”), *quod casu accidat, dicta, quam nonnulli medicorum magna celebritate profitentur, spectatorum naturam edocere potest* (ibid.).²⁸⁴ Galen claims that prior observation helped him in a medical emergency, an epidemic of anthrax (“Carbunculus in Asia” (ibid.)), during which he was able to observe the exposed sores of the patients (*carbunculi*) by knowing exactly which muscles to manipulate (*musculos contraherent*). Galen attributes this ability to the teaching of Satyrus (*praeceptor*), and so here we have a clear appeal to authority, the opposition of one school of medicine to another, and an appeal to evidence based on direct observation, in this case not only of anatomy, but also of the ineptitude of the other students (*Alios autem omnes quasi caecos videbamus*).²⁸⁵ Moreover, Galen gives us the direct application of the stated method to the treatment of the patient. The appeal to memory, however, also reflects Smith’s apparent use of his Latin Galen for cribbing Greek vocabulary, which is combined, in the Galenic anatomical context, with the requirement for direct observation to aid memory. This is especially true, indeed, when the Greek name for a body part simply refers to what the object looks like, an example of the metonymic naming described by Quintilian (see Chapter 4). Smith notes Galen’s discussion of bones of the hand: *Vocant autem Anatomici ossa digitorum, internodia latine, phalaggas* (i.e. battle-line) *vel skytalidas* (i.e. stick) *graece, ut in libris de ossibus annotatum est* (fp. 5r).²⁸⁶ However, such metonymic naming can only describe the object up to a point, and so Smith also adds a marginal drawing of a forearm (Fig. 28; ibid.) to the discussion of tendons. While there is an attempt to add musculature, clearly

²⁸⁴ ‘Hence the much-vaunted “empirical” anatomy, to which some physicians attach special value, must fail to explain the nature of the observations which have been made’ (p. 4).

²⁸⁵ ‘We then saw some students, as though blind (etc.)’ (p. 5).

²⁸⁶ ‘It has been said in my *De ossibus* that anatomists call the bones of the fingers (in Latin, *internodia*), in Greek *skytalides* or *phalanges*’ (p. 16).

this is not a dissected arm, merely an arm and a hand: a mnemonic device illustrating the section being described, and a part of remembering by looking.

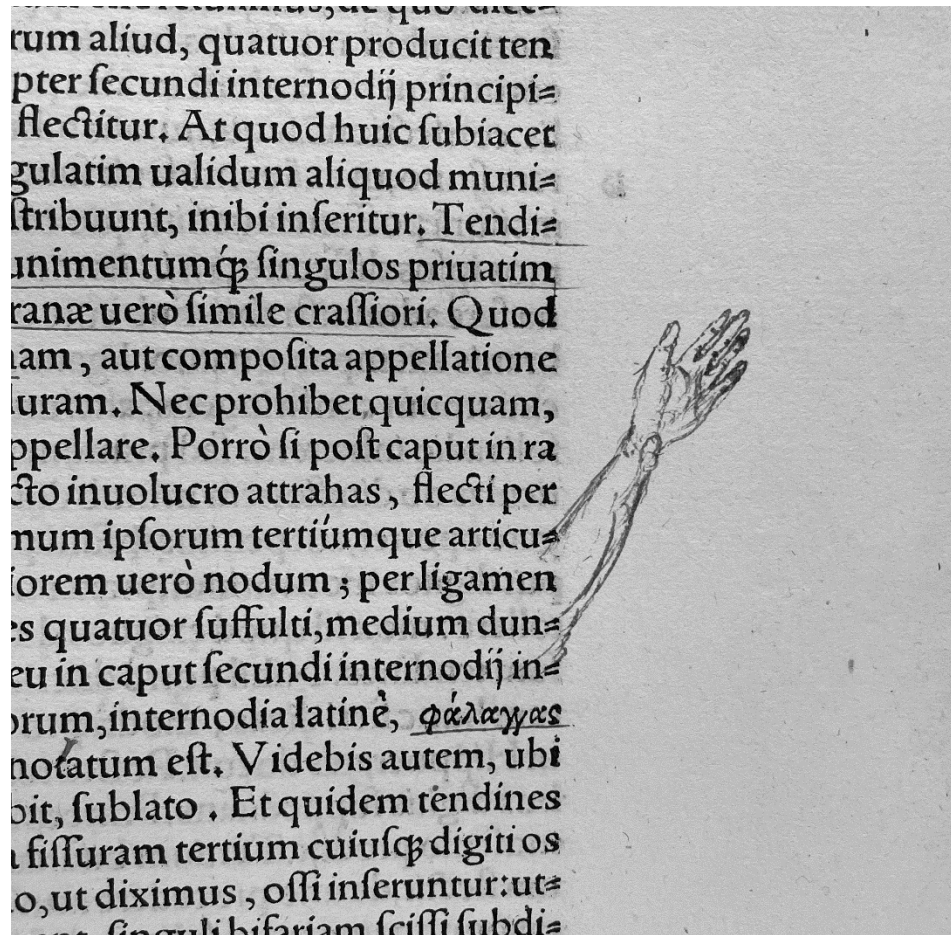


Fig. 28. Galen (1531).

To see this as an example of the mnemonic function of Smith's reading is only adequate, however, as a description of Smith's medical reading in terms of learning medical terms in Greek and Latin; there is no anatomical function to Smith's drawing that Galen would have considered useful. Instead, as we have seen, constructing a medical argument was a more involved process concerned with compiling facts from various authorities and sources, and, above all, from experience, to prove certain truths about nature, in some cases by disproving the errors of the same authorities. In this

sense, Smith's annotations provide visual referents for forms that Galen has observed through dissection, not intended to be an exact visual representation of a thing (*res*), but to provide a verifiable and incontrovertible signifier of what Galen is describing. If something looks like it does, and this is verified by repeated or "customary" observation, then the errors that lawyers might typically attribute to custom – such as the corruption of language – cannot be of any concern. In Smith's Galen this is illustrated by his use of visual signifiers to confirm truths about medical forms, which also apparently served to alleviate Smith's doubt about the veracity of the modern edition through which he was accessing this ancient medical authority. Describing veins, Galen refers to the vessel coming from the left ventricle of the heart to the lungs (pulmonary vein) as an example of a vein: *Quales autem venae, tale ex sinistro*. Smith has erased *sinistro*, however, and inserted "dextro" (fp. 45v). This perhaps surprising intervention stems from an ancient error, Galen describing how the anatomists got into a terrible muddle about the arteries and the veins in the lungs. Galen states that only by feeling the movement of the vessel can you be sure it is an artery (*pulsare deprehendas, arteriam illud vocato* (fp. 45r). Indeed, you should *not* call something an artery unless you can feel this motion, even if it comes from the left ventricle, and in this the anatomists should be disregarded (*at prius quam motus ipsarum evidenter tibi innotescat, non necesse est vel quod ex sinistro cordis ventriculo oritur, vel quod ex dextro, sic pronunciare, quemadmodum nonnulli Anatomicorum factirarunt* (ibid.)).²⁸⁷ However, Galen concedes that it is not possible to distinguish the two vessels connecting the heart and lungs in this way ("No[n] clare distinguu[n]tur" (ibid.)), and so the anatomists have got tied up in a problem of *nomenclature*, about whether the

²⁸⁷ 'But unless its movement be clearly distinguished you should not call a vessel an artery, whether it spring from the left ventricle or the right, whatever some of the anatomists might say' (p. 177).

vessel coming from the left ventricle signifies a vein, and a vessel coming from the right ventricle signifies an artery: *qui etiam in hisce appellationibus inter se discreparunt: attamen quidam ipsorum quod ex sinistro sinu vas procedit, arteriam aut venam asserunt, nonnulli quod ex dextro.*²⁸⁸ So the problem is not only one of the impossibility of distinguishing something visually, but also one of naming it (*pronunciare ... nominare*). Galen notes that there is a way out of the mess: *Rectius autem ii qui neutrum ipsorum absolute nominarunt, arteriam, aut venam, sed appendice quadam pronunciati praecipitantiam correxerunt, vel arteriosam venam dicentes, vel arteriam venosam, quatuor siquidem nomina duobus vasis Anatomici indiderunt* (ibid.);²⁸⁹ Smith notes the two terms “Arteria Venosa” and “Vena Arteriosa” (ibid.). It is on the following page that he corrects the textual error, in which the printer has failed to correctly distinguish the left and right ventricles, which is ironic given that this is the crux of Galen’s argument: since you cannot distinguish the veins by the senses (including by looking), it is best to distinguish them by *function* (i.e. to which ventricle of the heart they correspond), with a qualification provided by their appearance, i.e. that the vein looks like an artery (“Venae una habent tunica[m], {Gr.} oiochitones” (fp. 45v)), while the artery looks like a vein (“Arteriae {Gr.} dichitones” (ibid.)).²⁹⁰ Smith seems to have provided these Greek terms himself.

²⁸⁸ ‘They differ from one another over this terminology, for some declare that the vessel springing from the left ventricle is an artery or vein, others that springing from the right’ (ibid.).

²⁸⁹ ‘A better course is theirs who refuse to call either of these “artery” or “vein” simply, but modify this hasty ascription by calling them “arterial vein” or “venous artery”. In fact four names have been given to two vessels by anatomical experts’ (ibid.).

²⁹⁰ ... *melius esse rati, ut quoniam ipsa pulsu parum evidenter cognoscimus, vas spiritale vocemus arteriam: sed quia venae tunica vestitur, venosam adiiciamus. Rursus venam altero nomine ab usu nuncupemus: quoniam vero & hoc arteriae corpus est, arteriosam addamus, non optimum (ut dixi) fuerit, pulsu & eius defectu ea discerni, veum quum hoc sensibus non adeo clare distingui, a communione quam cum utroque cordis ventriculo habent, indi nomen debet, appendix vero a corporea substantia fieri. Porro ex iis qui citra appendicem ipsam nominarunt, quidam certe soli corporis substantiae, quidam vero usui attenderunt. Itaque juxta corpoream substantiam arteria vas est quod ex dextro cordis sinu oritur: vena autem, quod ex sinistro contra usus ratione: quod ex sinistro prodit arteria est: quod ex dextro, vena;* ‘I think it preferable (since we cannot distinguish them clearly by the pulse) to call the vessel containing *pneuma* (*spiritale*, i.e. breath) an “artery” but, since it has the covering of a vein, to add “venous”. So to the other I give the name of “vein” from its function, but

Smith therefore applies the correct interpretation of a visual and functional interpretation of the veins in the lungs to the incorrect text – this is not so much a medical intervention, but one that any good reader should be making – but he also adds Greek vocabulary where it is absent. These two functions of reading are united in Smith’s response to Galen’s description of the third kind of pulmonary vein, the “rough artery” (*arteria aspera*, i.e. trachea), which he says are made up of cartilages in the shape of the Greek letter *sigma* (σ): *tertium arteria aspera, ex cartilaginibus, quae literae σ imaginem referunt, constructa*.²⁹¹ In Andernach’s translation, this is represented by a piece of type, giving the lower-case *sigma* form. However, Smith does not quite follow this, strangely, given that the type quite accurately represents the circular shape of cartilage that Galen is describing (*Itaque circuli cartilaginis* (etc.)). Instead, Smith has added the archaic capital “.C.” form of *sigma* to the margin,²⁹² accompanied by the abbreviation “Nũ.”, which presumably refers to the Latin numeral form (*numerus*) for one hundred (*centum*), signified by the capital “C”; this is equivalent to the epigraphic Greek capital form of *sigma*, usually found on inscriptions.²⁹³ However, why Smith felt he had to make clear that this was the Latin numeral form and not merely the Greek letter form is unclear; possibly because modern printed editions typically used the modern capital form of *sigma* (Σ). The printer has not used the wrong letter, therefore, simply the wrong form of type, because if he used the archaic form of *sigma* it would not read as such to many of his modern readers and

since its substance is that of an artery, I add “arterial”. It would be best, as I said, to distinguish these vessels by the presence or absence of a pulse. But as that is not clearly discernible by the senses, their names should be given from their communication with the two ventricles, with a qualification from their substance. Those who name them without adding a qualification pay attention to their substance only, or to their function only. By substance, the vessel springing from the right ventricle of the heart is an artery, that from the left a vein’ (ibid.).

²⁹¹ ‘The last is made of cartilages shaped like the letter *sigma*’ (p. 178).

²⁹² Smith often adds these two “points” on either side of numbers or page references, giving weight to the idea that this is a number or *numerus*.

²⁹³ Op. cit. Singer, pp. 178 and 250, n. 146; cf. op. cit. Temkin, p. 475, n. 29.

would appear wrong; however, if he used the Greek modern form of a capital *sigma*, this would not resemble its circular shape. Again, it seems strange that Smith felt the need to make this intervention when the lower-case *sigma* serves perfectly well (unless the fact that the cartilaginous rings are not entirely closed off is significant, but how Smith would have known this is not clear). Regardless, Smith was clearly engaging with a two-fold *textual-visual* relationship, as he did in his historical books, in which the construction of argument from authority involves direct observation – with a view to both form and function (expressed in the technology of the printed book) – including, in some cases, the contradiction and amendment of the imperfect text.

iii. Diagnosis and cure in Avicenna and Aetius.

According to the conception put forward in the previous section, of a movement away from logical inference from language towards an interest in deriving facts from particulars and things, we might expect Smith to follow the same trajectory from his earlier to his later medical reading. In turn, we might expect Smith to move away from arguments derived from rhetorical arguments (Galen's squabbles with the empirical anatomists, for example) and towards the use of experience and custom as evidence. Maclean, meanwhile, characterised this movement in terms of the move from *genera* to *species*: 'Medicine is only a science in an improper or loose sense of that term, whereas it is certainly a conjectural art ... art must deal with singular events, which are infinitely variable and are known through the senses: our intellect can only grasp things at the level of species and genera.'²⁹⁴ The determination of fact should therefore only be achieved sensually, i.e. through direct observation, but such a mechanism was not

²⁹⁴ Op. cit. Maclean, p. 273.

always possible (as we saw in the case of pulmonary veins), and there was, moreover, always a temptation to grasp what could not be perceived, as Nutton pointed out: ‘Usually, contagion was discussed in terms of what could be observed, but the temptation was always there to seek for its invisible causes ... No ancient doctor ever saw the seeds, animalcula (i.e. bacteria), or effluvia that were said to cause the disease or to carry it from person to person: he inferred their existence by logic from invisible “facts”.’²⁹⁵ As we have already observed, a Renaissance humanist physician (especially one trained as a lawyer) should be involved in the move from logic to rhetoric, and from language to things. However, in this section, and throughout this chapter, we will see Smith concerned with the kind of inferential, conjectural medicine that is associated with ancient medicine, in which rhetoric certainly played its part (the analogy of “seeds” being one example): ‘The famous sentence of Anaxagoras, “What appears before us, a glimpse of the invisible”, provided ample justification for a whole range of causal theories, some taken for granted, others expressly defended in argument, and it allowed the ancient doctor and philosopher to explain a relationship between particular phenomena by exploiting a range of analogies drawn from all aspects of life.’²⁹⁶ Smith’s five-volume set of Avicenna’s *Codex* (Venice, Pincius, 1523)²⁹⁷ included the basic kind of logic diagrams expressing these causal relationships, which are usually associated with scholasticism and would later be used by Pierre de la Ramée (1515-1572) – another scholar who Smith supposedly encountered in France – from the middle of the sixteenth century, to convey dialectical argument visually (Smith, however, was not nearly as keen on Ramism as his protégé Gabriel Harvey);²⁹⁸ one such set of tables

²⁹⁵ Vivian Nutton, “The Seeds of Disease: An Explanation of Contagion and Infection from the Greeks to the Renaissance” in *Medical History*, 27 (1983), p. 2.

²⁹⁶ Ibid.

²⁹⁷ M.2.17-21; A81.

²⁹⁸ For Smith’s encounters with Ramus cf. op. cit. Burnett, Simpson and Thorpe, p. 30. Ramism was also concerned with the shift from what Grafton and Jardine called the shift from “humanism to the

describes what must be considered in the use of leeches in different medical cases (*sanguisunarum usus considerandum* (Fig. 29; II, fp. 10viiiR)). In Smith's annotations to Avicenna on plague and its cures, as well as diseases that seem to have affected Smith's own experience, we see him engaging in this process of determining a causal relationship from the cause of the disease to the cure.

humanities", i.e. toward a modern, humanist tradition of pedagogy (op. cit. 1986). Mordechai Feingold, however, noted that Ramism has been considered to have had a democratizing influence, and criticized Grafton and Jardine for their use of Ramist "shallowness" in developing their thesis: "English Ramism: A Reinterpretation" in Mordechai Feingold, Joseph S. Freedman and Wolfgang Rother, eds, *The Influence of Petrus Ramus: Studies in Sixteenth and Seventeenth Century Philosophy and Sciences* (Basel: Schwabe & Co. AG, 2001), pp. 128-129. Feingold notes that Walter Ong referred to the tradition of Ramism in England as "juvenile" (p. 127), concurring that in general English scholars used Ramus as a 'facile tool for argumentation' (p. 144); cf. Ong, *Ramus Method, and the Decay of Dialogue* (Cambridge, MA: Harvard University Press, 1958).

adbuſta ſupponant: aut nimia ex
apud ponticoſe ſanguifugas cũ ipſe
guſſigari: quaz appoſito morbia
milibus. ¶ No parte nota q poſt
ius

odcum ſanguinis extrahit: vt a di-
oſura ipſius. Juxta illud Raſe ſe
ro occiderint locis adhuc ſi vt ibi
ecandus aut multa aqua calida la-
teſi: quod dicitur ſi fuerit impoſſi-
lo modo addibere nō poſſunt ſunt
ate carne: quibus ſi applicent ali-
i multa aqua calida ſicut iubet Ra-
quarti ſexta trac. 4. c. de cura mor-
d morſus e ad infectione vnguis
ignis adminiſtratus poſt extrahio-
is cũ aqua & ſale. Et in iſto caſu vi-
q cum aqua ſola calida: propterea
re locus morſus ſeruat. ¶ Attende
cie ſunt ita ſalubres & pauce mali-
medicinarū q poſt ſanguifugas me-
uare vultus ſuſſicialiter & pāno li-
p ſi in morſu ſanguifuge ventroſa ap-
iteretur applicatio eius neq vt ap-
niſt pauci ſanguinis qui circa morſu
generet. ¶ Unus eductioni ſola pla-
terio q quidā pſultant ſtatim poſt
riace electe: vt ſi ſiſtoſitas elicta ſue
cōicata a corde p eā ſtatim repleatur.
¶ In hac parte ſeptima dat qua-
tuor ſpecialia remedia & vni ge-
ituz ex morſu ſanguifuge. Primus eſt
p puluerem gallarum combuſtaruz.
q cōſtrictio earuz eſt vebemē & pro-
p poſſino calcis puluerizate. De qua
rimus cineritatez corporis lapidoſo/
ſanguine. Abluta quidē deſiccan-
nerando eſſecant ſuper locū vulne-
rio cineris & maxime cineris ligno-
a illud pun. ſcōo buius. c. de cinere.
cus & reliquorum retinet ſanguines.
ablutus fuerit reſtringit ſanguines
ſine morſicatione. Juxta illud pun.
acquirat ei cōglutinationē & exicca-
perſperſio pulueris regule combu-
ſacit qua vulnus claudittur. Juxta il-
Regula furni que eſt bene aduſa hz
eſt de regula nō lota. Sed regula lo-
atiua. Eſſe ſerapione dicto. c. dicē
ec teſte medicina bona ad cōſolidan-
e eſt: medicina queq alia a predictis
no terra ſigillata lapidis ſanguinarie:
inogloſſe vel plantagine vel burie
uic caſu remedia dedit. c. de ſangu-
are ceperit pānoſis lineus aceto inſu-
nerit terra ſiguloſa vel regule recen-
ie combuſte & contrite deſuper erit
dia predicta reſtrictiva ſanguinis iā
guifugas apponit hora qua ſanguis
fuge fluxu ſanguinis ſuſpūuz indu-
gibus dicti ſunt prouenire apāta ſpū
idioribus q poſſit ſanguine teſte re-
tinec fugere deſinūt donec laſſe fue-
s & magnis vili ſe appendunt.
arte octaua a tāgū duas vtilitatez ſpe-
m generalem applicationis ſanguis/
tancia vel intercūtanea ſicut eſt ſa-
yphrea nigra de ſanguine ſuſco melā
en arabicum idem ſignificans qd ſa-
puſſulae paruas fixas lenco diuſas
viceribus cruſoſis vt ait pun. quar-
runt autez hio ſanguifuge affice poſt
do ſanguinem malio & acutis permi-
dicionum morbozum ſubcutaneoni-
ribus nigris melancholicis que ſunt
ila tibiari paupet petentiū elemoſy-
nab hio ſanguifuge nigrum & corru-
eſt in alijs caſibus ſimilibus illo qui
etigimib & ſcabie ſeda & albaras ni-

cando & corticez generando vt calz &c. ¶ Alterius nota q be ſanguifuge cō-
ferunt ſabaf & morbis ſubcutaneis cũ immediate educant hanc materiā ſub-
cutaneam. Sabafenſis ſunt ruborez puſtuloſi. Alcuabē ſunt loca nigra melan-
colica ad ſanandum diſſicilia: vt littera notat exterior.

De partibus

gra & varicibus & elephantia & tinea maligna & puritu inſeſto & lepra ex ſan-
guine melācholico vno. Similes hio vtilitatez piememorat Raſe ſeptimo al-
manſoria capitulo de ſanguifuge dicens. Sanguifuge cum in locis ponitur
vbi eſt impetigo aut ſabapba vel vulnus malum & antiquum corpore prius
phlebotomia inanto auxilium prebent. ¶ Attende primo q aliquorum ſuit
opinio q ſanguifuge corpori appenſe electiue attrahunt & ſibi ſugunt melio-
rem ſanguinem peiori relicto. Quod ſi verum foret non ſolum inutilis ſed no-
ctua plurimum in dictis caſibus applicatio eſſet ſanguifugarum neq conue-
niret niſi in plectoria. Cuius contrarium nos edocuerunt medici ſolēnes Ra-
ſe & Hſin. Et experimentum ſano teſtatur. Ilam videmus eas frequenter he-
rere malis viceribus & inde fugere corruptum ſanguinem. Et ſi poſſit ſuge-
runt ſtatim crepantur ſanguis ab hio exiens apparebit ſuſcus ſordidus turbi-
dus. Et quia talis pſomoz videtur ipſa ſanguifuge & luto quo aluntur pre-
ſumendum ſatis eſt q plus talem attrahunt cooperante ad id natura noſtra
que bonum retinet vt theſaurum ipſius & malum expellit. ¶ Attende ſecun-
do q non tantummodo in predictis caſibus ſanguifuge vntur: immo etias
interduz applicamus eas ſuper emoroides ſurda doloroſas & ſuper bochia
epidimalia & ſuper vel prope carbūculoſas malignas & antraces ſimiles maxi-
me cuſ timor vel ſuſpicio eſt ne deſitterant & ad intima redeant.

Sanctur aqua et-
Sale.

Sequitur figura consideran- dorum in vſu ſanguifugarū.

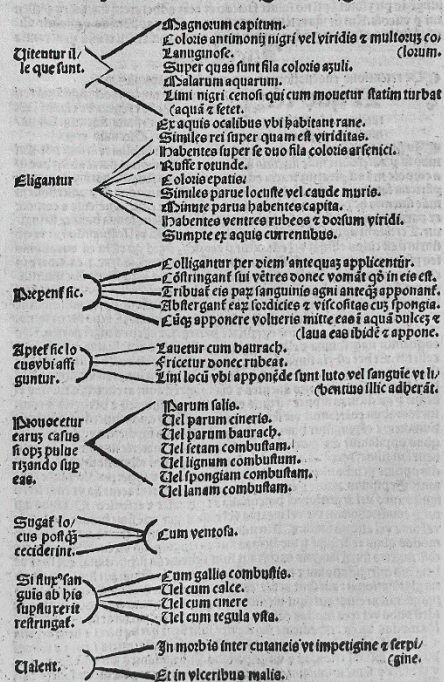


Fig. 29. Avicenna (1523).

Smith does not annotate his Avicenna a great deal, given its size, and he is also far more interested in the commentary provided by the medieval French doctor Jacques Despars (1380-1458) than he is in the main text. What occupies Smith above all in the Avicenna are three things: vomiting (*vomitus*), enemas (*clisteres*), and the plague (*pestis*). The first two things are concerned with diagnosis and cure; the third (in which diagnosis and cures are also discussed but are less relevant) is more concerned with the cause and

with the doctor's best intentions under the difficult circumstances. Smith was also aware, in the case of diagnosis, that authorities might differ ("Avicenna contra Galen[us]" (I, fp. ii7r)); this was in regard to the observation of urine as a diagnostic tool: *Cuius contrarium innuit hic Avicenna in textu: et sic Galenus et Avicenna differunt in significatione et comparatione illarum urinarum adinvicem.*²⁹⁹ Galen says that it is better if the urine is first "turbid" (or opaque) and then goes clear than if it remains opaque, but that the second option is still better than if the urine goes turbid having first been clear.³⁰⁰ Is Smith implicitly accepting Avicenna's explanation? It does not really seem to matter to Despars what Galen's interpretation is, nor does it seem to matter to Smith that Avicenna uses his interpretation for the diagnosis of varying stages of digestion. The disagreement may therefore simply be in the order of benefit: clearly indigestion (the first option) is worse than complete digestion, but Avicenna agrees that the third diagnosis (*ebullitionis*, i.e. a form of extreme indigestion) is indeed worse than the others.³⁰¹ Nature, after all, could not reasonably be expected to digest everything (*cum ratione quia natura non ei obedit*); the appeal to what can reasonably be expected of nature is an example of what Nutton describes as rhetorical, causal inference. Diagnosis is therefore subordinated to the question of authority: it is enough that

²⁹⁹ 'Of which thing Avicenna signifies the contrary position here in the text: and thus Galen and Avicenna completely differ in the signification and comparison of the urine.'

³⁰⁰ *Et dicit ... Galenus quod illa quae mingitur turbida & postea clarificatur melior est sibi appositae etiam quae mingitur turbida & sic permanet etiam melior est quam scilicet illa quae mingitur clara & postea sit turbida*; 'And Galen says that urine which is passed opaque and afterwards goes clear is better than that which is passed opaque and remains so, which is also better than that which is passed clear and afterwards goes opaque.'

³⁰¹ *Avicenna autem his auctoribus videtur in hac parte dissensus quia prima significat stomachum eum quod natura in digerendo laborat cum ratione quia natura non ei obedit stomachum eius totalitatem: licet stomachum partem patiat. Secunda significat digestionem factam stomachum eum & alios proximam digestionem completam. Tertia ebullitionem*; 'But Avicenna is seen to dissent from these authors in this, because the first test shows nature struggling to digest in his stomach, which is reasonable because nature does not completely obey the stomach; and the stomach will suffer on his part. The second test shows complete digestion in the stomach according to Avicenna, and to others, nearly complete digestion. The third shows ebullition (i.e. a failure of the stomach acid).'

Avicenna contradicts Galen (and Rabbi Moses and, incidentally, Averroes). However, it is equally possible that Galen is being defended here by Smith.

The appeal to nature and reason is perhaps not enough for Smith, precisely because it operates in the realm of the general and in the language of logic. Avicenna was a follower of Galenic humoral medicine, but, ‘in the *Canon*, [he] was influential in enlarging the idea suggested by Galen that some medicines, simple or compound, had particular, individual effects due not to the primary qualities (i.e. hot, cold, moist or dry) but to a purely idiosyncratic “specific form”.’³⁰² Smith notes, however, that aloe should not be given on cold days (“*frigidis dies no[n] est danda aloe*” (II, fp. Eee5r)). Avicenna can also be placed in the broad movement we have described from *genera* to *species*, towards particulars, from diagnosis to cure. Diagnosis operated in broadly inferential terms, as part of a humoral system of purging and emetics: ‘Frequently used remedies included wine, employed since antiquity for cleansing wounds, and various laxatives and emetics, prized because they removed superfluities or bad humors.’³⁰³ Vomiting is accepted by Smith as a means of diagnosis on Avicenna’s authority, via Despars’ commentary: (“*Vomitus ... Utilitates vomitus*” (II, ffp. 6viiiR-7iV)): *ut in eis fiat vomitus sunt chronice sicut hydropisis & epileptia & melancholia* (fp. 6viiiR) ... & *confert lassitatti corporis & ulceribus que sunt in renibus & vesica* (fp. 7iV) ...³⁰⁴ It is also a cure, with Avicenna recommending purging after meals: *Ipse quoque fieri debet in mense semel aut bis post repletionem* (ibid.).³⁰⁵ The condition of melancholy, indeed, offers a clear progression from humoral cause through diagnosis to cure, according to

³⁰² Op. cit. Siraisi, p. 145.

³⁰³ Ibid., p. 148.

³⁰⁴ ‘So that in these diseases chronic vomiting occurs, as does dropsy, epilepsy and melancholy ... it confers weariness to the body, and ulcers in the kidneys and bladder.’

³⁰⁵ ‘The same should be made once or twice a month after eating.’

Avicenna himself: “Melancholia proveniens ex splene” (III, fp. rr3R)): *Et sic modus tertius proveniens ex splene & meseraica. Et signa eius sunt multitudo appetitus cibi. Et paucitas digestionis & inflatio ventris ... Et cura eius est ut sumat in potu. 3. iii. Epithymi contriti cum. 2/3(?) in sirupi acetosi in hebdomada semel* (ibid.).³⁰⁶ Smith follows Despars’ commentary, meanwhile, noting that the purgative effects of vomiting are useful in the treatment of leprosy: *in alleviatione lepre ... quia per vomitum purgantur humores qui si ad cutem spargerentur sedarent colorem: iuvat ergo vomitus* (ibid.).³⁰⁷ Enemas (*clysteres*) (“Clyster” (II, fp. 7iiiR)) ... “Clisteres” (fp. 5viiR)), on the other hand, which were generally used for the treatment of constipation in the healthy (*tutius esse sanis constipatis frequenter sumere lavamenta per anum sub forma clisteris ex aqua hordei* (etc.) (fp. 5viiR))³⁰⁸ are also declared by Despars to be useful in all kinds of situations: *neque securior laxandi ventrem in omni tempore: in omni regione: in omni etate: & in omni sexu quam per clystere vel suppositorium* (fp. 7iiiR).³⁰⁹ These are conjectural generalities rather like diagnosis by observation of urine. Enemas, however, offer Smith the chance to get into something with a much greater sense of particularity: a recipe. Once again mining Despars’ commentary, Smith appends two “rules” judging the use of clysters, using the shorthand familiar from his legal annotations, for *regula*, which in those circumstances usually denotes a maxim. However, while Despars uses the same abbreviation in his commentary (is this where Smith picked it up?), here it has the sense of a recipe or “receipt” (*receptus*), to use the archaic terminology: *R. furfuris quod sufficit ut. Mensura 4. & ponatur in sufficienti*

³⁰⁶ ‘And likewise the third way it arises is from the spleen and intestine. And its signs are a large appetite, a lack of digestion, and bloating of the stomach ... The treatment is to take 3 (and a third?) measures of crushed thyme, with 2/3 of a measure of sirup of vinegar, in a drink, once a week.’

³⁰⁷ ‘... in the alleviation of leprosy ... because humors are purged through vomiting, which if they were to spread to the skin, would discolour the skin (a symptom of leprosy), so vomiting helps.’

³⁰⁸ ‘... it is better for healthy people who are frequently constipated to take an enema in the anus in the form of a *clister* made of barley water (etc.).’

³⁰⁹ ‘Nor is there any safer way of loosening the bowels at all times, in all regions, and for every age and sex, than by enema or suppository.’

quantitate aque (etc.) ... *R. [decoctione bletarum] sic le quod sufficit in aqua sufficienti coquatur bene* (etc.) (ibid.).³¹⁰ As we can see, Smith is interested in the rules or at least in the presence of rules, but not apparently in the specifics of the instructions. We are, however, moving towards the realm of particulars.

Indeed, the rhetorical generality of Despars' commentary vanishes in the case of the plague, to be replaced by the physician's direct appeal to the evidence of his own experience. Diagnosis is easy in the case of plague (Avicenna assumes plague is caused by the corruption of the air by vapours),³¹¹ but prognosis is impossible. As Smith notes, nothing must be promised to the plague patient ("Nihil certi promittendu[m] in peste" (V, fp. 4HvR)): *Et nunquam promittas alieni salutem hac febro detento: dato quod voceris a principio: & quod tuus patiens sit valde obediens & astantes sibi sint idoneissimi: & apothecariis fidelis & doctus & bene munitus: sed in eis dubie prognostica semper* (ibid.).³¹² In the face of such a frightening disease, Despars can only offer his own experience, in which the cause of the plague is also believed, following Avicenna, to be corrupted air: *Vidi parisiis temporibus meis latrinarum & fovearum mundatores aliquos in intrantes foveas maxime fetoris, ubi slico moriuntur ... Et epidimiali tempore vidi aliquos afferentes mihi suas urinas: quorum tetigi pulsum & neque urinam neque pulsum reperi multum alteratum & naturalitate: quorum aliqui*

³¹⁰ 'Recipe: take enough bran to fill four measures and dissolve it in a sufficient quantity of water ... Recipe: [to make a decoction of wheat], take sufficient to fill a measure, and a sufficient quantity of water, and cook it well.'

³¹¹ Op. cit. Nutton, p. 18.

³¹² 'And never promise the health of someone affected by this fever: even given that you are called right from the start, that your patient is exceedingly obedient and his attendants are the very best, and the apothecaries are faithful and learned and well-equipped, still always doubt their prognostics.' Siraisi puts this in cynical terms: 'Skill in prognosis was a prerequisite for following standard advice urged on practitioners by various writers. This advice included avoidance of hopeless cases; [and], in those [which were] taken on, [the] careful manipulation of the hopes and fears of the patient and their relatives so as to inspire confidence in the physician – viewed as a psychological asset to recovery – and the prompt payment of fees' (op. cit., pp. 133-134).

eadem die moriebatur alii in crastino ... (fp. 4H6v).³¹³ When it comes to curing the plague, indeed, experience is the best authority, and here we are dealing in particulars (“Vini usus in peste” (fp. IIII4r)): *credo didicisse multis experimentis in me* (ibid.).³¹⁴ Smith has also drawn a fish to note that while some generally avoid eating fish during plague times (*quod quidam prohibent generaliter pisces tempore peste* (Fig. 30; ibid.)), Despars thought it was fine if cooked with a little vinegar, sage or cinnamon (*aceti & saluse & canelle modice* (ibid.)).

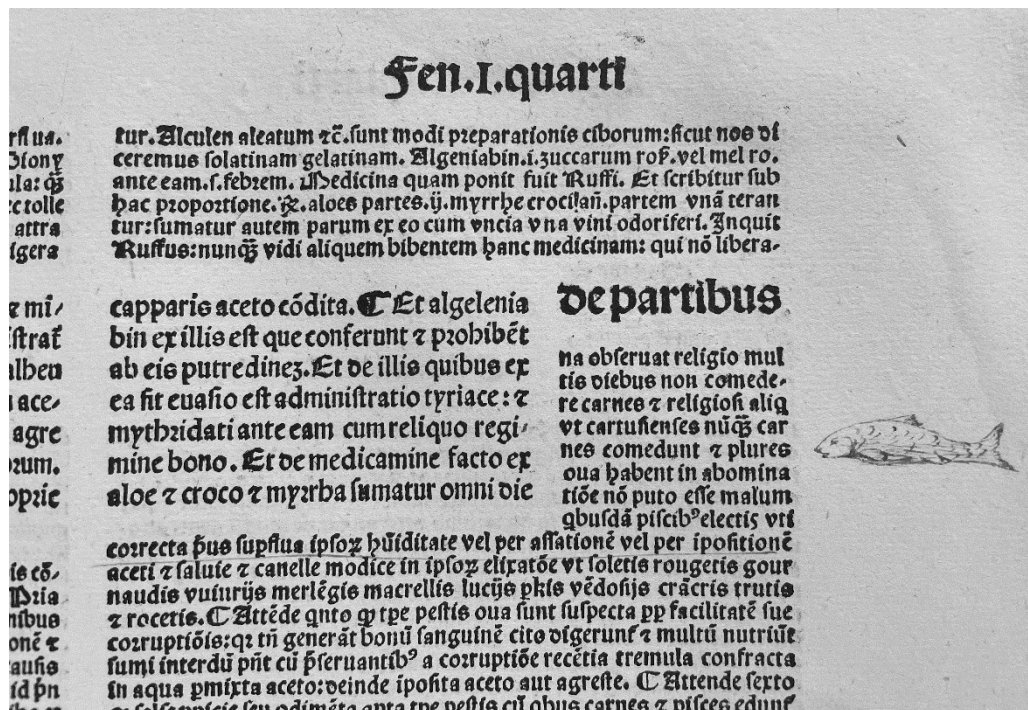


Fig. 30. Avicenna (1523).

Experience, even when it cannot provide a cure, provides the best possible confirmation of authority, which is especially applicable to diagnosis. Smith’s copy of Aetius of

³¹³ ‘In Paris in my time I have seen cleaners entering the toilets and pits, especially those pits which smelt foul, from which it is considered that they died ... And during the time of epidemics, I have seen others bringing me their urine, whose pulses I took, finding neither the urine nor the pulse to be greatly altered from the normal state, some of whom died that very day, others the next.’

³¹⁴ ‘I believe I have revealed many things from experiments on myself.’

Amida, a sixth-century Greek physician, which contains three works on medicine, reveals his own approach to observation and experience as a confirmation of medical authorities. There are two hands here, one identical to the hand seen in Smith's Avicenna, and so probably dating from the mid-1530s, and a later hand more closely associated with his reading of the 1560s or 1570s. This is apparently confirmed by his annotations. Smith marks a short passage on the throat (*gurglione*) in Aetius's second work, *De cognoscendis et curandis morbis* (or *Decima sermones*), adding a manicule and annotation: "Hoc videtur fuisse meu[m] m{alum?} (II, p. 61)",³¹⁵ i.e. this was seen in my illness. Smith, as we know from his manuscript autobiography, suffered from a tumour in the throat towards the end of his life, which removed his voice and most likely killed him, though the annotation in Aetius likely refers to an earlier illness.³¹⁶ A tumour in the throat is one of the cases being discussed here: *quae ipsa adfecto circa gurgulionem consistens aliquando tumorem excitat in ipso* (ibid.).³¹⁷ Aetius is describing the loss of the voice in cases where drainage of fluid from the head (via the rough artery, or *aspera arteria*) is obstructed by this becoming twisted (*cum suo extremo obtorquetur*), or by the tumour, causing a build-up of fluid (*superhumectatus*). In the worst cases (*quod sane extremum*) this leads to a complete loss of the voice: *Quod si amplius augescat malum, vox ipsa in totum perditur* (ibid.).³¹⁸ In this case Smith is confirming a diagnosis through its symptom or sign. Experience, therefore, is what moves the conjectural art of diagnosis from the realm of *genera* to the particularisation of *species*. Often this is a rhetorical act, i.e. saying "this thing

³¹⁵ NB: many of Smith's medical books have been trimmed at some point, some of them apparently in Smith's lifetime, since they are in original, unrestored bindings; losses from annotations are marked with {} brackets.

³¹⁶ Op. cit. Burnett, Simpson and Thorpe, p. 69; this would, however, suggest the extremely late annotation date of 1576. Cf. MS Sloane 325.

³¹⁷ 'This same malady is brought on whenever there is a tumour of the throat arising in that same place.'

³¹⁸ 'If the condition worsens further, the voice is completely lost.' The same point about *defluxus* is noted slightly earlier: "Vocis intercept{a} causa" (p. 55).

happened to me”, but Smith’s medical books may also be seen in the context of a move from rhetoric to *practice*.

Diagnosis occurs visually in Smith’s annotations to Aetius, with a later programme of annotation – as has been mentioned, this book was read several times across several decades – including doodles of suffering patients, not unlike the physiognomic portraits that Smith was adding to his books of ancient history around the same time. Smith is once again engaging with Galenic or humoral medicine, noting that dysentery is caused by yellow bile (“Dysenteria a flava bili” (II, p. 176)) and also noting a Galenic cure, *picra*, made from aloe, which is not attributed as such in the text: “Picra Galeni” (II, p. 112); here Smith is using the earlier hand associated with his Avicenna. Smith is also illustrating the visual connection between anatomy and diagnosis of illness: in the first part, the *Libri septem*, for the section derived from Galen’s description of the channels of the nose and the actions of the breath (“Inspiratio et Respiratio” (I, p. 285)), Smith has added a man with an enormous and almost visibly obstructed nose (Fig. 31; *ibid.*); this is in Smith’s later hand. However, at this point, the text is simply describing anatomy, and so the doodle only makes sense when we follow Smith’s annotations somewhat later, which include the categorisation of symptoms: “Mucus ... In palatu[m] screatu [i.e. producing phlegm in the palate] ... In nares{ exufflatio (i.e. producing phlegm in the nose); sternutati{one} (i.e. sneezing) ... ~~screatu~~ (*ibid.*)”. From the obstruction of the vessels comes an unpleasant smell in the nose (“Odorandi nocume[n]ta unde” (*ibid.*)): *ergo his ita se habentibus odorandi nocumentum non meatibus nasi, sed prioribus cerebri ventriculis*.³¹⁹ Smith then moves from the

³¹⁹ ‘Therefore, in these conditions, the harmful smell does not affect the nose but first the ventricles of the brain.’

symptoms to the cause (“Aer plus aeq[u]o frig[i]dior” (ibid.)): *vel partium refrigeration humectatione contingit, aer enim praecipue plus aequo frigidior inspiratione attractus narium meatus & circumvicinas partes extemplo refrigerat.*³²⁰ Finally, Smith moves to the cure, i.e. to the recipe: “Nigella ... Castoreum (i.e. secretion of beaver testicles); Acetu[m] squilleticu[m] (i.e. vinegar of shrimp)” (I, p. 286). Even at this much later point in his life, therefore, Smith is still very much operating in the realm of ancient, humoral medicine – cold and heat – but there is a sense here of Smith’s own observation and confirmation of the facts, as well as his focus on the remedy. Smith draws another portrait to illustrate an inflamed head, which is interesting given that this malady has no visible symptoms: “{C}aput Calidu[m] et perustu[m] {a}ssidue a destillationibus {vex}antur” (II, p. 62).³²¹ In fact, in this case, the symptom and its cause are apparently less important than the remedy. Smith therefore gets straight into how to make the decoctions that are useful for treating maladies like inflamed heads, these being derived in Aetius’s text from the ancient physician Philumenus: “{P}ix in oleo plurimo {di}ssoluta (i.e. pitch dissolved in oil) ... Thure & mirrha cu[m] vino et {o}leo tritis (i.e. frankincense and myrrh ground in wine and oil) ... {U}nguentu[m] Irinu[m] (i.e. ointment of iris) (ibid.)”. The easiest way of marking this in the margin, one favoured by Smith throughout his reading, is the derivation of *species* from *genera* using the same notation seen in Avicenna’s diagrams, in which the ingredients are listed under one heading, as shown by Smith’s notation of the distillations useful in this case (*sorbtionibus vero ... decocto*):³²² “Decoctu{ hyssop; ficuu[m]; nucu[m] pinearu[m]; Iridis” (i.e. decoctions of hissop, fig, pine nuts and iris) (ibid.). In this way botany

³²⁰ ‘Or it happens through the cooling and moistening of the parts of the nose; for the air chiefly is colder than usual during inhalation: it is drawn into and immediately cools the nasal passages and surrounding areas.’

³²¹ ‘Distillations (i.e. catarrh) are usually the cause of a hot and inflamed head.’

³²² ‘... by useful potions truly distilled.’

becomes a part of the shift from *genera* to *species*, with ingredients for distillations being just one of many possible applications of the taxonomical arrangement of plants.

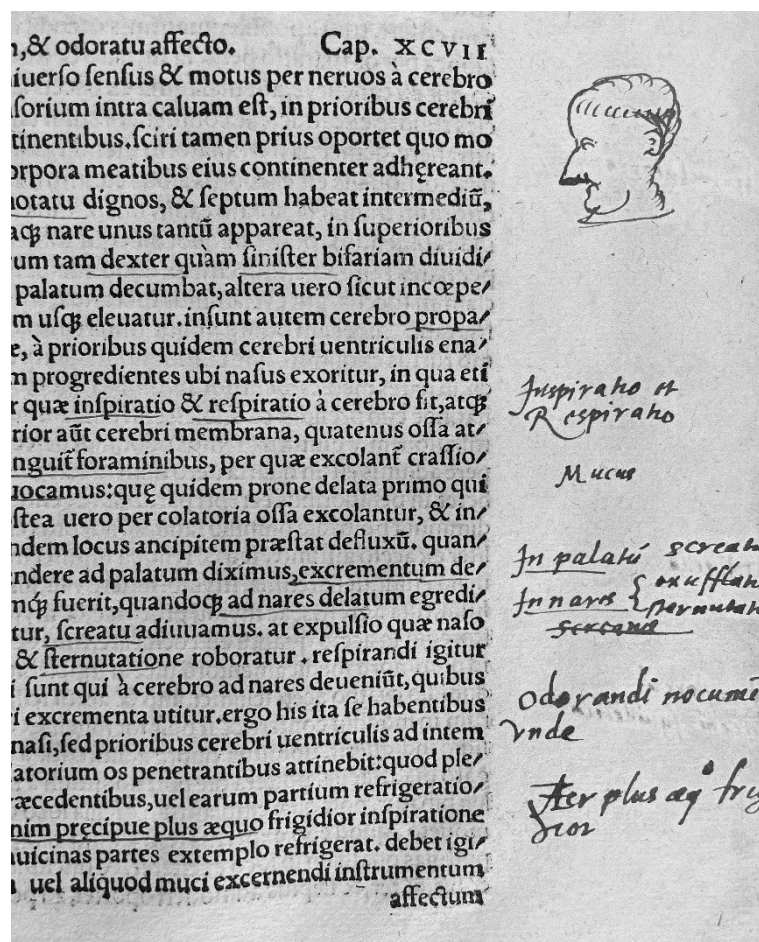


Fig. 31. Aetius (1533-1535).

iv. Ancient and modern practice.

I began this chapter by claiming, following Blair and Maclean, that Renaissance medical practice (and Renaissance thought in general) involved a movement from words to things, which was expressive of the movement from logic to rhetoric (scholasticism to humanism), and from *genera* to *species*. We began with medicine, and the conflicting appeals to logical inference (generalities which were, of course,

rhetorical) and to particulars. In this section we will move almost entirely away from medicine, though the medical methodology we observed in Galen and Avicenna will remain to the fore: direct observation and customary practice, and the confirmation of authority by experience, in this case with regards to botanical and zoological knowledge. Once again, the importance of experience will be placed in the context of a general shift towards local knowledge, the belief in the ability of specific medicines to cure local areas of the body, which sixteenth-century Paracelsian medicine emphasised in contrast to Galenic medicine and another ancient authorities.³²³ This section will discuss agriculture and therefore botany – to some extent a part of medicine, most obviously because of the part it plays in the preparation of remedies – and will address how the application of names to things is part of botanical knowledge. We have seen how the visual identification of things is important for diagnosis and treatment, but it is also important for the identification of plants. As with anatomy, and the taxonomy of the body, the customary naming of things is simultaneously a useful and an uncertain means to understanding. As Sven Dupré has observed, translation (*translatio*) refers to direct transfer but also to change, using the example of grafting trees (something with which Smith is particularly obsessed, though this term never apparently appears in relation to grafting in the books read by Smith).³²⁴ However, *translatio in adversarium* can also be an antagonistic, rhetorical process involving parody, or throwing one's opponent's arguments back at them, as in *in utramque partem*. Dupré observes that botanical naming could equally be an antagonistic process,

³²³ Op. cit. Siraisi, p. 147.

³²⁴ Sven Dupré, "Doing it Wrong: The Translation of Artisanal Knowledge and the Codification of Error" in Matteo Valleriani, ed., *The Structures of Practical Knowledge* (Cham, Switzerland: Springer, 2017), p. 168.

especially as the catalogue of plants expanded in the sixteenth century, what he calls ‘the confrontation of erudition with local knowledge.’³²⁵

However, local or customary knowledge – specific knowledge – need not be completely in opposition to classical erudition; botanical cures, i.e. local medicines, were also a part of humoral medicine, as we have seen. Smith, indeed, understood the relationship between ancient textual authority and his own practice in positive or complementary terms, as shown in his compendium of works by Roman agricultural authors, *De re rustica*, namely Cato the Elder, Varro, Rutilius Palladius and Columella (Paris, Petit, 1533);³²⁶ this work was bound with Smith’s copy of Euclid’s *Elementorum geometricorum* (Basel, Hervagius, 1546), the significance of which will be discussed in the following section. In Columella, experience is not antagonistic but rather strives for moderation by the confirmation or rejection of facts presented by ancient authorities. Columella states the importance of experience, which Smith notes (“*Usus magister art[ium]*” (p. 183)): *nos autem magister artium docuit usus primi anni malleolorum formare incrementa*.³²⁷ Knowing when to prune vines, for example, is a question of following authority confirmed by experience, which includes the rejection of those authorities whom experience has disproved. Smith notes the authors that Columella deemed overly timid in their pruning, who were in error (*timuerunt qui ... in eo errabant*): “Vergilius, Sasern{a}, Stolo, Cato” (ibid.). Indeed, it is on the admission of everyone (*omnium confessione* (ibid.)) that shoots should not grow too long from hard wood, because they will not be fruitful, as Smith notes (“Pampinaria (i.e. shoots) e d{uro} saepissime carent” (ibid.)): *siquidem e duro quae pullulant omnium*

³²⁵ Sven Dupré, “Science and Practices of Translation” in *Isis*, 109.2, (2018), p. 304.

³²⁶ D.1.10(2); A41.

³²⁷ ‘But experience, the master of arts, has taught us to regulate the growth of first-year cuttings’; trans. Harrison Boyd Ash (Cambridge, MA: Harvard University Press, 1941), I, p. 379.

confessione, pampinaria saepissime fructu carent (ibid.).³²⁸ The best option, therefore, is to take the middle course (*media ratio*), and neither trim too harshly nor leave things to grow too long: *Media igitur ratio sequenda est ...* (ibid.).

Moderation is a kind of corroboration, therefore, with prior experience being the fulcrum on which the correct interpretation of prior authority is supported. In the case of grafting trees, even the correct name for the process is uncertain: *quam vocant agricolae emplastrationem, vel, ut quidam, inoculationem* (p. 217).³²⁹ Here, what the rustics call something (*vocant agricolae*) is important, but it is unnecessary to decide which name is better. The process of Smith's reading *De re rustica* is similar, in that he has several sources to compare, and, moreover, the agricultural authors frequently overlapped. In both Palladius and Columella, for example, Smith notes that there is a leeway of fifteen days either side of the ideal date for grafting ("15. dies ..." (p. 335); "15. Dies neq[ue] cito {n}eq[ue] tarde" (p. 406)), because all jobs need only be done within certain months. Columella states: *quia neque praefestinatum opus nimium immature videri possit ante quidecim* [sic, recte *quindecim*] *dies factum. Nec rursus post totidem nimium tarde* (p. 335).³³⁰ Palladius corroborates this statement: *Omne opus rusticum, cum fieri praecipitur, neque cito est, si ante quindecim dies: neque tarde, si post quindecim fiat* (p. 406).³³¹ However, moderation and corroboration involve a degree of antagonism towards authority, and this case is no different. Columella's reasoning for working by half-months is that rustics should not behave like astrologers,

³²⁸ '... seeing that, by the admission of everyone, shoots which sprout from the hard wood are very often destitute of fruit' (ibid.).

³²⁹ 'The last kind the husbandmen call emplastration, or, according to some, inoculation' (II, (trans. E.S. Forster and E.H. Heffner, p. 103).

³³⁰ '... because work finished fifteen days too early cannot be regarded as too hurriedly performed, nor on the other hand can work finished fifteen days late be regarded as too slowly carried out' (III (Forster and Heffner), p. 71).

³³¹ 'All agricultural work, when it is directed to be done, is not too early if done before fifteen days, nor is it late if done fifteen days after.'

who try to divine the specific day for the beginning of spring (“Vere novo, q{uando} dicitur factu[m]” (p. 335)): *Novi autem veris principium non sic observare rusticis debet, quemadmodum astrologus, ut expectet certum diem illu ... qui veris initium facere dicitur...* (ibid.).³³² Indeed, Columella has written a whole treatise on this, as Smith notes (“Adversus ast[r]olog[os]” (ibid.)), which attacked the error of the Chaldaeans (*quod improbissime Chaldaei pollicentur*), i.e. that changes in the weather correspond to fixed dates (*ita diebus statis aeris mutationes respondeant* (ibid.)). Indeed, Columella’s approach to astrology is a feature of his moderation; discussing which astrological calendar he is using in marking the equinox, Columella rejects that of Hipparchus (“Equinoctium ... Hipparchus” (p. 300)), not because he is wrong – Hipparchus asserted that the equinox falls when the star signs are not in the eighth, but in the first house of the zodiac (*quae docet solstitia et aequinoctia non octavis, sed primis partibus signorum confici*), on which more in a moment – but because the alternative calendar of “Eudoxus. et Meto” (ibid.), i.e. the ancient Greek astrologers Eudoxus of Cnidus and Meton of Athens, and other old astrologers (*antiquorumque fastus astrologorum*), is most closely aligned to the rustic festivals (*qui sunt aptati publicis sacrificiis*). In any case, says Columella, Hipparchus is too complicated for the rustics: *Nec tamen Hipparchi subtilitas pinguioribus, ut aiunt, rusticorum literis necessaria est.*³³³ Theory is therefore subordinate to utility and function, a feature of Smith’s similar cherry-picking of chronological systems in his Cardano, as we have seen.

³³² ‘But the husbandman ought not to observe the beginning of spring, in the same way as the astronomer, by waiting for the fixed day which is said to mark the entry of spring’ (III, p. 71).

³³³ ‘on the other hand, the subtlety of Hipparchus is not necessary for rustics of less refined education’ (II, p. 489).

Because Columella has opted for one calendar over another, we once again observe Smith following suit with his annotations, as he did in his Galen. Smith follows Columella's calendar in noting that on March 15 the sun will be in Pisces, using the astrological symbols ("15° cal martii; [Sol] in [Pisces]" (p. 337)). However, elsewhere Smith undertakes a practical demonstration of Columella's reasoning by entering a contemporary equinox, presumably in the year that he read the book: "Equinoctiu[m] Higini tempore. 22° M[artis] in 8° gradu aries 1567. 10 vel 11° {in?} parte arietis Zodi[aci?] XXV^o" (p. 289).³³⁴ Columella is introducing a third equinoctial system, this one put forward by Hyginus, advocating its usefulness specifically for the care of bees (*Deinceps illa totius anni cura, ut idem Hyginus commodissime prodidit*),³³⁵ which is as follows: *Ab aequinoctio primo quod mense Martio circa VIII calendas Aprilis in octava parte Arietis conficitur...* (ibid.).³³⁶ Smith has applied this astrological method to his own time, though he seems, at the same time, to be rejecting Hyginus, having erased his name. Was Smith more interested in whatever was entering the tenth or eleventh house, lost to us through trimming? And if so, why could he not choose one or the other? This might therefore suggest a rejection not only of Hyginus but also Hipparchus, in whose calendar the equinox corresponds to the eighth part of the Zodiac, and not the first, in which Smith was therefore following Columella. However, Smith's approach directly contradicts Columella's argument that rustics should not behave like astrologers, attempting to ascribe the equinox to specific dates;

³³⁴ I.e. 'Aries was in the eighth house on the 22nd of March 1567; and the tenth or eleventh in the part of Aries in the Zodiac, 25 degrees' (the change to numerals probably implies that the number 25 is not a date, like 22nd March appears to be (Smith could be referring to the planet Mars, but this seems unlikely); it is possible that an astrological body has been trimmed from the annotation, and that this is what is at 25 degrees in Aries. If Smith was using printed astrological tables (see A42 and A87), he could well have calculated this equinox at any time, but it would seem unlikely that he would insert a different year.

³³⁵ 'Next comes the management (of bees) throughout the year according to the excellent system set forth by the same Hyginus' (II, p. 481).

³³⁶ 'From the first equinox, which takes place about the twenty-fourth of March in the eighth degree of Aries' (ibid.).

Smith's intervention is, by Columella's and Palladius's reckoning, essentially pointless. Ancient authority did not require a dogmatic response, since several interpretations were possible, as we saw in Smith's Avicenna. However, he evidently felt that the claims of any single interpretation could only be verified through practical use. Columella's advice on seasonal planting is reflected in Smith's numerous marginal depictions of crescent and full moons governing when to sow, advice which he seems to have followed literally when he marked a variety of pear that he was presumably planting with a crescent moon, in a list found in his commonplace book.³³⁷

Smith's house and estate, Hill Hall in Essex, was the focus for much of this reading. Smith was able to confirm the assertions of another Roman author, Vitruvius, via Columella's discussion of building materials, and vice versa. Smith even provides a direct reference to Vitruvius (such references to specific books are surprisingly rare in Smith's annotations): "{p}su[m] habes ap[u]d Vitru{vius}. li[bro]. 7^o. ca[pito]. 4^o" (p. 408). Smith copiously annotates this section, clearly interested in Roman building materials; these held a linguistic interest, with Smith glossing terms in English in his secretary hand: "Rudera, {sec.} false earth, unmade earth" (ibid.). However, the same materials and their use also fed into Smith's antiquarian interest in Roman

³³⁷ MS83, f. 155v: "Sent seadess [from?] Mr Monk to [?] Mr Shere & sowid in my garden. 20. ap[ril]. 1569"; Smith lists various plants in italic and secretary hands (the latter chiefly being names in Latin), with "lessk pear [?]" being marked with a crescent moon. See Ruel, who notes that the Romans grafted under a crescent moon (as Smith has noted with a doodle), but does not seem to suggest that grafting *always* took place under a crescent moon, since it was more important to follow the equinoctial dates: *Id etiam religionis servant, ut luna crescent utraque calamus deprimatur manu* (p. 67); 'They also observe this in their religion, that when under a waxing moon the reed (*calamus*, for binding the graft) should be pressed down with both hands' (p. 67); Ruel distinguishes the waxing moon (*luna crescente*), shown facing right by Smith, from the waning moon (*luna silente*), which Smith does not illustrate (ibid.). In his *Geoponika* Smith draws moons facing both ways side-by-side (p. 111); this is odd considering the text specifically mentions only the waning moon (*legouses de selenes*) as the correct time for grafting of the vine. In a section on fruit-trees in Palladius's *De re rustica*, Smith notes the general advice that seeds should be sown by the crescent moon (*luna crescit*), but here Smith's waxing moon is reversed, facing left, accompanied by a single dot representing the seed (p. 416).

measurements: “Rudus, Id est due {p}artes saxi contuse, una parte calcus ... [inner margin:] 6 dig[itorum]. (ibid.).”³³⁸ Columella’s advice for the use of this kind of earth flooring invokes the potential benefit for barefooted users during the winter (*tale pavementum debetis imponere, in quo vel nudis pedibus stantes ministri hyeme non rigescant*);³³⁹ this could have been confirmed by comparison with one of Smith’s numerous editions of Vitruvius.³⁴⁰ We have one of Smith’s annotated copies of Vitruvius, his copy of Guillaume Philandrier’s (1505-1563) edition (Strasbourg, Knoblochianus, 1550), which is now at Trinity College, Cambridge;³⁴¹ a second copy of the exact same edition belonging to Smith is in the British library, unannotated.³⁴² Clearly Smith was using a different edition, now lost, in relation to his Columella: in the Trinity copy, Smith does *not* note the line in question (*quique versantur ibi ministrantes, & si nudis pedibus fuerint, non recipiunt frigus ab eiusmodi genere pavimenti* (p. 311)), but he does note that the floor is made of a mixture of ingredients: *inducitur ex sabulone, & calce, & favilla mixta* (terms which Smith transcribes into the lower margin (ibid.)). He also adds an English gloss to the commentary: “tegulae {sec.} paving tile” (ibid.). On the same page of Smith’s Columella on which he notes the Vitruvius reference, he also refers to an Italian commentator – undoubtedly Daniele Barbaro’s (1514-1570) edition (Vinegia, Marcolini, 1556), a copy of which Smith also

³³⁸ ... *id est saxi contusi* (i.e. powdered stone) *duas partes, & cum una calcis* (i.e. lime) *temperatae constitues* (i.e. heated together). *Hoc cum ad sex digitorum crassitudinem feceris* (i.e. make the tiles six inches thick).

³³⁹ ‘So that those servants who are worked there (i.e. versantur), even though they are barefooted, they will not receive the cold (i.e. frigus) from the pavement.’ the Loeb offers a different interpretation to that of Vitruvius, due to the interpretation of *frigus* as *fraces*, from the Greek *fragus* (i.e. “wine-lees”): ‘although the servants who are employed there are barefooted, their feet are not stained by the wine-lees on this kind of pavement’ (Vitruvius, *On Architecture*, trans. Frank Granger (Cambridge, MA: Harvard University Press, 1934), II, p. 101.

³⁴⁰ Cf. Richard Simpson, “Sir Thomas Smith and the Wall Paintings at Hill Hall, Essex: Scholarly Theory and Design in the Sixteenth Century” in *Journal of the British Archaeological Association*, 40 (1977), pp. 1-20; MS49, f. 94r.

³⁴¹ L.8.145[1]; A97.

³⁴² 1043.h.3; A90.

owned³⁴³ – using English and his secretary hand: “Whether it be ~~straw ashes~~ {sout of the chy[m]ney} or smyth’s cynders th’Itallian interpreter of Vitruvius doth dowte (ibid.).” The problem is that Barbaro is unsure, which equally leaves Smith at a loss. Smith does not settle on an answer himself, but he does at least narrow down the possibilities by removing one potential option, the erroneous “straw ashes”. Here, therefore, Smith is driving at the particularisation of names for things within the text, especially in response to the doubtful interpretation of contemporary commentators.

Smith’s use of these sources is therefore characterised by an awareness of their possible fallibility and dubiousness, which was, of course, standard humanist practice. However, in Smith’s books of Roman agriculture and architecture there is an increased awareness that the eyes can lie, as Vitruvius himself noted. In a passage concerning the supreme importance of correct proportions (*Nulla architecto maior cura esse debet, nisi uti proportionibus ratae partis habeant aedificia rationum exactiones* (p. 254)), Vitruvius reminds us that our eyes and senses constantly fail the judgement of the mind: *Non enim verso videtur habere visus effectus, sed fallitur saepe ab eius iudicio mens*.³⁴⁴ Here Smith has added a pair of rheumy eyes: “{Vi}sus fallitur” (Fig. 32; ibid.). An identical annotation appears in Smith’s copy of Cardano’s *Aphorismorum Astronomicorum* (fp. 307v) at the Bodleian. Cardano is referring to the literal failure of sight as well as to the metaphorical blindness of error, describing how imitators of his method are like those cursed to be blind by the influence of certain stars at their nativities:

³⁴³ There is a copy of this edition at Queens’ (F.2.24), but it bears no distinguishing marks relating it to Smith; possibly his copy was replaced. It appears in Smith’s 1576 inventory as “Vitruvio co[n]co[m]mento et picture” (f. 94r).

³⁴⁴ ‘For the eyes do not appear to bring accurate results, but the judgement is often deceived by it’ (II, p. 21).

... *indicio autem tot sunt geniturae, non a me confictae, sed praeter unam meam, ab aliis sumptae, licet etiam experimentum sumere. nam qui luminaria habuerint in constellationibus, non evadunt, quin oculos habeant quasi albos, & ab aliorum forma dissimiles, ac ut plurimum praegrandes, voco autem constellationes, Suculas, Virgalias* (etc.) (ibid.).³⁴⁵

In both texts, and in both cases of Smith's reading, there is a conflation of the failure of observation – akin to *experimentum* – with a literal failure of eyesight, expressed in the changeability of particulars and the confusion that can arise from an inability to correctly distinguish *species*. Vitruvius uses the term *species* to describe the visual failure of proportion in relation to *hands-on* experience: *Alia enim ad manum species esse videtur alia in excelso* (ibid.).³⁴⁶ However, this is also an interrelated problem of visual art and its deceptive qualities: *Quemadmodum etiam in scenis pictis videntur columnarum projecturae, mutulorum ecphorae ...* (etc.) (ibid.).³⁴⁷

There must be a practical element to all of this, after all. Palladius gave a very literal account of the utility of experience: a successful farmer (*dominus*) will keep an eye on his estate (“*oculus domini*” (p. 405)); Smith has sketched a disembodied eye in the margin to illustrate the point (*Praesentia domini profectus est agri*).³⁴⁸ We know that Smith actively planted and harvested from his estate, because he sent instructions to his chaplain, Thurston Shaw, from France, referring to specific plants in his garden.³⁴⁹ We

³⁴⁵ ‘There are indeed so many genitures not made by me, but derived from one of mine, being taken by others, it being permitted them to make an attempt (*experimentum*). But those who have luminaries in the constellations do not escape, but have eyes of a kind of whitish hue, and differing in form from those of others, these constellations being of great number and very forceful, which I call Suculas, Virgalias (etc.).’

³⁴⁶ ‘For one kind (*species*) [of appearance (*aspectus*)] is seen near at hand; another, in a lofty building (etc.)’ (II, p. 21).

³⁴⁷ ‘... just as when, in the paintings on stages, there seem to be projecting columns, corbelled mutules (etc.) ...’ (ibid.).

³⁴⁸ ‘Profit of the land is in the presence of the lord.’

³⁴⁹ Op. cit. Simpson (2015), pp. 103-104.

can assume that the plants Shaw was to harvest had medicinal purposes because of Smith's stillhouse library and the recipes for cures in his commonplace books.³⁵⁰ On another level Smith's interest in Vitruvius and Columella was an antiquarian exercise, like weighing Roman coins: Smith makes no annotations of Columella's descriptions of measurements in his *De re rustica*, but he has nonetheless transcribed the measurements into his commonplace book ("Ex Columella li[bro]. 5^o. ca[pito]. 1^o.") and calculated their English equivalents, as he did with coins.³⁵¹ Ancient experience must not only be corroborated with other ancient experience, therefore, but must also be tested through modern experience, like diagnosis. Palladius was no different, mentioning a method for ingrafting trees taught to him directly by a Spaniard ("Hispanicos in{sitio}nis modis" (p. 432)): *Hispanus quidam mihi hoc genus novae insitionis ostendit*.³⁵² Smith similarly takes issue with Columella's description of one method of grafting (*Hoc tertium genus insitionis* (etc.)),³⁵³ adding contradictions derived from French sources (potentially first-hand, i.e. when Smith was in France). Firstly, Smith provides a French gloss for the shield-shaped bud of the tree that will be the site of the graft in one particular method (*genus insitionis*): "a lescusson", i.e. the escutcheon or shield (p. 218). He also adds, in the inner margin, "hoc falsu[m]", likewise in his secretary hand, which is either a contradiction of Columella's claims that this kind of grafting works on trees with moist, juicy and strong bark (*quae humidum succosumque, & validum librum habent*), or that fig trees (*sicut ficus*) have such bark in the first place. Either way, Smith's contradictions continue in his italic

³⁵⁰ MS83, f. 3r: "Ad Catarrhu[m] frigidu[m] stillantem" (i.e. distillation for cold catarrh); there is also an earlier recipe on f. 160, but this does not seem to refer to distillation: "Ffor the sicknes reinyng 1558 and 1559 emongs the people".

³⁵¹ Ibid., ff. 120r-120v. For coin tables see ff. 32r-39r.

³⁵² 'A certain Spaniard showed me this new kind of grafting.'

³⁵³ Interestingly there is a textual difference here with the modern translation, which specifies that this is Columella's own invention (*nos tertium genus insitionis invenimus* (etc.) (p. 107)).

hand in the outer margin: “no[n] observant galli ...³⁵⁴ no[n] ponu[n]t galli ...³⁵⁵ {po}st .21. dies/ post {? (trimmed)} dies miagalli (i.e. my French?)”.³⁵⁶

Jean Ruel (1474-1537), the modern French botanist whose *De natura stirpium* (Basel, Froben, 1537) was read by Smith, did not apparently have any advice on this exact point. However, clearly Ruel was following the same Greek tradition (and even sources) as Smith, in addition to Roman models (such as Virgil’s *Georgics*): Smith not only dealt with the overlapping Latin agricultural writers, but also compared his Latin *De re rustica* extensively with the Byzantine Greek compendium of agricultural texts, *Geoponika* (Basel, Winter, 1539);³⁵⁷ this was another book that, like Smith’s copy of Tacitus’s *Histories* at Queens’ (Basel, Froben, 1519),³⁵⁸ he shared with his former fellow Queens’ student, John Ponet (c.1514-1556), and which is now in Exeter Cathedral Library.³⁵⁹ Ruel noted, for example, that shoots should be enclosed for ten days *before* grafting took place, a piece of advice that Smith (or perhaps Ponet) noted in Greek in their *Geoponika* (“I. (i.e. ten) emeraï pro tou egkentrisismou” (p. 293)).³⁶⁰ It was certainly Smith, however, who inserted notes in *Geoponika* on his own experience of when it was best to plant trees in England, contrary to the text, which advised planting between November 7 and December 20 (“a. .7^o. Nove[m]b[ris] ad .20.

³⁵⁴ ... *eiusdem spatii corticem circuncidito, & materiam delibrato*; ‘cut out a part of the bark of the same dimensions as before and strip the bark off the firm-wood’ (II, p. 107). I.e. the French do not cut from the new branch.

³⁵⁵ ... *deinde commissuras & vincula luto oblinito spatio relicto*; ‘Then daub the joints of the wound and the ties round them with mud, leaving a space’ (ibid., p. 109). I.e. the French do not use mud (or clay).

³⁵⁶ ... *post XXI diem solvito emplastrum*; ‘after twenty-one days unbind the scutcheon’ (ibid.).

³⁵⁷ C.5.15; A48.

³⁵⁸ F.1.4; A19.

³⁵⁹ C44; A90. Smith notes the same methods: “Egkentrismos” (*insitio*), “emphyllismos” (*inoculo*) – glossed in English with “betwixt the bark & the tre” – and “enophthalmos” (*emplastratio*) (p. 291).

³⁶⁰ As with many of Smith’s medical books, there are two programmes of annotation; this is in the earlier hand, which may, of course, also be Ponet’s. Cf. Ruel, p. 67: *decem aut paulo plures dies ante insitionem iubent*.

dece[m]b[ris].” (p. 247)); Smith notes: “At apud nos. experientia docuit, ab septembris {octob} .10^o. usu ad Nove[m]b[ris]. 20. potius autu[m]nu[m] esse, et co[m]modu[m] plantatione[m]”, i.e. my experience taught me that favourable planting is more possible in the autumn from October 10 to November 20 (ibid.). This may be a point about local seasons rather than planting specific trees; Smith had previously followed the text directly regarding the planting of olive trees (*elaias*) (“a 15. Nove[m]b[ris] ... ad 20. Dece[m]b[ris].” (p. 221)), which seems unlikely in winter in Essex. The *Geoponika* therefore represents Smith’s use of dual Greek and Roman traditions, both of which were accessed through original texts and via the modern French tradition. What mattered above all, however, was *local* experience.

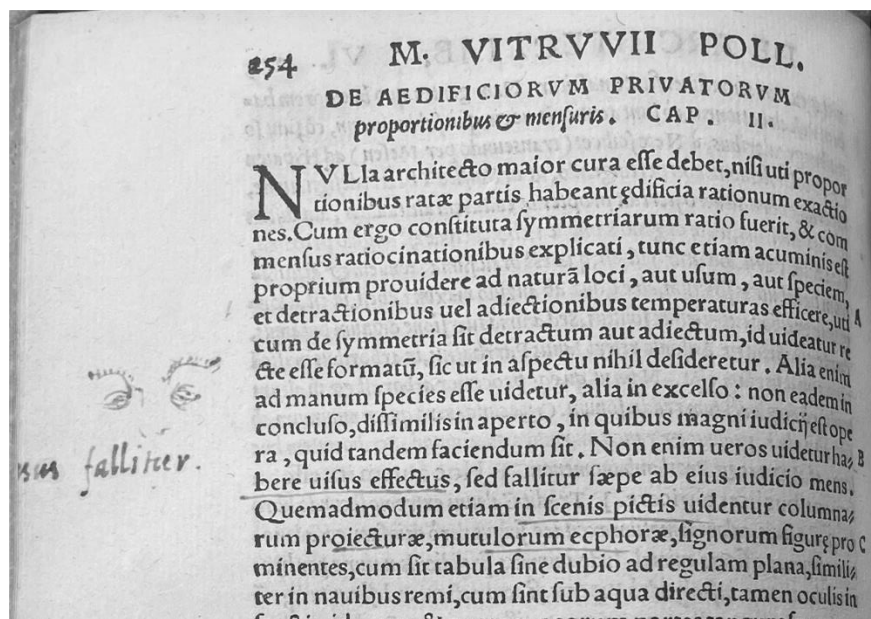


Fig. 32. Vitruvius (1550).

v. Trial and error.

We have moved away almost entirely from the sphere of medicine in this account of Smith’s “medical” reading, though in Smith’s *De re rustica* we observed the

importance of visual observation and customary knowledge in confirming authority, which also characterised Galen's approach to anatomy. In this final section we will see how Smith's orthographical reading of Guillaume Rondelet's *De libri piscibus marinis* (Lyon, Bonhomme, 1554-1555)³⁶¹ – ostensibly a medical book, or at least a book with medical applications (Smith notes Rondelet's rejection of a Galenic point of anatomy ("Galenus repraehensu{s}" (I, p. 523)) – was read by Smith in linguistic terms of observation and of practical trial and error. Language is part of the definition of particulars: the application of changeable and untrustworthy words to immutable nature, to *species*. In his Rondelet Smith entered three taxonomical tables into the margins, dividing types of fish according to size: large, small, and miniscule ("Satis magni ... Parvi ... Minimi" (I, p. 207)). Such particularisation was especially useful in identifying what was familiar to Smith's own context, and which could be verified by personal observation. In this final section, and indeed throughout the remainder of this thesis, I will argue that the addition of Smith's English context was the final aim of his reading, one which relied on understanding the particularity of forms – linguistic and legal – to his English context. In the context of his mathematical and scientific books, this was largely concerned with Smith's correction or improvement of faulty or insufficient texts. This chapter began with this kind of reading in one sammelband – the combination of a Latin Galen with a Greek paraphrase of a Latin legal text – and we will begin this section with another combination of books: Smith's Columella is bound with his copy of Euclid's *Elements* (Basel, Hervagius, 1546). In this case, unlike in the case of the Galen and Theophilus, the two works seem to have been paired after arrival at Queens', since they appear in what may be a 1580s binding, and the Euclid appears separately in Smith's 1576 inventory. However, there is a clear (if accidental)

³⁶¹ F.9.27; A52.

connection between the practical architectural advice that Smith noted in *De re rustica* in combination with Vitruvius, and the perspectival geometry of Euclid's *Elements*.³⁶² Smith annotates his Euclid very infrequently, concerning himself only with the relativity of proportions: doubling, tripling and cubing ("tres triplae" (p. 108)). Here Smith is simply noting that $3 \times 3 \times 3 = 27$ (*quia vigincuplaseptupia constat ex tribus triplis*), but this is also a question of what exists in nature: *Non diffinit autem proportionem extremorum continuae proportionalitatis inter plures quam quatuor terminis constitutae, propter id quod dimensiones in rebus naturalibus repertae, non excedunt ternarium* (ibid.).³⁶³ Proportion is, after all, a question of dimensionality, so that Smith is addressing the comparison between lines ("Linea; Superficies" (ibid.)) and solid form ("Solidu[m]" (ibid.)). Again this is a question of nature: *proportio duarum quantitatum, est simplex intervallum, & habens naturam simplicis dimensionis ut lineae: proportionalitas autem trium, est duplex intervallum, & habens naturam duplicis dimensionis ut superficiei: proportionalitas autem quatuor, est triplex intervallum, ut habens naturam trinae dimensionis ut solidi* (ibid.).³⁶⁴ So, finally, by the quadrupling of proportions you result in the geometrical form of the cube ("quadratu[m] cubus" (p. 109)): *& quod proportio extremorum continuae proportionalitatis denominatur in tribus terminis constitutae denominatur a quadrato, in quatuor vero terminis constitutae denominatur a cubo, quorum quidem quadrati & cubi latus ...* (ibid.).³⁶⁵ All of this is representative of "rational" and not "irrational" proportion, Euclid residing firmly in the realm of logical inference.

³⁶² My thanks to Richard Simpson for suggesting this.

³⁶³ 'There is no more proportionality than the extremes of continuous proportion constituted between four *termini*, because when these things occur in nature, they do not exceed the ternary.'

³⁶⁴ 'Proportion of dual quantity is simply the interval [between two points], so that in nature this is expressed as a line; then there is three-dimensionality, which is two intervals, and here you have in nature the appearance of two dimensions, as with surfaces; then there is four-dimensionality, which is a triplicate interval, so that you have in nature the appearance of three dimensions or solids.'

³⁶⁵ '... so that the extreme of continuous proportionality is denominated as three times three, or four constituents in four *termini*, so that each side is quadrated and cubed.'

The visual construction of geometrical propositions is crucial to Euclid's *Elements*: printed woodcut diagrams had been added to the margins of the text since Ratdolt's edition of 1482, and incorporated *into* the text for the first time in Hervagius's 1533 edition.³⁶⁶ Smith, naturally, pays attention to these diagrams, using them as the numerical confirmation of the rational proportions described above: $3 \times 3 \times 3 = 27$ is noted on one arc of the diagram ("p[ri]mi ad tertiu[m]" (ibid.)) and $3 \times 3 \times 3 \times 3 = 81$ is noted on another ("primi ad quartu[m]" (Fig. 33; ibid.)). There is a visual reflection of these operations in Smith's Vitruvius, where he notes that a *fornix* is a kind of hemispherical arch (*longa et in arcum curva est*),³⁶⁷ or "hemiti", and adds these terms to a marginal drawing based on the printed depictions of arches, with the "shorter" arc above and the "longer" arc below (Fig. 34; p. 304); elsewhere he draws mouldings in the margins (p. 226). Smith would have been aware, since it is demonstrated in his Euclid, that the cubing and quadrating of numbers results in these differing curves, which can be used to show three-dimensional depth using two-dimensional lines; this is also what the illustrations in his Vitruvius show, though again Smith felt the need to add his own, clearer expression of the text. In this sense Smith was confirming the *text* of his Euclid by transcribing it onto the visual proofs, i.e. the diagrams in a secondary text (it should be noted that elsewhere in Smith's copy of Euclid, a reader has used compasses to scratch blind impressions of geometric diagrams into the margins; Smith stipulated in his gift of a geometry lectureship to Queens' that this should be taught by drawing the figures in sand, an ancient commonplace referring to the "learned dust" or the

³⁶⁶ Benjamin Wardaugh with the assistance of Philip Beeley and Yelda Nasifoglu, *Euclid in Print, 1482-1703: A Catalogue of the Editions of the Elements and other Euclidian Works* (London: The Bibliographical Society, 2020), p. 37.

³⁶⁷ I.e. 'long and curved into an arch'.

“philosopher’s sandbox”).³⁶⁸ However, in Smith’s copy of Euclid (and possibly unique to his copy) there was an element of doubt or insufficiency in the text that Smith was forced to address, which occurs in the printed diagrams, in which some of Hervagius’s type was either broken or the impression simply unclear. Smith has corrected this by adding numbers, in one case completely erasing and then substituting the poorly cut type with “3”, and in another overwriting the poor impression or broken type of 12 with “2”, while leaving the useful printed integer 1 (Fig. 33; p. 109). Here Smith is actively restoring or changing texts to facilitate his reading: he deemed the printing of his Latin Euclid to be doubtful and emended it accordingly. Possibly this act of correction was as important to Smith as the proper understanding of the subject that it facilitated.

³⁶⁸ Yelda Nasifoglu, “Reading by Drawing” in op. cit. Beeley, Wardaugh and Nasifoglu, p. 73; Rose, “Erasmians and Mathematicians at Cambridge in the Early Modern Period” in *The Sixteenth Century*, 8.2 (1977), p. 55.

neque extremis interponitis. Et nota quod etiam in
 proportio producit ex omnibus proportionibus in
 proportio extremorum continuæ proportionalitatis
 à quadrato, in quatuor uero terminis constitutæ
 quadrati
 is primi
 quatuor
 continuè
 n, deno-
 o ad ter-
 nam ip-
 quartum,
 onis pro
 rij, ipsa
 extremo-
 terminis
 quadrato,
 roportio
 nomina
 denomi-
 patet in
 propor-
 rtio pri-
 n tripla,
 ad quar-
 omina-
 cialis, cuius latera sunt 2 & 3, quæ sint denominatio
 b qui est denominatio proportionis primi ad quar-
 æ sunt denominationes trium proportionum inter

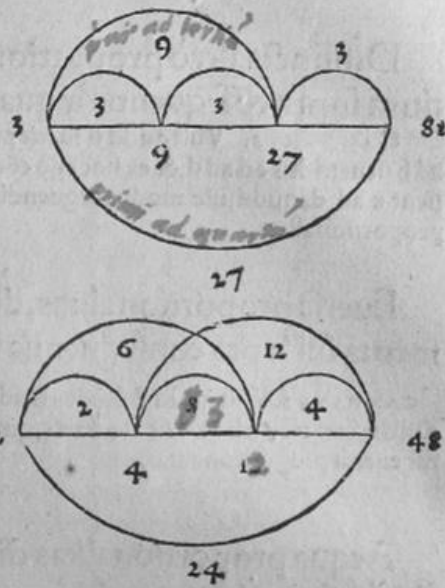


Fig. 33. Euclid (1546).

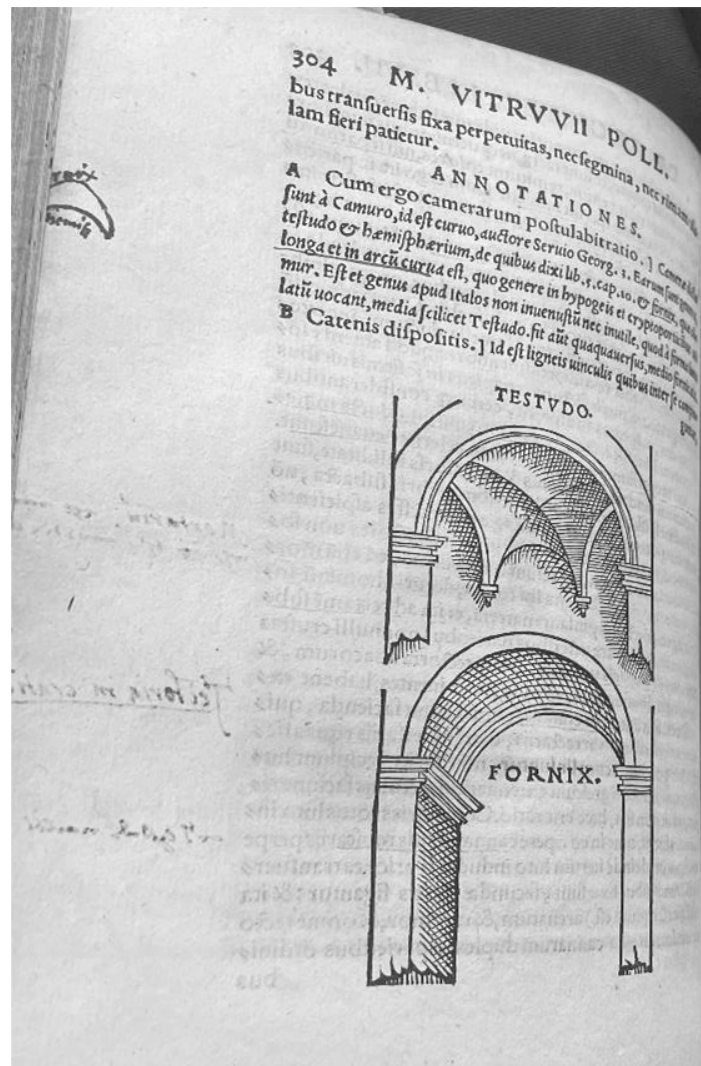


Fig. 34. Vitruvius (1550).

Returning to the ideas expressed by Galen and by Palladius in the *De re rustica* – that observation tied to practice was the route to knowledge – we find Smith taking this idea literally in his approach to diagrams and illustrations in his texts. One might argue, rightly, that any sensible reader would correct an unclear (and therefore unusable) diagram, but for Smith the act of correcting (or improving) the text is clearly crucial for understanding the text itself. We see this in Smith's *Columella*, in which a woodcut of the ancient Roman pruning knife, the *falcis* or *falx*, is annotated in print with the names of its parts, which are also listed within the text along with their functions. The woodcut diagram has been marked with an alphabetical key of printed type, loosely applied, the

letters corresponding to a table containing the names of the parts (a common explicatory device); the diagram, as in the Euclid, appears within the text, making this a typographical headache for the printer. But the printer's efforts in providing a key were not good enough for Smith, who chose to add the names of the parts directly in the appropriate places (Fig. 35; p. 191 [recte 192]), which means these names appear separately three times on the page. For whatever reason, even assuming that Smith was simply taking the practical advice that writing visually aids learning, the point of the exercise was to identify particulars. As has been mentioned previously, this is, on one level, simply the learning of vocabulary, in this case aided by visual cues. The same might be said of Smith's approach to Columella's poem *Hortus*, which is mined for the names of plants, diligently copied out by Smith as lists in the margins. Similarly, Smith occasionally drew plants like a stylised cherry tree ("Cerasus" (p. 484)); he also drew more accurate impressions of plants, like the crocus in his copy of Ruel (Fig. 36; p. 295), noting also that if drunk in a decoction it can cause death by laughter ("Crocus risu & gaudio ne{care}" (ibid.)). The search for *species* is both taxonomical and linguistic, if only in a mnemonic sense. However, we also find Smith doing the same thing in his Vitruvius, where once again the clarity of the text is increased by additions: lines matching the diagrams to the corresponding text, and the addition of an alphabetical key, which evidently proved too great a task for the producer of the woodcuts (who did, however, add the date 1550 to one fragment of stone) (Fig. 37; p. 124). More significantly, in this case, Smith is adding English names for Roman parts: "the shank ... the base ... the chapetell ... the shau[f]t" (ibid). Tools, indeed, received similar treatment in Smith's *De re rustica* ("harow, noccare" (p. 344)). As we have seen, even the individual parts of tools had specific jobs; it was important they were referred to by the correct names.

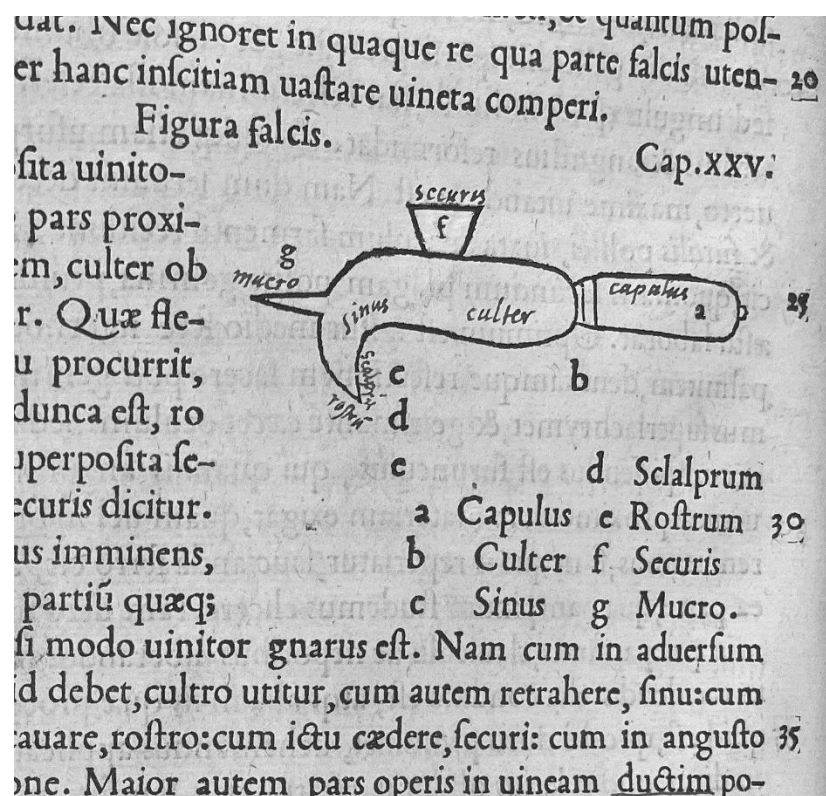


Fig. 35. De re rustica (1533).

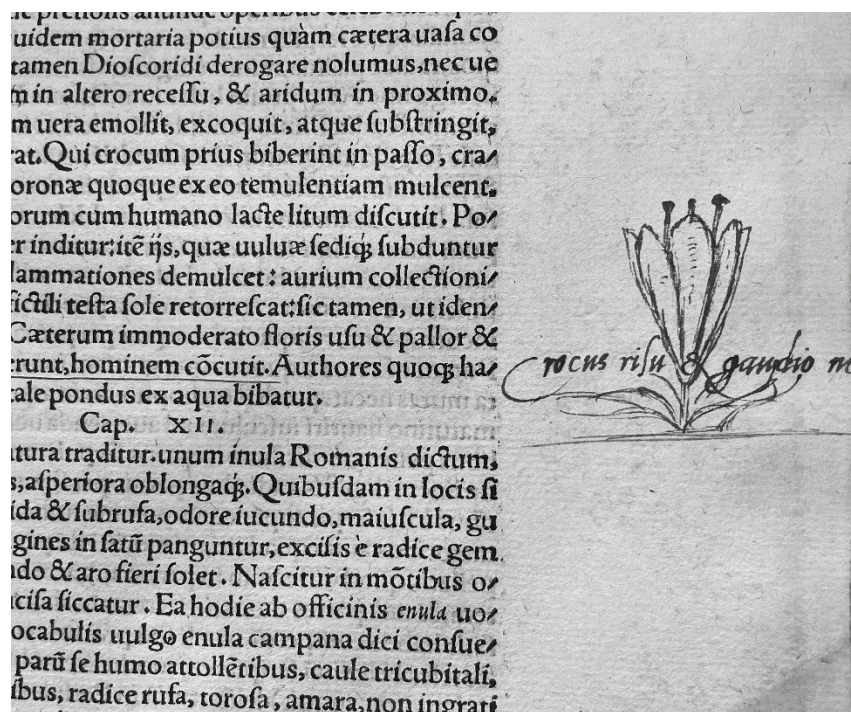


Fig. 36. Ruel (1537).

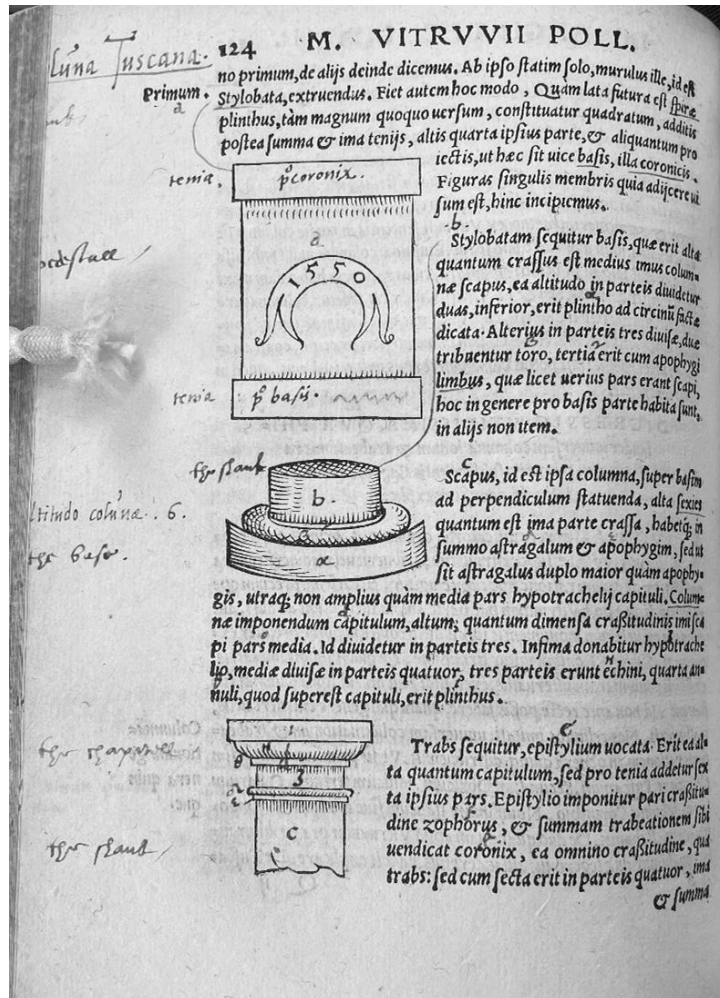


Fig. 37. Vitruvius (1550).

The remainder of this chapter will focus predominantly on Smith's copy of the works of Guillaume Rondelet on fish, in which we find both the additions to diagrams that are described above and the addition of English vocabulary. Smith's Rondelet is in two books: *Libri de piscibus marinis* (Lyon, Bonhomme, 1554) and *Universae aquatilum historiae pars altera* (1555), issued together. In each of these books, every species is illustrated with a woodcut, which in certain instances Smith has amended. In the case of the bream (*sargus*) Smith has noted the black stripes ("Lineae nigrae" (I, p. 121)) in Rondelet's description and then added these to the woodcut of the fish, cross-hatching the single lines used (insufficiently) by the engraver to show colour. Smith has also

noted the black spot at the tail (“Macula ad caudam”; *Ad caudam macula est nigra* (ibid.)) and added this in ink (I, p. 122). This occurs again in the case of the *melanurus*, for which Smith has added the lateral stripe (Fig. 38.1; I, p. 126). There is a similar instance of this kind of amendment of illustrations to the moray eel (*De Muraena*), to which Smith has noted: “Angli muraenas no[n] habent”, i.e. the English do not have moray eels. To the illustration he has also added a pointed snout, though this is not called for in the text, which refers to the blunt upper jaw (*superiore maxilla aquilina*) (I, p. 402)). As we have argued earlier in this chapter, the search for particularity that invokes such changes is everything to do with an insistence upon things (*res*) rather than words (*verbum*); conversely, given the importance of words in describing appearance, categorisation of species is equally a rhetorical mode (perhaps Smith simply preferred moray eels to look like this). Smith, after all, expends most of his energy in Rondelet adding the names for the fish in different languages. In this final section, I will argue that the search for particulars is directly associated by Smith with speech and pronunciation in English and with the practical application of speech to things. It should be said that this is not at all surprising: the addition of multilingual glosses was standard practice amongst annotators of herbals. Once again this was part of the rhetorical search for particulars. Brian Ogilvie has described how the “primacy of the visual” was ‘above all a primacy of shape, form, and arrangement’.³⁶⁹ (Colour, as we saw in the case of the bream, was a potential limitation of contemporary illustration).³⁷⁰ Ogilvie argues that, contrary to Blair’s model, the more obsessively things are arranged according to shape and form, the further the botanist moves from a particular experience to a generalised knowledge: backwards from particulars, or from

³⁶⁹ Brian W. Ogilvie, *The Science of Describing* (Chicago: Chicago University Press, 2006), p. 206. At Parham House in Sussex there is a hand-coloured copy of Rondelet in a binding associated with the library of Henry, Prince of Wales.

³⁷⁰ Ibid.

“local knowledge” based on experience, to “universal knowledge”.³⁷¹ This was a consequence of there being too many forms with too much similarity, as Ogilvie explains: ‘Because descriptions were often contrastive, providing only enough detail to distinguish a species from others known to the describer, it was sometimes hard to determine whether two descriptions referred to the same or to different species. Furthermore, naturalists gave different names to the same – or, at least, arguably the same – plant or animal.’³⁷² This recalls Galen’s confusion, which was in fact the printer’s confusion, over arteries and veins. For Smith, therefore, the addition of English terms is a reaction against this potential for generalisation, an attempt to locate the *res* in direct, practical, and local experience.

As with Smith’s transcription of Columella’s field dimensions into his commonplace books, which was most likely an antiquarian project, practical matters on Smith’s estate seem to have had disappointingly little to do with Smith’s annotations in the case of Rondelet. Smith notes in his commonplace book that he has ponds full of tench and carp, though he seems almost entirely uninterested in what Rondelet has to say about these species.³⁷³ Indeed, Smith’s first interest is in Rondelet’s Aristotelian conception of spontaneous generation (“Arist. De ostracodermis” (I, p. 86)), noting that there are species of fish that are apparently born from sea-foam: *Omni ostracoderma, inquit Aristoteles, sponte nasci: hinc manifestum est, quod in navigiis oriantur ex putrescente limo spumoso multisque in locis in quibus nihil tale ante fuit, postea ... nata sunt* (ibid.).³⁷⁴ However, as was the case in Torello Saraina’s discovery of fossilised fish on

³⁷¹ Ibid.

³⁷² Ibid., pp. 207-208.

³⁷³ MS83, ff. 159v-160r: “Fishes put in to the ponds 6°. et. 7°. Martii. 1559. sed[?] nuge 1560 sed. Ro. [?] ... Carps fish put in to ponds. 11. No. 1563.”

³⁷⁴ ‘All ostracoderms, says Aristotle, are born spontaneously: from which it is evident in ships that they originate from putrid mud, foam, and in many places where nothing was before.’

a Veronese mountain, spontaneous generation was a phenomenon of locality, as Smith notes in the discussion of barnacles, another spontaneously generating creature of the sea (“{Bar}nacles. Angli vocant” (ibid.)): *Sed quid mirum sic nasci testaceum genus, cum in Britannia ex ligno putrescente, aves anatibus [i.e. geese] similes oriantur, quas Crevans nuncupant?*³⁷⁵ In the case of barnacles, therefore, the solution to the impossibility of classifying something that is born out of rotting wood means it is named according to the closest metonymic signifier, a name based on the observation of behaviour – birds called “crevans”, who raise their young on rotting wood – rather than visual form. Rondelet continues in this vein, comparing the ostrocerms or *purpurae* to fungi, as Smith notes (“Fungi nascent[ur] quomodo facilliter” (I, p. 87)), because they are born without the need for seeds: *semen vero eorum nullum esse existimandum est* (ibid.). The case of spontaneous generation reveals to us, therefore, the need for similarity in cases of difficult classification, for which the solution is *not*, apparently, correct and distinctive naming, but rather the confusing elision of species through function or behaviour. In this case, Smith counters the confusion, the retreat into *genera*, by glossing the French term for goose into the specific English name.

The localisation of names is, however, also concerned with the possible generalisation of error, as Rondelet is all too aware. Noting the dangers of using ancient authors (*Quod si a veterum sententiis, si quando cum veritate non consentient, discendum esse duximus*),³⁷⁶ he also complains of the deficiencies of modern authors, who he makes out to be criminals, and again there is the appeal to experience: *multo certe minus mirum*

³⁷⁵ ‘So is it therefore surprising that in this way this *genus* of shellfish is born, when in Britain, out of rotting wood, there are similarly born birds like geese, which in England they are thus called “Crevans”?’ In John Gerard’s *Herbal* (1597), this seems to have been confused with the idea that barnacles were geese eggs, laid on rotting wood, and called the “goose tree” (Chap. 171).

³⁷⁶ ‘We have thought it necessary to depart from the opinions of the ancients whenever they do not correspond with the truth.’

esse debet, si recentiorum quorundam scripta, ubi res postulat, improbemus ... neque rerum usu perspecta, neque rationibus firmata literis mandant, sed variorum autorum locos ... vel ab aliis dolo emendicata, vel furto erepta (his enim artibus mihi imposuerunt inepti quidam Romae & Lutetiae) publicant, digni certe non reprehensione, sed etiam poena (“Romae, Lutetiae”; I, p. 115).³⁷⁷ In Rondelet’s treatment of fish, however, being cheated is also a local concern, one very much connected with similar forms and shapes of fish. As Smith notes (“pro Sargo venditur” (Fig. 38.2; I, p. 127)) – significantly adding this note to the diagram and not to the relevant portion of the text – the *melanderino* is often sold as a bream because of its similar form: *Is in nostro mari reperitur, & sargi nomine venditur, ob similem corporis figuram. Et est malnuro similis, sed corpore paulo rotundiore ...* (etc.)’ (ibid.).³⁷⁸ So, here we have two very similarly named fish resembling a third fish, but the important thing is that these fish swim in French seas (*nostro mari reperitur*), so this is also practical advice for a visit to a French fishmonger. As we have previously mentioned, this interest in local experience is frequently combined with an interest in local dialect. In many cases Rondelet and Smith note the regional names of fish, for example in the case of the *melanuro*, which is one of the fish whose woodcuts Smith augmented: “*oculata ... ophthalmias ... Ro[mani].* (i.e. in Rome) *Ochiado ... Mass[ilienses].* (i.e. in Marseille) *oblado ... Monspel[ienses].* (i.e. in Montpellier) *nigr’oil*” (Fig. 38.1; I, p. 126); Rondelet notes that the name used in Montpellier is descriptive, meaning “black-eye” (*nostri Monspelienses nigr’oil, id est, nigrum oculum*). Elsewhere, Smith

³⁷⁷ ‘How much less remarkable that we should disapprove of modern authors, when the case arises ... who put forward nothing seen through use (i.e. experienced), nothing solidified into writing with reasoning ... but published works obtained by deceitful begging, or taken by theft (for some foolish individuals in Paris and Rome have practised these means on me), for which they should be considered worthy not only of condemnation, but also of punishment.’

³⁷⁸ ‘This is found in our (i.e. French) seas and is sold under the names “sargus” because of its similar body shape, which is similar to the mackerel, but with a slightly rounder body.’

apparently provides his own experiences in France as confirmation of *taste*, another useful taxonomical variation: “{Cu}rato [?] et viroso sapore {...} cu[m] Massiliae fuera[m]” (p. 406), i.e. when I was in Marseille, this had a cured and slimy taste.³⁷⁹ This concerns the meat of the moray,³⁸⁰ and its potential for laxative qualities, as noted by Ovid (*tum multiplici flexu laxare fores donec evadat* (ibid.))³⁸¹ and parenthesised in Rondelet’s text, which should remind us that Rondelet was a physician and that this is, in many ways, a medical text. Smith therefore seems to have supplied his own Massilian experience (i.e. in Marseille and Montpellier) to this example, though he makes no comment on the fish’s supposed medicinal qualities.

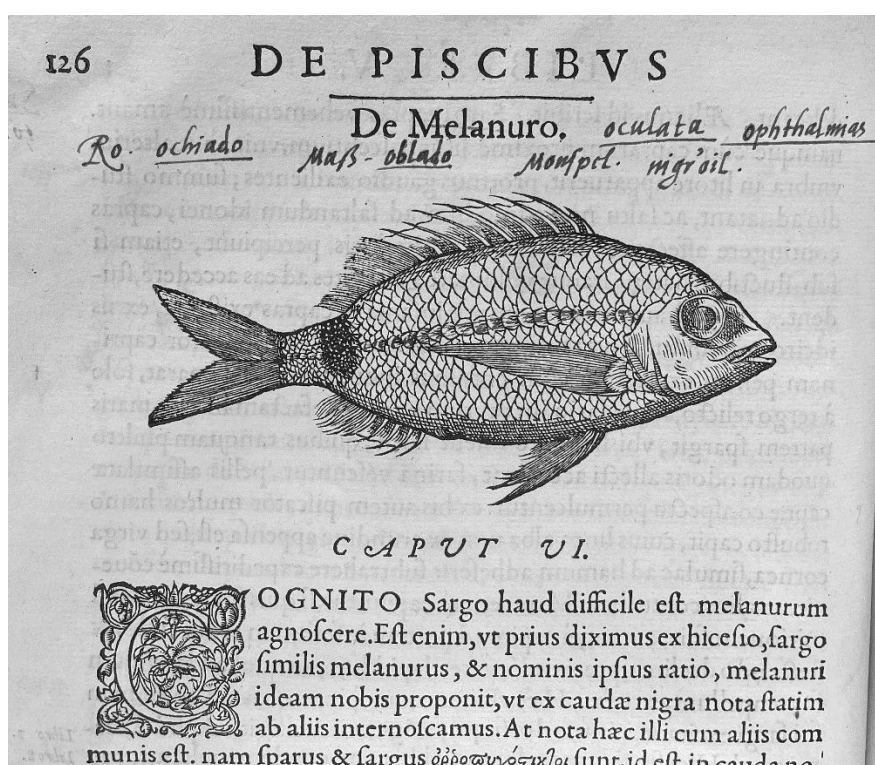


Fig. 38.1. Rondelet (1554-1555).

³⁷⁹ *Virosus* can also describe an unpleasant or fetid odour, but it seems unlikely that Smith would be describing the odour in terms of taste, so the slimy texture is more likely

³⁸⁰ There is a note on the moray, noting that it is not found in English waters, but is doubtful whether this is in Smith’s hand.

³⁸¹ Then, with multiple turns, loosens the doors until it escapes.’

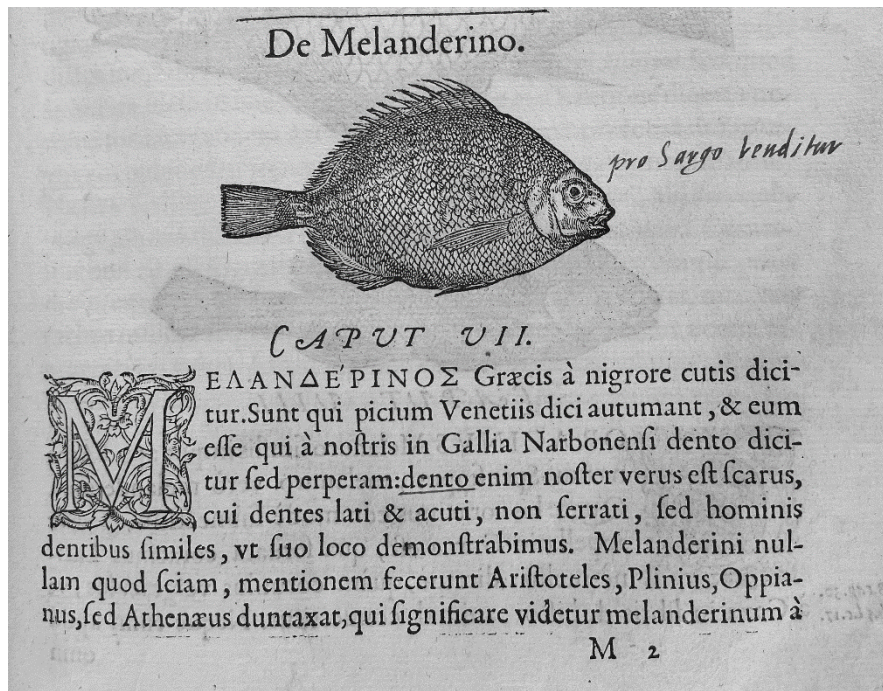


Fig. 38.2.

Smith's interest in English species is also not medical, but he nonetheless saw Rondelet's catalogue as an opportunity to comment on some of the physical qualities of species as he experienced them. In the second work, which covers (in addition to sharks and whales) crustaceans, shellfish and even monsters, Smith restricts his glosses solely to the English language, and his experiences to the English context. For example, salmon are found in England and the wider seas: "Salmo co[m]mun]is Anglor[um] et oceani" (p. 157). However, Smith can be even more specific than this in the case of oysters ("Ostrea pelagia mar[ina?]" (II, p. 37)), once again referring to taste; as Rondelet notes, English oysters are the sweetest oysters and are preferred to all others: *dulciora Britannicis ... Britannica omnibus praeferunt* (ibid.). Smith, however, can go one further, since Rondelet is evidently unable to do so: "Brita[n]nica, Ostrea, {sec.} Wainfleete oisters" (II, p. 38). So, Smith can confirm the facts, no doubt from personal experience – or at least from hearsay – that the very best oysters can be found in Wainfleet, in Lincolnshire, where they were evidently farmed artificially ("Ostreoru[m]

Vivaria” (ibid)). So, as we have seen, locality is in part about dialect and in part about the correct identification of species by the confirmation (through local knowledge) of particulars that are universally recognisable and true: English oysters are the best oysters. For Smith, as shown by his annotations to Rondelet, the idea of recognisable and universal features was evidently a linguistic and rhetorical proposition. In Rondelet’s second work, Smith’s English glosses for species (these abound in Smith’s *Columella*, with names of plants and tools, as they do in his *Ruel*,³⁸² and in his *Vitruvius* and indeed his legal books) take on a very specific, orthographical form, one that can be linked to Smith’s work on English orthography, *DAS*.³⁸³ In his work on orthography, written in the conventional humanist form of a dialogue, Smith discusses the English language with Quintus, who sounds Roman (and speaks Latin), but is really English, since he refers to *nostri sermonis*, i.e. “our language” (fp. 2r). Custom is at the fore: Smith quotes the maxim, *Conveniunt rebus nomina saepe suis*, i.e. “things (or people) usually deserve their names” (fp. a1v). Here *rebus* most likely refers to people rather than things, since Quintus is discussing his argument with “Stubborn”, an obstinate man (*pertinaci ingenii homo* (fp. a1r) who never gives in to reason: *qui nulli unquam rationi, quantumcunque fuerit evidens & aperta, cedit* (ffp. a1r-a1v).³⁸⁴ Stubborn presents the argument which Smith will overcome in this tract and in his related tract on Greek pronunciation: *Quid (inquit) interest quomodo scribatur, modo legi queat, & iam sit haec forma recepta?* (fp. 2r).³⁸⁵ Stubborn is really the embodiment of custom, who

³⁸² E.g. “byrche” (*betula*, p. 132), “slo” (i.e. sloe, for *prunus*, p. 237), “cabbage” (*lacuturres*, p. 360), “melones” (*sucrinus*, p. 379), “wod” (i.e. wode, *glastum*, p. 434), and “Saynt Johns grasse” (*hypericon*, p. 575).

³⁸³ For a general survey cf. E.J. Dobson, *English Pronunciation 1500-1700* (Oxford: Oxford University Press, 1957), vol. I.

³⁸⁴ ‘... he never gives way to reason, however plain and clear it may be’ (pp. 14-15).

³⁸⁵ ““What difference, said he, “does it make how a word is written, so long as it can be read and is now the received form?”” (p. 17).

steadfastly defends the errors that he has introduced: *Ille omneis omnium errores & abusus pervicacissime defendit* (fp. a1v).³⁸⁶

For Smith in *DAS*, pronunciation is essentially the art of designating the constituent parts of words and forming them into words with meaning, wherein the force (*vis*) of each individual part together conveys the meaning of the word. In this sense writing and pronunciation are essentially the same thing (*quo possit scriptio nostra pronuntiationi respondere* (fp. 4r));³⁸⁷ the words on the page must describe the sounds, and vice versa. This is also a visual proposition, Smith using the same analogy of painting as in his work on Greek pronunciation: *Est autem scriptura, imitation sermonis, ut pictura corporis* (fp. 5r).³⁸⁸ Smith also appeals (not for the last time) to an Aristotelian conception of inherent properties, putting him into the same tradition occupied by Rondelet's Aristotelian natural history of fish: *Rerum aliae certam habent suam naturam aeterna, ut Aristotelis credidit, & semper sui similem futuram* (fp. 7v).³⁸⁹ Other things, however, are customary, which is to say governed by agreement or consensus (*pacto & consensu* (fp. 8r)), such as laws, coins, weights, measures, and legal contracts, in which language is also included;³⁹⁰ these things not being immutable (*immutabilis*) but rather changeable, there have arisen different languages and different pronunciations. Smith therefore posits a system in which specific sounds are represented by specific written signs (naturally Smith appeals to hieroglyphs as an

³⁸⁶ 'He obstinately defends all kinds of errors and abuses ...' (p. 15).

³⁸⁷ '... making our written language correspond better with our pronunciation' (p. 25).

³⁸⁸ 'Now writing is an imitation of speech, as a painting is of a person' (p. 31).

³⁸⁹ 'Some things, as Aristotle believed, have their own eternal and unchangeable nature' (p. 39).

³⁹⁰ *Et & alia quaedam certis rebus natura, quae non hoc aeterno & immutabili rerum ordine consistit, sed hominum inter se quodam quasi pacto & consensu. Unde leges, numismata, pondera, mensuraeque, contractuum iura ... In his verba vocesque cuiusque gentis numero* (fp. 8r); 'Certain things have another nature, not constituted by this eternal and immutable order of things, but by a sort of mutual covenant and consent among men. Whence are derived laws, coins, weights, measures, rights of contract ... Among these I include the words and speech of every nation' (p. 41).

analogy (fp. 9r)): he used accented vowels and classical diphthongs, and re-introduced two Anglo-Saxon characters, *thorn* (þ) and *eth* (ð), as did John Hart in his work on English orthography.³⁹¹ Smith attributes the possibilities of his system to nature, which included the inherent meanings of sounds as interpreted by custom – i.e. the development of systems of language – resulting in the parts of speech being represented by a stable system of signs. This also refers us to Galen’s system of defining body parts according to function qualified by appearance, and vice versa: if rhetoric is the identification of particulars, then the identification of particular *words* with *things* is simultaneously the basis of language; pronunciation in accordance with writing.

Smith is highly aware in his work of the interchangeability of linguistic forms between languages, usually understanding the result to be incomprehensibility. In his *Rondelet* he notes the use of beaver’s testicles to make musk oil (*castorem*), the French word for the process of applying this oil being *proindre* (*id quod Galli aucupio dediti Proindre vocant, id est, perungere* (i.e. to apply oil) (II, p. 238)). Smith has glossed this French term not with a gloss into English but simply with a direct English pronunciation: “to proïne” (ibid.). In *DAS* he notes the frequent use of the diphthong “oi” among the French and its comparative rarity in English (*ut Gallis frequentissima, ita nobis rarissima* (fp. 16r)). Indeed, in *DAS* Smith seems unsure of what to do with this diphthong; he certainly does not suggest adding an accented “i”, as he does in his *Rondelet*. Instead, Smith notes that the sound might as well be *ui* as *oi*, because of the interchangeability of the short *o* and *u*. Indeed, in Smith’s *Rondelet*, various animals are glossed in English apparently using the written system described by Smith in his work on English orthography, though never quite corresponding to the system he

³⁹¹ *An Orthographie* (London, Seres, 1569); op. cit. Dobson.

describes therein. The *alburnus* is glossed as “blee. bleike” (p. 208), so that the French double “e” (properly *ée*) is given an English diphthong form, “e” with “i”. However, this conjunction does not appear in Smith’s tract; indeed, the only time he uses the umlaut in a diphthong is in the similar-sounding *äi*, for words like “pay”, “day”, “way” (fp. 15r). However, Smith sees this as a corruption by country folk (*rustici*) of the form *pai*, *dai*, *wai*, with the rustics elongating the vowels to make them unpleasant and coarse: *Rustici utranque, aut extremam saltem literam longam sonantes, pinguem quendam, odiosum, & nimis adipatum sonum reddunt* (ibid.)).³⁹² The town- and city-dwelling folk (*urbanius*, lit. “more urbane”), on the other hand, keep both these vowels short in their pronunciation: *In his est utraque litera brevis apud urbanus pronuntiantes* (ibid.). Could it be, therefore, that what Smith is recording in his Rondelet are examples he has *heard* of bad pronunciation, which he records here – trial and error – and which consequently do not appear in his work, though they might have stood as examples of how to pronounce words, either well or badly?³⁹³ Smith notes that there is an even more pleasant (*delicate*, which could also mean “wanton”) manner of pronouncing the long “a” (*qui valde delicate voces has pronuntiant* (ibid.)), which Smith equates to the Roman diphthong *ae*, used especially by what he calls *mulierculae*, which is the diminutive form of *mulieres* (women): *mulierculae praesertim* (ibid.). This could simply be referring to young women,³⁹⁴ but the Ciceronian sense of this term (from the *Tusculan Disputations*) is “common working girl”. This Roman diphthong and pronunciation *does* appear in Smith’s Rondelet: describing the *locustus*, or crayfish, Smith first glosses it as “cræfish” (I, p. 534), using the *æ* diphthong derived from Latin:

³⁹² ‘But country folk lengthen both, or at least, give them an unpleasant and over[ly] coarse sound’ (p. 69).

³⁹³ I am very grateful to Richard Simpson for pointing out this possibility.

³⁹⁴ Danielsson translated this simply as “women”, but it seems likely that Smith’s use of this particular form was deliberate (p. 69).

pæ, *wæ*, *dæ*. Had Smith been down to the market and listened to the shrimp girls hawking their wares?

One gets the feeling that Smith's system of written sounds is not as stable in his own mind as he might suggest in his work. Indeed, Smith might also be seen to be *experimenting* with sound, trying out different sounds for the same forms.³⁹⁵ This experimentation also leads to some blurring of signification within Rondelet's Aristotelian categorisation of *genera* into *species*, with the movement again being towards local particulars. Smith applies the same term "crayfish" to a different species of crustacean, the *astacus*, but Smith glosses it here as an English *species*: "crefish. angloru[m]" (Fig. 39.1; I, p. 538). So, with a new species and a new woodcut comes a new sound (and locality) for the same English word, this time with the short "e" of Smith's orthographical system. A similar process occurs again for giant prawns (*Squilla crangone*): in the first book, Smith has glossed "præn fortasse" (I, p. 547), though he has chosen to erase an accent (~) from above the *æ* diphthong, implying that he did not originally hear this vowel quite the same way that it was spoken by the *mulierculae*. Indeed, this is not necessarily an exclusively English word, having been glossed from a mention in the text of *praen fortasse*, implying a French term for prawn, which elsewhere Rondelet describes as "longoustin", as Smith notes. However, in the second work, Smith modifies the pronunciation, once again applying it to a new species, this time of freshwater prawns (*Astacus fluviatile*): "Præne" (II, p. 210), which according to *DAS* is a long "a" (fp. 10v). In the context of *pay*, *day*, *way*, Smith attributes this pronunciation to Scots and Northerners (fp. 15v) and refers to it as the "improper Greek diphthong" (*diphthongus improprie Graeca*); however, in the word "mane" (as in

³⁹⁵ Op. cit. Simpson (2021).

horse's mane or *juba equi* (fp. 10v)), which more closely corresponds to "prane", Smith does not consider it problematic. A final example of indecision occurs, again in the first book, over shrimp (*squilla gibba*) (is it a coincidence that all of these might be found and sold together?): here, Smith has appeared to write "shrýmp" (Fig. 39.2; I, p. 549), but on closer inspection the "y" has simply replaced "i" by the addition of a descender, with the original dot remaining. Nothing of this kind can be found in Smith's work on orthography, but, curiously, Smith's Euclid bears a signature in which Smith has added "Syr" later than he originally signed his name, this addition bearing the same abortive "i" to punctuated "y" correction. Smith is not always so indecisive and clearly feels far more confident with the "e", "i", "o", and "u" vowels than he does with "a" (though see "hareng" (I, p. 222)): "smelt" (II, p. 196); "perche" (p. 197); "eel" (p. 198); "lampron" ... "millers thomb" (p. 202); "stikelyng, stikelbag" ... "godgeon" (p. 206); "polwigs, tadpole" (p. 215); "frog, tood" (p. 216); "horsleche, bloodsucker" (p. 226).

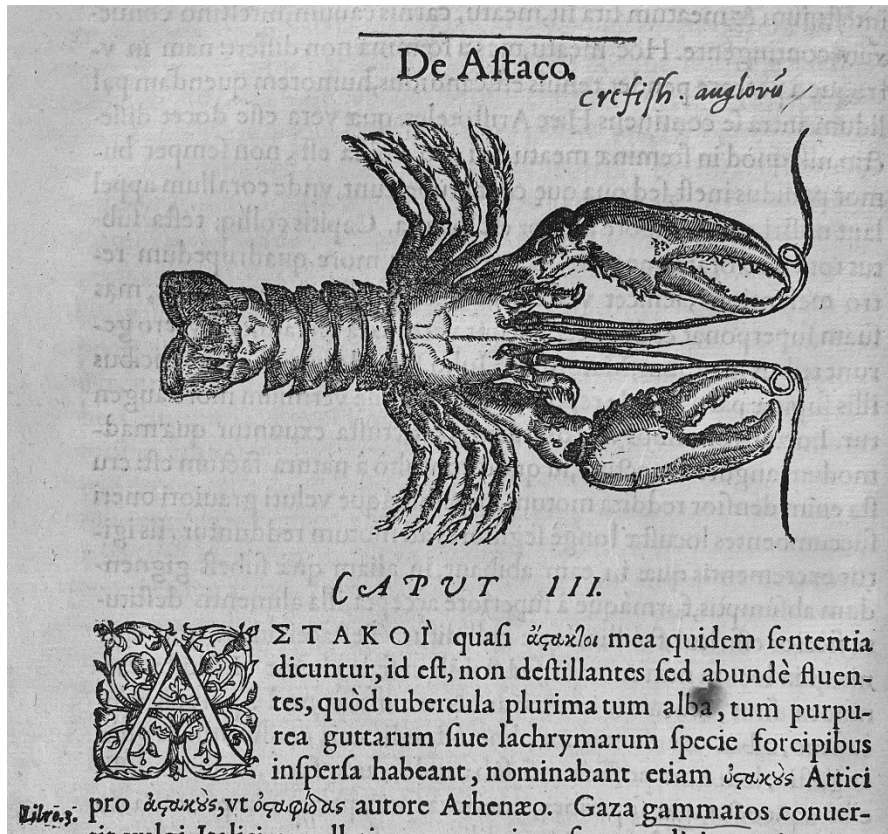


Fig. 39.1.



Fig. 39.2.

vi. Conclusion.

Smith appears to have looked to graphic depictions of pronunciation – so that written symbols are pictures for the elements of sound, which convey their force and meaning to words – to solve the problem of a rapidly multiplying natural world and its exponentially multiplying linguistic descriptors. This applied equally well to ancient sources and languages as it did to modern dialects and the local names that had arisen through custom, the latter often being based on physical observation. Indeed, observation and experience were the means for testing the assertions made by ancient authorities, corroborated through the interconnected reading and use of the books in Smith’s library. The fact that Smith seems to have been unsure of his linguistic project – changing vowels and trying out new diphthongs – is in one sense indicative of the moderation that we identified earlier in this chapter, with Smith happiest when choosing the “middle path” (*media ratio*). Smith’s experimentation with pronunciation is, however, also a symbol of his determination to eradicate the errors bred by custom, to move from local dialect to a uniform (universal) method of writing. This process was marked by the desire for the particularity represented by physical things and visual signs (*res*), as opposed to the corruptibility of words (*verba*). This rhetorical-dialectical approach might also describe Smith’s attempts in his *Rondelet* to establish an application for his system of English orthography: the paradoxical de-localisation of knowledge through the definition of things according to their specific names. Clearly, however, as Smith’s *Rondelet* shows, languages and customs were never entirely mutually exclusive. The conflicting attempt to localise knowledge in particulars while establishing a universal relationship between words and signs was challenged by the legal conception of language; in the following chapter we will see how such a

conception was expressed in Smith's work on Greek pronunciation and his reading of Roman civil law.

CHAPTER 4: LANGUAGE IN CIVIL LAW.

*Erant autem cippi, tumuli militares, ex lapidibus quadratis secus publicam viam positi.*³⁹⁶

Wolfgang Lazius, *Commentariorum Reipublicae Romanae*

i. Introduction.

In the previous chapter we saw how Smith directed his practical reading of medicine towards experimentation with his system of English orthography. The etymology of *species* was understood to be of supreme importance for the understanding of visual forms in nature, which was itself crucial (within medicine) for understanding diseases and applying treatments. Direct observation was required to understand symptoms and identify treatments from the natural world, which could go by a variety of names. Such an approach can also be applied to law: to understand the law one had to understand the texts of the law, which could appear in multiple forms and languages. Moreover, to apply Roman civil law to an English context – which Smith certainly did, just as he had done with Rondelet’s fish – one had to perfectly understand how languages had changed through time. Language was closely tied to the authority of the laws; all written laws had their origin in divine law, which had at some point been translated into the written code of civil law. All languages and laws, therefore, had an original inventor or legislator (divine or otherwise): an authority. In this chapter I will address how etymological concerns were the preserve of legal humanists like Andrea Alciato, for

³⁹⁶ ‘There were on the other hand boundary markers, the tombs of soldiers, and “quadrates” of stone, which were placed along the public streets’ (p. 7) (Basel, Oporinus, 1551).

whom etymology was a part of authority, which was in turn expressed in jurisdiction. Through his reading of Alciato, I will attempt to frame Smith as a typical legal humanist. In this we are beginning to move away from the analysis of Smith's reading as part of a commonplace Renaissance response to the technology of the printed book, and towards an intellectual biography of Smith, in which his reading will be portrayed as a three-dimensional process that contributed to specific elements of his written works. In this case the work in question is Smith's letters on Greek pronunciation, *DLG*, the companion volume to his tract on English orthography. I will link Smith's *DLG* to Alciato's *De verborum significatione* (1530), demonstrating that Smith's understanding of how civil law operated textually was derived from, and in some cases opposed to, Alciato's legal conception of linguistic etymology. This is crucial for understanding how Smith read Roman law in an English context, and how he arrived at the ideas concerning legal authority expressed in *DRA*.

A good linguistic understanding of the law's origins led the lawyer to the force of the law, which was the basis for the application of the case; such was the force of the argument in *DLG*. Smith wrote his letters on ancient Greek pronunciation in 1542 when he was a fellow of Queens', in response to (the then Vice-Chancellor) Bishop Stephen Gardiner's (1483-1555) decree banning the use of the "new" pronunciation at Cambridge. In essence, Smith, along with his co-agitator Cheke, was advocating the pronunciation of ancient Greek following a system advanced by Erasmus, which chiefly revolved around articulating both vowel sounds within the Greek diphthongs (*ai*, *oi*, etc.) as opposed to their being sounded with single vowel sounds.³⁹⁷ This was, the

³⁹⁷ Cf. Erasmus, *De recta Latini Graecique sermonis pronuntiatione, dialogus* (Lyon, Gryphius, 1528); Cheke's letters to Gardiner were published, with the latter's replies, before Cheke's death in Strasbourg: *De pronuntiatione Graecae potissimum linguae disputationes cum Stephano Vuintoniensi Episcopo septem contrariis epistolis comprehensae ...* (Basel, Episcopus, 1555).

young scholars argued, closer to the original pronunciation of Greek as it was spoken in ancient Greece – so that the “new” pronunciation was, in fact, the original or “old” pronunciation – and totally unlike the modern pronunciation of Greek, which was (quite understandably) being advanced by modern Greeks who were teaching the language in European universities.³⁹⁸ In Chapter 2 we explored how Smith’s reading was systematic, aiming to replicate the technologies and functionality of printed books, and how Smith applied these systems to questions of genealogy and chronology. In Chapter 3 we saw how such a systematic approach to reading could be useful for dividing things into *species* and *genera*, or into taxonomies and hierarchies. Again, this approach was necessarily linguistic, since *species* are designated by their names as much as by their appearance or function (different but related kinds of *significatio*). This applied to the wording of legal contracts such as wills and testaments (a major feature of *DRA*) just as it did to different species of fish; languages and names are customary and developed through use, like legal institutions. Similarly, we have already seen how etymology was part of the historical study of genealogy, both of languages and legal systems alike, which we might call “legal anthropology”, perhaps most clearly expressed by the division in Dionysius of Halicarnassus’s *Roman Antiquities* of Republican Roman society into *classes*. But Dionysius, also Smith’s ancient authority on Greek pronunciation in *DLG*, had much more to say about how the Roman Republican legal system originated in Greek history, and in a mythical Greek past.

³⁹⁸ Smith describes his interaction with a Greek in Paris in *DLG*, who may of course be fictional; see ffp. 5v-6r.

ii. Law and custom.

The thesis of Dionysius of Halicarnassus (unsurprising given that he was Greek) was that the Romans had originated with Greek tribes and peoples; even the tribes already living in Italy, the Aborigines and Pelasgians, were originally Greek, and had not only mingled with those who had newly arrived from Greece (the Peloponnesians who came over with Hercules), but also with the fleeing Trojans: ... *ita ut iam confidentur quivis, missos eos faciens, qui barbarorum & fugitivorum, & vagorum hominum, perfugium Romam faciunt, Graecam eam urbem asserat, demonstrans eam maximam commune urbium, & humanissimam* (p. 55).³⁹⁹ Indeed, while it is Smith's Latin edition that has survived at Queens', he also possessed this work in the original Greek, in an edition containing Dionysius's work on rhetoric, *De compositione*, large sections of which appear in *DLG* as proof of ancient Greek pronunciation.⁴⁰⁰ Dionysius was hoping to correct the absence of a decent history of ancient Rome in Greek.⁴⁰¹ Moreover, Dionysius connected his purpose with a natural law of hierarchy: the Greeks would accept their position as a Roman colony if they could only understand the origins of Rome and its laws (including its Greek origins), which had made the Romans into a

³⁹⁹ 'Hence, from now on let the reader forever renounce the views of those who make Rome a retreat of barbarians, fugitives and vagabonds, and let him confidently affirm it to be Greek city, [showing it to be] the most hospitable and friendly of all cities' (the whole section is marked in blind in the margin); trans. (from Greek) Earnest Cary (Cambridge, MA: Harvard University Press, 1937), I, pp. 305-307.

⁴⁰⁰ *Romaikes archaiologias biblia deka; Tou autou tes retorikes technes ... Dionysii Halicarnassei antiquitatum Romanorum libri X; De compositione* (etc.) (Paris, Stephanus, 1546); MS49, f. 89r. Carlotta Dionisotti has noted that these passages must, therefore, have been inserted later than 1542, when the original exchange of letters with Gardiner took place (paper delivered at the Society of Antiquaries, London, 6 December 2013).

⁴⁰¹ ... *nulla enim de his rebus satis diligens, aut certa historia digesta est Graecis, usque ad nostra tempora, nisi summatim quaedam, & concise, valde brevia...* (p. 4); 'For no accurate history [of the Romans] written in the Greek language has hitherto appeared, but only very brief and summary epitomes' (I, p. 19).

superior people: *Naturae enim lex est omnibus communis, quam nullum dissoluit tempus, deterioribus semper imperare meliores* (pp. 3-4).⁴⁰²

Smith's interest in the very earliest institutions of Roman society was therefore rooted in Greek etymology. The earliest institutions of Roman government, as established by Romulus, are described by Dionysius and translated into Greek equivalents, some of which Smith notes at the top of the page: "*phyle triteis*, Tribus; *phratia lochos*, Curia" (p. 60).⁴⁰³ More terms are underlined in the text with their Greek equivalents, comparing the classes of Roman citizens who could vote (and those who could not) with their equivalents in Athens: *Plebeios* ... *Patres* ... *eupatridas* ... *agroikous* (ibid.). The Greek genealogy of the Romans is also, therefore, a natural point of departure for Smith's comparison of Roman legal terms with English ones, similar to the process of translation in his Rondelet, in which the English terms needed to be supplied: "Patron; mastre ... Clientes; retayners" (p. 61) (as we shall see in the final chapter, this was an extremely significant derivation for Smith's thought in *DRA*). Dionysius makes it clear that translations can be applied to more than just simple words or terms, however, suggesting that the Romans directly translated their system of the *tribus* (the tripartite division) from the Greek Lacedaemonians (i.e. Spartans): *Hunc mihi morem videtur Romulus a Lacedaemoniis transtulisse* (p. 63).⁴⁰⁴ Such translations worked in both directions: one element of the Republican *Lex Julia* (governing agrarian law), which

⁴⁰² 'For by a universal law of Nature, which time cannot destroy, it is ordained that superiors shall ever govern their inferiors' (I, p. 17).

⁴⁰³ *Essent autem ea nomina lingua Graeca interpretata phyle & trittys, Tribus, phratia [sic] vero & lochos, Curia. homines vero qui tribuum ducatus haberent: phylarchai [sic] quidem & trittyarchai [sic] quos Romani tribunos vocant. Qui vero phraties praesiderent, phratriarchai [sic] & lochagoi quos illi Curiones dicunt;* 'These names may be translated into Greek as follows: a tribe by *phyle* and *trittys*, and a curia by *phratra* [sic] and *lochos*; the commanders of the tribes, whom the Romans call tribunes, by *phylarchoi* [sic] and *trittyarchoi* [sic]; and the commanders of the curiae, whom they call curiones, by *phratriarchoi* [sic] and *lochagoi*' (I, p. 333).

⁴⁰⁴ 'This custom Romulus borrowed, I believe, from the Lacedaemonians' (I, p. 351).

required some citizens to become colonists, had been introduced by Romulus, but would have made, says Dionysius, a good law for the Greeks: *Fuit item tertium Romuli institutum, quo uti maxime Graecos oportuisset, institutorum omnium (ut mea fert opinio) optimum: quod & firmæ libertatis initium Romanis fuit, nec minimam prae-buit eorum partem, quae ad principatum ducunt ...* (p. 64).⁴⁰⁵ However, some Roman laws or customs, Dionysius had to admit, were simply undesirable from a Greek perspective; a woman could be killed by her husband for committing adultery, but also for drinking wine: *Mulier adultera vel vinum bibens a marito occidi poterat* (p. 70; marked in blind to the margin). The latter “crime”, suggests Dionysius, would have been the least offensive of all for the Greeks: *& de eo quod peccatorum omnium minimum videretur Graecis, si qua inventa esset mulier vinum bibens* (ibid.). For Romulus, however, adultery was the ultimate sin a woman could commit (*ut delictorum muliebrium ultima*), and so the two crimes, being related, were considered equal: adultery was the source of all folly (*insania*), but drunkenness was the source of adultery (*corruptionem quidem insaniae principium ratus, corruptionis autem ebrietatem* (ibid.)).

Laws were therefore different according to different customs, a commonplace echoed by Smith in *DLG*: *& contra naturam sane furtum est, quanquam ab aliquo populo, ut a Lacedaemoniis probabatur ... Ergo qui apud Triballos & Essedones parentem suum mactaverat, impie fecit, sed tamen laudabatur* (fp. 16r).⁴⁰⁶ Smith took this point up in the French jurist François Connan’s (1508-1551) commentary on the civil law (“Cur

⁴⁰⁵ ‘There was yet a third policy of Romulus, which the Greeks ought to have practised above all others, it being, in my opinion, the best of all political measures, as it laid the most solid foundation for the liberty of the Romans and was no slight factor in raising them to their position of supremacy’ (this section is marked in blind in the margin) (p. 357). It is worth noting here, given Smith’s project to establish a colony in northern Ireland in the 1570s along the lines of a Roman Republican colony, that the hypothetical example of the ideal city in Plato’s *Laws* was a colony (Book 4).

⁴⁰⁶ ‘Theft is also unnatural although it was approved by some nations, as by the Lacaedaemonians ... He who had slain his parent among the Triballi and Essedones did an ungodly action, but was praised’ (p. 73).

Lacedaemoniis furtu[m] permissu[m]” (I, fp. 2v)): *Sic furtum illud edulorium Lacedaemoniis permissum fuit, justum non fuit. Est enim illa naturae vera & nulli non cogita vox, [“] Neminem esse laedendum: [”] ad quam non obsurduerant ipsi, quod fieri non potest, cum ea vox unicuiusque nostrum aures assidue feriat, sed privatis injuriis utilitatem publicam praeferentes ...* (ibid.).⁴⁰⁷ Private injury for public benefit was a thesis advanced by Smith in his manuscript work, the “Discourse of the Commonweal” of 1549, as Neal Wood has shown.⁴⁰⁸ However, in *DLG* Smith essentially followed Connan in the idea that no custom is just if it does not agree with nature, which is the source and end of all laws (“Natura fons et finis ll. (leges)” (ibid.)): *Neque vero quicquid hominum more justum est, aut honestum, id vere est huiusmodi, nisi fuerit aequitati naturae consentaneum ...* (ibid.).⁴⁰⁹ The source for natural equity (*aequitas natura*) was *conscientia*, which Smith glossed in English as “Conscience” (fp. 3v) (the full significance of which will be discussed in the following chapter). Smith was making the point that all customs must be tried against the law of nature, and directed by conscience, but he did not believe all of them could (or should) necessarily be followed.⁴¹⁰ However, custom was certainly seen to be responsible for the perversion of natural or divine law, a process that Smith compared directly with unnatural pronouncement, as he rather tartly pointed out in one of his letters to Gardiner in *DLG*:

⁴⁰⁷ ‘Therefore the theft of food, permitted by the Lacedaemonians, was not just. For there is even a true voice of nature, not unknown to anyone, which says, “None shall be harmed”: to which the Lacedaemonians had not shut off their hearing (which cannot be done, since that same voice constantly strikes the ears of every one of us), but public benefit was placed by them above private injury.’

⁴⁰⁸ Neal Wood, “Avarice and Civil Unity: The Contribution of Sir Thomas Smith” in *History of Political Thought*, 18.1 (1997), pp. 24-42. Wood argued that Smith’s *Discourse of the Commonweal* was an unusual expression of a belief, derived from Plato and Augustine, that “avarice”, i.e. individual profit seeking, was actually a driver of social and civic unity.

⁴⁰⁹ ‘Neither is anything truly just or honourable according to human custom, unless it should be in agreement with natural equity.’

⁴¹⁰ ... *ut consuetudines omnes ex aequitate naturae probandas, non omnes quaecunque sint, sequendas existimemus* (fp. 16r); ‘so that while we might consider that all customs must be approved out of natural law (fairness), we do not consider that all of them – whatever they might be – must be followed’ (my translation).

Atque similia non sunt contra consuetudinem sonasse, & male vixisse, imo vero similia: quoniam par poena apud nos in utroque constituitur, atque etiam illius propemodum ex edicto tuo supplicium est gravius (fp. 16r).⁴¹¹

Legal penalties (*poena ... ex edicto*) are of interest to Smith in his Dionysius. As the *patrones* and *clientes* were established in the spirit of friendship and mutual benefit (*officia institutens utrisque percommoda, benivolas, civilesque conjunctiones eorum fecit* (p. 61)), they could not testify against one another in legal disputes, nor could they go to war with one another, which would be punishable by death, as Smith notes with a manicule (“*Poena p[ro]ditionis*”, i.e. the punishment for treachery (ibid.)). Communal institutions (*utrorumque communia officia*) and customary laws were not, however, written down, and it was written law (“decrees” or *edicta*) that Smith craved as a legal humanist. The problem with Dionysius is that he describes systems of law that were written down once, in the Republican Twelve Tables, the written code of the Republican civil law, which was inscribed on tablets in the Forum, but had only survived in fragments, if at all; in the *CJC* it was described as the origin of the Roman civil law code.⁴¹² Dionysius refers to a variety of Romulan laws preceding the Twelve Tables, describing them variously as customary statutes (*consuetudines statuti*) and written decrees (p. 90), and even mentions one law that had survived from the second king of Rome, Numa Pompilius, into the Twelve Tables (*in quibus est lex scripta huiusmodi* (p. 71)). Similarly, Marcus Ancius had set up Numa’s laws in the Forum on tablets (*in pugillaribus excripsit proposuitque in foro videndos omnibus volentibus* (p.

⁴¹¹ ‘But unusual pronunciation (*contra consuetudinem sonasse*) and evil living are different things. Nay, they are alike; since an equal penalty is appointed for them by your decree’ (p. 73).

⁴¹² ‘He therefore adopted the laws and customs instituted in the reign of Romulus, thinking them to be the best of all the decrees, he permitted them to remain; and where it was seen that Romulus had left something out, he added it.’

130)),⁴¹³ while Tullius later unified the earlier codes of Romulus and Numa, and here Dionysius also describes laws being written down (*legesque conscripsit* (ibid.)).⁴¹⁴ There is an uncertainty, however, about what was written down and what was originally customary (i.e. unwritten) law: Dionysius alludes to one law, which governed the father's almost total ownership of his son.⁴¹⁵ As Smith notes, even a slave when released was completely free ("Emancipatio" (p. 71)), whereas a father could sell his son and, if he was sold by his new owner, immediately take possession of him again, up to three times. The Greeks, says Dionysius, will probably find this especially onerous, even tyrannical (*quam acerbum & tyrannicum ... patri concesserit* (ibid.)); it is unclear, says Dionysius, whether this law was originally written down (*scriptam an non scriptam certum non habeo* (ibid.)). It was, however, one of the laws considered worthy for inscription in the Twelve Tables, and it is with these that Smith finally has some case law to get to grips with.

Dionysius describes an episode in which a patrician, Appius Claudius, was obstructed from marrying an underage girl that he desired, because of the laws inscribed in the Twelve Tables (*praeterque legem quam ipse in duodecim tabulis scripserat* (p. 520)), an episode which, moreover, led to the overthrow of the Roman oligarchy by the plebeians.⁴¹⁶ The girl was from a plebeian family, but, moreover, Appius could not marry her because she was betrothed to another man, and he was himself legally married. Having tried to bribe the girl, he eventually resolved to kidnap her, and sent

⁴¹³ 'He wrote them in tablets and laid them out in the forum, so that all who wished to could see them.'

⁴¹⁴ 'He wrote down the laws, including those which had been removed because of age or neglect, those which Numa and Romulus had introduced, having unified the same.'

⁴¹⁵ The Latin states that Dionysius considers this the best law, rather like the *Lex Julia* (see above): *legum omnium opinor optimam*; however, in the original Greek text it is the Roman kings that consider the law to be the best (*basileis ... apanton kratiston hegoumenoi nomon*) (pp. 390-391).

⁴¹⁶ VII (1950), p. 9.

one of his clients, Martius Claudius, to do the job; he was, however, apprehended in the act by a mob. In the legal argument that ensues – Martius having been dragged to a court to explain himself, where (coincidentally) Appius was the presiding judge – Martius appeals to common law (*ad communem legem omnibus confugio* (ibid.)), arguing that the girl’s mother had in fact been one of his slaves (though she was raised by a free woman), and that accordingly she was his property. The girl’s family, on the other hand, claimed that this was a lie: the girl was free-born, which meant that Appius, the magistrate, had to follow the laws inscribed in the Twelve Tables and release her; laws which, as chief of the *decumvirate*, he had himself put down in writing (*primum quia hanc legem ipse simul cum aliis in duodecim tabulis scripsisset: deinde quia esset idem decumviratus princeps* (p. 521)). Appius’s judgment of the case refers to a separate legal argument entirely: when someone is being taken from the condition of freedom into slavery, it is the man who is attempting to maintain their liberty, not the man trying to remove it, who has custody of that person until the trial.⁴¹⁷ This story is significant because it is the written law that triumphs. Like a true legal humanist, Smith is therefore trying to pick real instances of Roman civil law from the rubble of the Twelve Tables. In Dionysius, however, laws are mainly discussed in abstract terms – inscribed, rubbed out (*delere*) and re-inscribed – without specific reference to the laws themselves, which have mostly been lost.

⁴¹⁷ ... *cum ducatur corpus aliquod in servitutem ex libertate, non auferentem aliqua libertatem, sed custodientem ipsam, dominum esse corporis usque ad finem iudicii* (p. 521). See also p. 522, where Appius responds: *Ego inquit legem non ignore de vatione ductorum in servitutem positam, quae non sinit esse corpus apud auferentes usque ad finem litis: neque eam, quam ego scripsi, dissolverem unquam volens*; “I am not ignorant of the law concerning the bailing of those who are claimed as slaves, which does not permit their persons to be in the power of the claimants till the hearing of the cause, nor would I willingly break a law which I myself drafted” (VII, p. 105).

The case of Appius Claudius sets up the opposition of customary or natural law – unwritten law – with the written system of civil law. Custom was often seen as a law unto itself, to which the written civil law was inherently opposed, since it was specific and prescriptive. As Smith notes in his work on Greek pronunciation: *Magna quidem vis, magnum pondus, autoritas plurima consuetudinis & usus* (fp. 17r).⁴¹⁸ The authority of custom (even its *imperium*, as Smith calls it) is over things which have no fixed position: *Multa quoque sunt, fateor, quae nullam stabilem ac firmam naturae suae sedem, & quasi ideam habent: in quibus moris & consuetudinis praecipium jus & tanquam imperium est, ut ex eius decreto cuncta fiant & administretur* (ibid.).⁴¹⁹ The authority of immutable nature – natural or divine law – is therefore at odds with custom: *Non igitur consuetudo naturam invertere, sed apud excaecatos consuetudine, reprehensionis notam vel in flagitio tollere, vel pari levitate etiam in recte facto potest inurere* (fp. 16r).⁴²⁰ What Smith is concerned with is the potential for *bad* customs to corrupt natural or divine law, just as they corrupted language. As Smith notes in his copy of the *Codex*, while divine things are perfect, human laws are prone to corruption and can never remain the same (“Divinae res perfectae ... Humani juris Conditio in infinitu[m] decurrit” (fp. 33r; I, 17.2.18)): *Sed quia divinae quidem res perfectissimae sunt, humani vero juris conditio semper in infinitum decurrit, & nihil in eo quod perpetuo stare possit, (multas etenim formas edere natura novas deproperat)...* (ibid.).⁴²¹ The law and its original texts therefore represent a greater degree of

⁴¹⁸ ‘Great is the force, great the weight, enormous the authority of custom and usage’ (p. 77).

⁴¹⁹ ‘I admit that there are many things which have no stability or fixity of nature, no notion, as it were. Over these is the main right, and as it were the empire (*imperium*) of manner and custom, so that all things are done and governed by its decree (*decreto*)’ (ibid.).

⁴²⁰ ‘Custom cannot reverse nature; but among those who are blinded by custom it can erase the mark of blame from a crime, and, with equal thoughtlessness brand it on a good action’ (p. 73).

⁴²¹ ‘Because things divine are most perfect but the condition of human law is to run on indefinitely, and there is nothing in it that can last forever – for nature hastens to produce many new forms ...’; trans. Fred H. Blume, ed. Bruce W. Frier, *The Codex of Justinian: A New Annotated Translation, with Parallel Latin and Greek Text* (Cambridge: Cambridge University Press, 2016), I, p. 289.

perfection, which it is custom's place – an authority that must be followed, after all – to corrupt. This is also a natural process that brings in new laws and languages, which the original *written* code of law cannot contain, a contingency that was written into that same code: *non desperamus quaedam postea emergi notitia quae adhuc legum laqueis non sint innodata*.⁴²² In Smith's annotation of the *Codex* this is followed by an interesting erasure: he has excised an entire passage forbidding anyone from using any legal text other than Justinian's code in any legal trial; Smith appended a maxim to this erasure, as well as a note ("Similitudo L1 (leges)") on the similarity of laws, which can easily be confused: "Om[n]i habere memoriam et poenitus in nullo peccare Divinitas magis quo[rum] mortalitatis est" (ibid.).⁴²³ Error is built into human nature and therefore into human laws. For Smith, this is above all a question of how written law, as a translation of divine law into a system of writing and contracts, is prone to corruption by custom. In *DLG* he refers to such written systems of law: ... *usus veteris & veri apparentis species pro Tabulis XII, & solonis axonibus, aut Lycurgi retris habebantur: hinc omnia mutare & corrigere, & de novo invenire solebant, non quae edicto firmarent ad terrorem, sed quae rationibus probarent ad persuasionem* (fp. 27r).⁴²⁴ It is highly significant that even edicts are seen as potentially fallible in interpreting the original statutes of the law; the only reliable option is good, sensible interpretation of the existing legal texts – whether according to strict interpretation of the written law, or to natural equity, or, ideally, to both – through legal *actions*, as evidenced by the case of Appius Claudius.

⁴²² 'We have no doubt that cases shall emerge that are not enmeshed in the bonds of the present laws' (ibid.).

⁴²³ 'To have perfect memory and not to commit any crime is more [a property] of divinity than of mortals' (my translation); the Latin section is part of 1.17.2.19: *Nec in iudicio nec in alio certamine* (etc.).

⁴²⁴ 'The appearance of ancient and obviously correct practice was reserved for the Twelve Tables, Solon's wooden rollers, and the *Rhetrae* (decrees) of Lycurgus. From this foundation they used to make all sorts of changes and corrections, and invent new laws, not to be established by decrees (*edicta*) and threats, but to be persuasively proved by arguments' (p. 117).

iii. On the signification of language.

Smith's work on Greek pronunciation set out two basic principles: firstly, custom corrupted divine law, and secondly, written texts could not be trusted, precisely because they were written down. Laws could be destroyed, or they could be changed. The Romans knew this just as well as modern historians: Suetonius describes Vespasian's efforts to restore three thousand bronze legal tablets to the Capitoline, which had been destroyed when Nero burned the city:

... aerearumque tabularum tria milia, quae simul conflagrauerant, restituenda suscepit, undique investigatis exemplaribus. Instrumentum imperii pulcherrimum, ac vetustissimum confecit: quo continebantur pene ab exordio Urbis senatuconsulta, plebiscite (p. 119).⁴²⁵

Smith has noted the “[Instrumentu[m] Imperii]” (ibid.) and the number of tablets. In his civil law books Smith noted the question of whether Justinian had burned the old volumes of the law when he promulgated the *CJC*; new laws always abrogated old laws, as we saw earlier in the case of Salic law.⁴²⁶ The best the legal humanists could hope for was to apply their linguistic skills to whatever evidence of the original texts they could find. The best sources, etymologically speaking, were inscriptions, which offered the original forms of Latin and Greek legal texts, and were therefore the closest thing to the original intention of the lawmaker. As we saw in Chapter 2, this could be applied to Biblical texts and divine law, as well as to the legal texts of “human” laws such as treaties. Natural law was therefore not only the origin of the written civil law

⁴²⁵ ‘He undertook to restore the three thousand bronze tablets which were destroyed with the temple, making a thorough search for copies: priceless and very ancient records of the empire, containing the decrees of the senate and the acts of the commons almost from the foundation of the city ...; *Lives of the Caesars*, trans. J.C. Rolfe (Cambridge, MA: 1914), II, p. 287.

⁴²⁶ Smith noted this in his copy of the *Institutiones antiquorum Jureconsultorum conflagrasse monumenta*... (H.2.19(1), fp. B2v) (see Chapter 4); Smith noted that this did not take place: “Justinianu[m] no[n] cremasse veteru[m] volumina” (Part II, p. 6).

but also of the language in which it was written. Indeed, the original, semi-divine lawgivers, to whom Smith referred in his legal lectures and in *DLG* – Lycurgus, Rhadamanthus, Numa Pompilius and Moses⁴²⁷ – were also, in Smith’s view, the originators of language, as Richard Simpson has aptly demonstrated in relation to Smith’s reading of his Plato at Lambeth Palace Library.⁴²⁸ This was, as we have seen, a question of corruption introduced by custom: in his copy of Plato’s *Republic*, Smith drew a huge Cerberus, the three-headed canine guardian of Hades, representing erroneous language (“VULGUS”), and confronting a miniscule figure of an orator in a pulpit (“{R}ETOR” (Fig. 40; p. 428)). However, it was also a question of ancient textual authority: in the *Cratylus*, Smith noted that a word pronounced in Plato’s day with single vowels (*noesis*, i.e. understanding) had “anciently” (*archaion*) been pronounced – i.e. by Greeks even older than Plato – with two vowels, which presumably brought into question whether the *oe* was, in fact, a diphthong (*neoesis*; “.e. [eta] anti ee. [epsilon]”) (with the manicule pointing, unusually, to Smith’s own annotation rather than to the text) (p. 58)).

⁴²⁷ UL MS Mm. 1.48, f. 395: “eorum quae sanxissent, Deum vel vere, vel simulate prae se ferebant authorem”; ‘those laws which they had sanctified (this term is used for Justinian in the *CJC*), either truly or feignedly carried God before them as the author.’ This manuscript copy of Smith’s second lecture is in the hand of the Cambridge antiquary Thomas Baker (1656-1740); for an identification of his hand cf. Robert Bowes and George J. Gray, *John Siberch: Bibliographical Notes 1886-1905* (Cambridge: Macmillan and Bowes, 1906), pp. 17 and 39. Smith’s first lecture survives in a seventeenth-century copy now at the Bodleian Library: Oxford, MS Top. Ox. E5.

⁴²⁸ Op. cit. Simpson (2021); when reading the *Cratylus*, as Simpson observed, Smith responded to a possible freak in his 1534 edition of the text, in which “law-giver” (*nomothetes*) was given as “name-giver”, (*onomathetes*), which Smith further amended to give the meaning of “creator of names”: “onomatothetes” (p. 78, n. 115). Simpson also points out that Smith’s source in the *DLG* for ancient Greek pronunciation was *On Literary Composition* by Dionysius Halicarnassus (op. cit. Dionisotti), which made reference to Plato’s *Cratylus* (p. 85).



Fig. 40. Plato (1534).

In the first letter of *DLG* Smith sets out a brief theory of language. He begins with his opponent Gardiner's position, which was obviously geared towards the idea that languages, and therefore pronunciation, are subject to change, and that this change is acceptable, perhaps even necessary. Gardiner's assertion, derived from Aristotle, was that some words are "natural" (*natura*) and others "conventional" (*placitum* (fp. 6v)): while the *sounds* of words are natural, spoken and written language is artificial, and its meaning is therefore entirely dependent on custom.⁴²⁹ According to Gardiner, words do not possess any inherent *species*, i.e. "type," or "notion" (*idea*), so that any force attached to them is not only entirely dependent on custom but also, therefore, changeable: *quibus verbis illum significare nobis vis, quarundam vocum nullam esse in*

⁴²⁹ Cf. Aristotle, *On Interpretation*, trans. H. P. Cooke and Hugh Tredennick (Cambridge, MA: Harvard University Press, 1938), Book 1. Smith, ironically, advanced this position in *DAS*.

rerum natura speciem & tanquam ideam, sed pro hominum arbitrio subinde variam atque mutabilem (fp. 6v).⁴³⁰ Smith, as we saw in the previous chapter, followed this position in *DAS*, clearly retreating from the hard-line position he took in *DLG*; Smith counters that words *do* have an inherent force and meaning: words are made up of various *elementa* or *symbola*, i.e. letters or syllables, which have varying levels of force (*vis*), especially when grouped together, so that *arbor* (tree) will mean what it means whether you divide it up as *a, r, b, o, r*, or, alternatively, *ar-, b, -or* (fp. 7r). Smith's argument is subtle and perhaps a little disingenuous: he does not argue that words are unchangeable, he merely suggests that such changeability is proof of the inherent meaning of the word; if you change the *symbola* or *elementa* then you no longer have the correct *species* or *idea*, neither can you correctly pronounce the name identifying that same *species* or *idea*. Again, Smith is not denying that language is (as Aristotle asserted) customary or artificial; he is simply suggesting that once a word has been given a meaning through customary use, that meaning is then unchangeable without loss of the inherent *idea* of the word. This is a highly legalistic argument.

Smith quotes the jurist Ulpian to further hammer home his point: *Rerum enim, inquit Jureconsultus, vocabula sunt immutabilia, hominum vero mutabilia* (ibid.).⁴³¹ This maxim – which Smith has underlined and noted in his copy of the second volume of the *Digest* or *Pandects* (fp. 160r),⁴³² which was the main body of case law of the *CJC* – refers to the making up of wills and testaments: though the name of the testator might be given incorrectly in the will, the force of the will does not change; however, as Smith

⁴³⁰ ‘Which you interpret as meaning that words have no definite *species* or notion by nature, but one constantly varied and changeable by human convention’ (p. 35).

⁴³¹ ‘For, as Ulpian says, “the names [*vocabula*] of things are unchangeable, but those of men can be changed.”’ (ibid.); the identification of Ulpian can be found in the marginal *lemma*; cf. *Digest*, 30.1.4.

⁴³² M.2.12; A54.

notes, if you put gold when you meant to put brass (*aut auri nomine aurichalcum comprehenderit* (fp. 7v)), then gold is what will be held to be in the will (*non continuo quod illi placeat, pro significato habetur, sed quod vocabuli natura desiderat, id tenebitur* (ibid.)).⁴³³ Ulpian's point is simply that in the case of wills, the lawyer can get the client's name wrong without changing the force of the will, but if he puts gold for *electrum*, or if he puts silver when clearly garments were intended (*quemadmodum si quis putet auri appellatione electrum vel aurichalcum contineri vel, quod est stultius, vestis appellatione etiam argentum contineri*),⁴³⁴ then his intention is redundant and these are what the (now void) will is said to contain; this is because things (*res*) have names which carry inherent meanings and therefore legal force. Ulpian recognised, therefore, that changing the *vocabula* of a thing was contrary to its natural force or meaning. Smith wrote in *DLG*: *naturam etiam talem dicimus esse vocabuli, ut si quis contra id quod ita constitutum est vel sonuerit, vel scripserit, vel ad significandum traxerit, distorquere vocabulum & luxare compacta membra, & contra naturam his abuti videatur* (fp. 7v);⁴³⁵ even lawyers, Smith notes, are frequently guilty of such errors. By using this very specific example from Roman civil law, Smith is in fact advancing a broader legal argument: the original force or intention of the legislator is corrupted through changes to the language of the law, which led to Justinian's proscriptions in the *CJC* against commentaries, translations seeking to change the meanings of words, and even abbreviations.⁴³⁶ The relationship between intention and

⁴³³ '... that is not held to mean what pleased the writer, but ... what the nature of the words demands will be maintained' (p. 39).

⁴³⁴ *Digest*, 30.1.4; '... just as if someone were to think electrum or brass to be included under the term gold, or more foolishly still, silver to be included under the term clothing'; all translations of the *Digest* are from trans. Alan Watson, *The Digest of Justinian* (Philadelphia: University of Pennsylvania Press, 2011); IV, p. 1, III, p. 1.

⁴³⁵ 'We also say that the nature of a word is such that anyone who speaks or writes it and makes it mean something contrary to what has been thus settled, appears to distort the word, to put its limbs out of joint and unnaturally misuse them' (p. 39).

⁴³⁶ *Codex*, 1.3.21-22.

language was always ambivalent, as shown by two statements in the *Digest*: firstly, that the force of the law was to be maintained rather than language itself (*Scire leges non hoc est verba earum tenere, sed vim ac potestatem*), and secondly, that the interpretation of the law should be as broad as was required to maintain the original intention of the legislator (*Benignus leges interpretaendae sunt, quo voluntas earum conservetur*).⁴³⁷ The importance of maintaining an unchangeable intention in relation to language, which is inherently *changeable*, is therefore also part of Smith's argument: we should all aim to use language exactly as it was used by the first users of that language: *Quis autem sit primus iste impositor, & qui sunt architecti verborum, quaestionis est, & in hoc tota causa vertitur* (fp. 7v).⁴³⁸

iv. Greek and Roman traditions.

Already we can see that there is some tension between the words and the spirit of the law: custom had corrupted the original legal texts; legal practice was therefore about establishing the principle at the heart of a case. Ian Maclean noted an important caveat to bear in mind when approaching the written texts of the law: 'The need for interpretation arises from a fundamental asymmetry in the law itself. The written law is, on the one hand, not the law; rather it embodies more or less directly and successfully the norms and force of the law; as a long series of jurisprudential texts have warned the student, to know the words of the law is not to know the law.'⁴³⁹ The solution to this

⁴³⁷ *Digest*, 1.3.17: 'Knowing laws is not a matter of sticking to their words, but a matter of grasping their force and tendency'; 1.3.18: 'Statutes ought to be given the more favourable interpretation, whereby their intendment is saved' (I, p. 12).

⁴³⁸ 'But the question is who was the first user, and who are architects of words; and this is the whole point' (p. 39).

⁴³⁹ Ian Maclean, *Interpretation and Meaning in the Renaissance: The Case of Law* (Cambridge: Cambridge University Press, 1992), p. 87.

problem involved an acknowledgment of a weakness inherent in civil law: the force of the law must always precede the language in which it will be written, which can never be sufficient to describe it perfectly. Moreover, legal humanists of the sixteenth century had to cope with the knowledge that the texts of civil law with which they were working might be highly imperfect, largely because of the huge amount of medieval commentary and grammatical error that was now interposed between them and the original texts; the texts of Roman civil law were an editorial work-in-progress in the sixteenth century. For legal scholars like Guillaume Budé (1467-1540), who looked upon Roman civil law as a “battered relic”, this was precisely its appeal, according to Donald Kelley.⁴⁴⁰ The awareness among legal humanists of the fallibility of language (custom) and the legal texts pervaded Smith’s understanding of the law, as shown by an annotation he made to the first volume of the *Digest* (fp. 5v; 1.2.2).⁴⁴¹ Addressing the commentary by the much-maligned medieval glossator Accursius, Smith illustrates the comic story of the foolish Roman arguing with the wise Greek, with a doodle of a smiling Roman (signifying his foolishness (*stultus*)), attired like a monk (ditto), facing a bearded and robed Greek in the classical guise of a philosopher (Fig. 41; *ibid.*). The story concerns a series of misunderstandings: the Greek is clearly raising one finger in the air in Smith’s doodle, indicating the existence of a single God (*qui sapiens nutu disputa re cepit, et elevavit unum digitum, unum Deum significans*), which the Roman takes as a sign that the Greek means to poke out his eye; he retaliates by raising two fingers (and his thumb) to poke out *both* the Greeks eyes (*stultus credens quod vellet eum uno oculo excecare, elevavit duos, et cum eis elevavit etiam pollicem ... quasi*

⁴⁴⁰ Budé was particularly drawn, wrote Kelley, to the ‘unusually corrupt summary of legal history attributed to Pomponius, which had suffered cruelly at the hands of medieval commentators’ (cf. Donald R. Kelley, *Foundations of Modern Historical Scholarship: Language, Law, and History in the French Renaissance* (New York: Columbia University Press, 1979), pp. 67-79.

⁴⁴¹ M.2.11; A53.

cecare eum vellet utroque); the Greek perceives this to be a reference to the Trinity, and responds by raising an open hand to signify his preference for a single and discernible godhead (*Grecus autem credidit quod trinitatem ostenderet, item Grecus apertam manum ostendit, quasi ostenderet omnia nuda et aperta Deo*); the Roman, this time thinking the Greek is going to slap him, raises a fist (*stultus autem timens maxillatam sibi dari, pugnum clausum quasi reperiussus levavit*), and so on.⁴⁴² Smith duly depicts his foolish monk like a pugilist, with both fists raised: the point of the story is that while the Greek is thinking about divine or natural law, the Roman mind takes things in a different, adversarial direction, which is civil law. There has been a failure of signification here, which illustrates the difference between a prescriptive system of contractual, written law arising from an unwritten system of divine law. Smith raises the story of the Greek and the Roman in *DLG*, accusing the same commentator Accursius of promoting a fable or tale (*fabula* (fp. 20v)), his point being that the story is based on nothing: it has no textual origin and therefore no authority. Indeed, Smith uses this story as an illustration of the importance of using statues and ancient monuments (*statuarum & aliorum veterum monumentorum* (fp. 21r)) as evidence for the *species* of language, which applies just as well to legal principles: *Ergo nec huius aetatis doctis hominibus, cum quid de linguae illius antiquae, & in libris tantum ac monumentis veterum viventis sono comminiscuntur, quod ex eiisdem libris non possunt comprobare, fides est adhibenda* (fp. 20v).⁴⁴³ When Smith picks this story out of the

⁴⁴² ‘The wise [Greek] began with a gesture (*nutu*) to debate things, and lifted one finger to signify the one God ... the fool, believing that the Greek wished to poke out one of his eyes, raised two fingers, and with these also raised his thumb ... but the Greek believed that this might signify the Trinity, and likewise raised his open hand, so that he might signify an entirely open and plain God ... but the fool, fearing that he was to be given a blow, raised his closed fist to strike back [etc.]’ (fp. 5v). There is a very curious addition here in Smith’s secretary hand: “This historie is in the bible of the butrie [sic] a yard from the claspe.”

⁴⁴³ ‘Credit, therefore, must not be given to the learned men of today when they make up anything about the sound of that ancient language, surviving only in books, and monuments of the ancients, which they cannot prove from the same books’ (p. 91).

commentary of his copy of the *Digest*, therefore, we might see this medieval fable recast as a legal humanist illustration of the primary importance of the text of the *Digest* itself, the body of case law against which all legal principles must be checked.

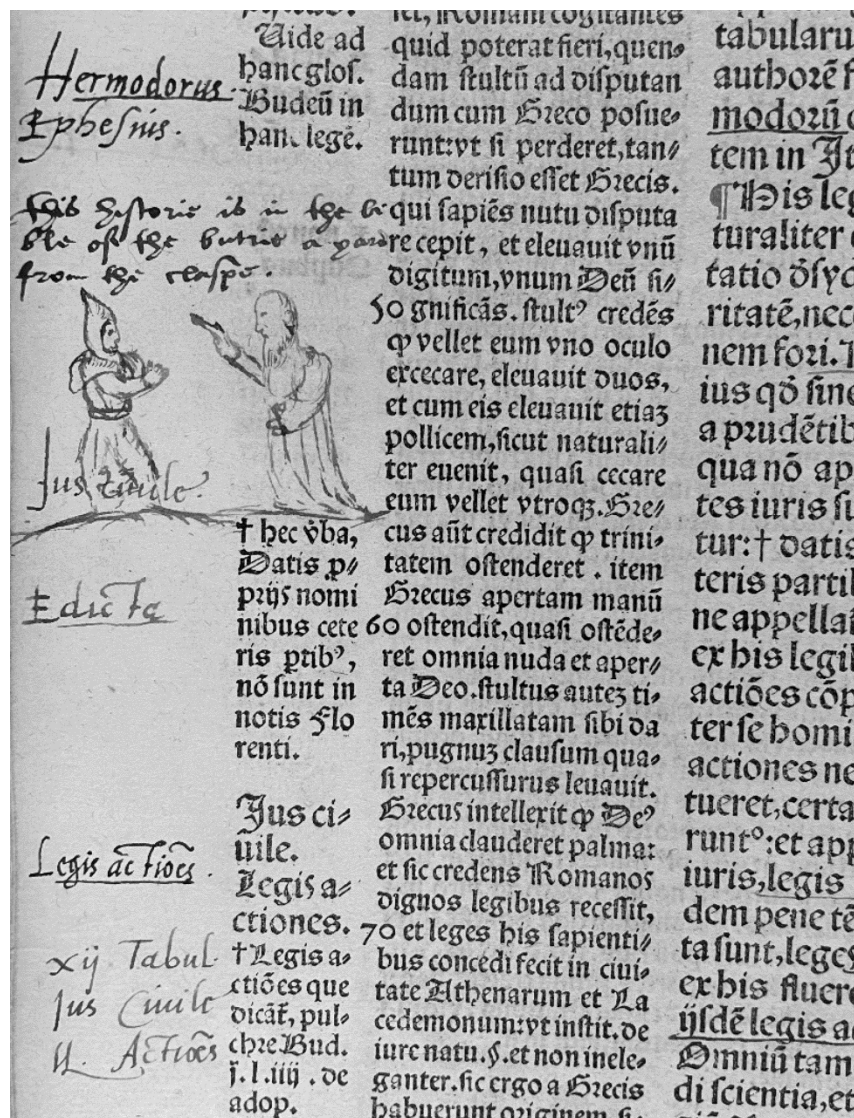


Fig. 41. *Digest*, vol. I, *Digestum Vetus* (1539).

The misunderstanding between the Greek and the Roman was illustrative of a problem inherent in the Byzantine code of civil law; questions of textual authority and translation were naturally built into a legal code that operated in both Latin and Greek,

for an empire whose principal language was Greek but whose ancient legal language was Latin. Smith possessed a copy of Theophilus's Greek paraphrase of the *Institutiones*, intended to be the portion of the *CJC* suited to elementary instruction of young law students (we have already encountered the Latin edition of Galen with which it was bound). The Greek paraphrase of the *Institutiones* is important for understanding Justinian's injunction in the *CJC* that texts were to be translated *kata poda*, or "on the heels", i.e. directly, and without altering the meaning of the Latin text; in fact, *kata poda* translation into Greek was the only means by which commentaries could be added, with a view to creating *paratitla*, or useful introductions, of which Theophilus's work is an example (see *Codex*, fp. 32r, where Smith notes this term in Greek ("Paratitla"); 1.17.2.21).⁴⁴⁴ This avoided the corruption or *confusion* of the law ("antinomia adoptii" (fp. B5r)) through bad Greek translation ("errata Graeci interp[retatio].") (fp. B6r)).⁴⁴⁵ The basic principles of the anthropology of the law – the movement from Greek divine law to Roman civil law – are expressed again in the *Institutiones*. Smith uses Greek to note the origins of civil law in Greece, observing the "Lakedaimonion zenelasia" (p. 4), i.e. the Spartan policy of expelling foreigners, with the text giving a reference to Lycurgus, who we encountered earlier as one of the semi-divine law-givers (*Lykourgou ... nomothetesantos*). Smith notes this same term later when it is applied to the Romans: "oi ton romaion nomothetai" (p. 5). Lycurgus is an example of the process of *divisio* of law into written (*eggraphoi*) and unwritten laws

⁴⁴⁴ *Ut nemo ... audeat commentarios isdem legibus adnectere: nisi tantum si velit eas in Graecam vocem transformare sub eodem ordine eaque consequentia, sub qua voces Romanae positae sunt (hoc quod Graeci kata poda dicunt), et si qui forsitan per titulorum subtilitatem adnotare maluerint et eaque paratitla nuncupantur componere;* 'No one ... shall dare to attach any commentary to the aforesaid laws, unless he wishes to translate them into the Greek tongue in the same order an sequence in which the Roman words stand – which the Greeks call *kata poda* ("following on the heels") – or if some prefer to make annotations to clarify the titles and compose what are called *paratitla* (introductory notes)' (p. 291).

⁴⁴⁵ Referred to in the *CJC* as 'perversions' (*persiones*) and 'disgraceful confusion' (*ex confusione dedecus*) introduced by 'verbosity' (*verbositas*) (ibid.).

(*agraphoi*), the former concerning the *lex*, *plebiscita* and *senatuconsulta* (all of which are given in Latin in the text), as well as the decrees of the emperor (*basilikai*), the edicts of the magistrates (*archonton edikta* (lit. “elders”)), and the definitions of the legal doctors (*ton sophon apokriseis* (lit. “separation”) (p. 5)). Smith notes in Latin that the *constitutio* involves a triad of written law: “ep[isto]la; decretu[m]; edictu[m]” (p. 6). He also notes the “Lex Regia”, i.e. the investiture of the emperor with the power to make laws by the Roman people, noting with a crown that the king’s law is strongest (“Basileus pases ti upopses kreitton”; *Basileos de touton kreitton* (p. 9)). Edicts could, however, also be issued by the magistrates (*magistratus populi romani* (p. 8)).

The authority connected with the right to issue written law is especially pertinent in the context of Theophilus’s translation and transliteration of the original Latin text of the *Institutiones*. Smith would have understood the origins of Roman civil law in the Greek linguistic and legal traditions (as described in Dionysius of Halicarnassus), but also the primacy of Latin as the textual authority of the imperial *CJC*. When it comes to *edikta*, instances of which appear in Greek in the text, Smith has obviously felt it necessary to transliterate the term back into Latin (*edikton* ... “Edictu[m]” (p. 7)). The close relationship between the intent of the legislator (*nomothetein*) and the language in which the law was originally written was extremely important for coping with terms that might be used in wills, especially when it came to consanguinity (i.e. kinship), depicted here in Greek tables like those that appear in Latin in the texts of Roman civil and canon law (Fig. 42; p. 168); one had to get the terms exactly right. Once again this is a case of straight swapping: opposite the tables Smith has glossed three Latin terms for inheritors, as directly as he can from the Greek text (“1. Sei (*ton souon*); 2. Legittimi (*ton legitimon*); 3. Cognati (*ton kognaton*)” (p. 169)). Smith also notes that one

consanguinity term is contained by another just as *genus* contains *species*, glossing a Greek term: “omaimotes (blood-relationship); Consanguinitatis jus species agnationis (consanguinity on the father’s side)” (p. 165)). So *agnatio* is a *species* of the *genus* of consanguinity and *omaimotes*, which is expressed in the Greek in terms of “form” (*eidos*): *e gar omaimotes eidos estin adnationos* [sic, recte *agnationos*] (ibid.). Interestingly there seems to be a textual error here: the Latin term has been transliterated into Greek incorrectly in the text – a failure of *kata poda* – but Smith has chosen to ignore this (or simply missed it). That Theophilus and Smith put these terms into *genus* and *species* is not surprising given the principles we have seen expressed in Roman civil law, but this will become extremely important for the question of how written legal language is understood, especially in Smith’s work on Greek pronunciation and Alciato’s *De verborum significatione*.

[illegible]

Fig. 42. Theophilus's *Institutiones* (1534).

The tension inherent in civil law is about the need to understand the texts of the law while also being acutely aware that the texts are corrupted or translated, despite Justinian's injunctions against commentaries and the insistence on *kata poda* translations. Smith's *DLG* presents an ambiguous view of Latin's position in relation to Greek, from which, as Smith noted in his *Theophilus*, Roman civil law was initially

derived. Smith tacitly conceded that Latin had been corrupted, since he noted that it had been rescued by Linacre, Hadrianus and Budé (*perpurgare Latinam linguam, & verum nitorem orationis restituere* (fp. 11v)), but emphasised that the general decline since antiquity had affected both Latin and Greek: *Et adulterina quaedam lingua ... cum in Italia tum etiam in Graeca exorta est* (fp. 10r).⁴⁴⁶ Smith's legal humanist solution to the problem of corrupted languages pervades *DLG*: if language is changeable, and texts are changeable (and printing is especially subject to error, as we have seen), then what you need is ancient inscriptions or "monuments" containing original legal texts. Understanding legal language is therefore dependent on understanding legal inscriptions, which are the edicts in their original forms; in this sense, *DLG* was an advertisement for legal humanism as it was practised by Alciato, Budé and Antoine de Baïf (1532-1589).⁴⁴⁷ Smith metaphorically connects the use of legal texts and inscriptions with the efficacy of legal actions (*causa*), i.e. legal practice:

Parumne igitur instructi videmur accessisse ad causam, qui & literarum elementis & communi scriptione tanquam censibus & monumentis publicis, quae potiora testibus in jure censentur, & gravissimorum insuper authorum testimoniis tanquam experientium in sua arte indicio, vivaque attestatiove [recte attestazione] freti, ad hunc foedum & inveteratum in pronuntiando errorum oppugnandum descendimus? (fp. 21v).⁴⁴⁸

Smith therefore delights in the activities of the antiquarians (*antiquarii vocantur*), who are like lawyers in that they look at the same old monuments: *...qui in inquirendo vetustati monumenta perstudiosi sunt ...* (ibid.).⁴⁴⁹ Legal inscriptions, within the context

⁴⁴⁶ 'And there arose a false tongue ... both in Italy and in Greece' (p. 49).

⁴⁴⁷ Budé's commentary on the *Pandects* appears in Smith's 1576 inventory (f. 99v).

⁴⁴⁸ 'Do we appear to have come into court insufficiently briefed, when we prepare to attack this foul and long-standing error in pronunciation relying on the alphabet and writing in general as though on electoral rolls or public monuments, which are regarded in law as better evidence than witnesses, and furthermore on the testimony of the most weighty authors (e.g. Dionysius of Halicarnassus), as upon the lively attestation of experts in their own art' (p. 95).

⁴⁴⁹ ... (continued) *si quando vetus numisma prisci alicuius Imperatoris aut Consulis nacti fuerint, aut statuam aliquam antiquam, cuius exesae nondum literae sunt, quia quarum rerum studio tenentur, hinc se putent adipisci posse, ut aut vultu[m] antiqui Imperatoris, aut Sagi veteris formam, aut habitum*

of the Greek-Roman tradition, are therefore representative of the attempt in the Justinian code to specify the meaning of words, which should not be changed under any circumstances. However, in *DAS*, as we have seen, legal contracts, coins and language were all things that Smith considered to be customary and determined by consensus. His position in *DLG* was, in fact, totally contradicted by the legal humanist conception of legal language: the legal humanists delighted in the certainty offered by legal inscriptions, but nonetheless they were totally aware that language could change, as did the legal signification of words. Both these positions were concerned with the textuality of civil law itself.

v. The texts of the law.

We have seen how language is synonymous with authority in Smith's conception of both ancient pronunciation and the development of ancient law. Smith was aware of the movement from natural or divine law to civil law, which required an appreciation of how language had changed or corrupted the original intent of the legislator, whether this was taken from a stone tablet or from the texts of the *CJC* (or both, as the case may have been). In the final section of this chapter, we will see how Smith's *DLG* was directly influenced by his reading of the works of Alciato, both in terms of Alciato's

Senatorum, aut triumphalis currus effigiem vel aliud forte quippiam, quod sit ab huius aetatis curriculo remotum discerent, propterea vehementer gaudere (ffp. 21v-22r); '... who are greatly delighted whenever they have found a coin of some emperor or consul, or some old statue whose inscription was not yet effaced, because they thought they could learn from them what interested them, such as the countenance of an ancient emperor, the shape of an ancient cloak, or the dress of a senator, the image of a triumphal chariot, or anything else out of the ordinary course of today' (pp. 96-97). It is significant that Smith mentions coin collectors in his paean to the *antiquarii*, since Roman coins found in England were collected by Smith and his friends as evidence of a Roman colonial past (op. cit. Burnett, Simpson and Thorpe; cf. Simpson (2021), pp 87-89. For a list of Smith's Cambridge circle of coin collectors, cf. Andrew Burnett, "Ascham, Coins, Cambridge and Beyond" in Lucy R. Nicholas and Ceri Law, eds, *Roger Ascham and his Sixteenth-Century World* (Leiden: Brill, 2021), p. 94. What happened to Smith's coins after his death is unknown.

theory of language, and his emphasis on the importance of inscriptions for linguistic-legal enquiry. In his *Digest* Smith has underlined the maxim that was previously discussed by Maclean: scire leges non est verba earum tenere, sed vim ac potestatem (fp. 8r); to know the laws is not to grasp their words, but their force and power. He adds a gloss: “vim et potestate[m] id e[nn]aratione[m]. Alc[iatus]. de. v[er]b[um] sig.[nificatione] li[ber]. 1o. fo[lio]. 7. in p[ri]ncipio (ibid.)”, referring to his copy of Alciato’s *De verborum significatione* (Lyon, Gryphius, 1537).⁴⁵⁰ In a further reference to this work, annotating a passage of commentary on the maxim quoted above, relating to fraudulent contracts, Smith notes a rhetorical term, *katachresis*, which he has transliterated from Greek into Latin: “Vis: [est] p[ro]p[ri]us se[n]sus verbor[um] ... Potestas: [est] deflectiones et catachresis [sic] (ibid).”⁴⁵¹ This is a crucial distinction derived from Alciato, which we have also seen expressed in Smith’s work on Greek pronunciation: the *force* of the law relies on the correct understanding of its words (*in proprietate*), which in the context of *sensum* means proper, accurate, or “of itself” (i.e. according to its *species*), and therefore inherent (it can also, however, mean lasting and permanent). Legal language, on the other hand, which also encompasses the force of the law, is changeable, as is implied by the two rhetorical terms noted by Smith here: *deflectiones*, a grammatical term meaning to inflect or to vary the meaning of a word, and *katachresis*, which is considered to be one of the “stylistic vices” of rhetoric, meaning the improper application of a word (*verbum*) to a thing (*res*) to which it does not correspond. It is significant that Smith has lifted the latter term from his copy of Alciato and supplied it to his reading of the *Digest*, where it does not appear in the text. The passage in Alciato to which this reference in the *Digest* points is intensively

⁴⁵⁰ H.1.19(2); A68.

⁴⁵¹ Smith appears to use “x” as an abbreviation for *est* here.

annotated. Smith seems to have read it several times and has even written over earlier annotations a second time (Fig 43; p. 6); at least one reading must have been in 1542, the date he added to the sammelband. It is arguably the crux of his understanding of civil law, a significant fact given that at this time Smith was clearly reading Alciato and the *CJC* in preparation for his lectures in that subject, and, moreover, that Alciato's conception of language also found expression in Smith's letters on pronunciation, which were written in the same year. Here, indeed, we find expressed the idea that Smith inserted into *DLG*, which we also observed earlier: *quod in sermonis & verborum negotio, nihil sit stabile*, i.e. in the business of words and language, nothing is permanent.

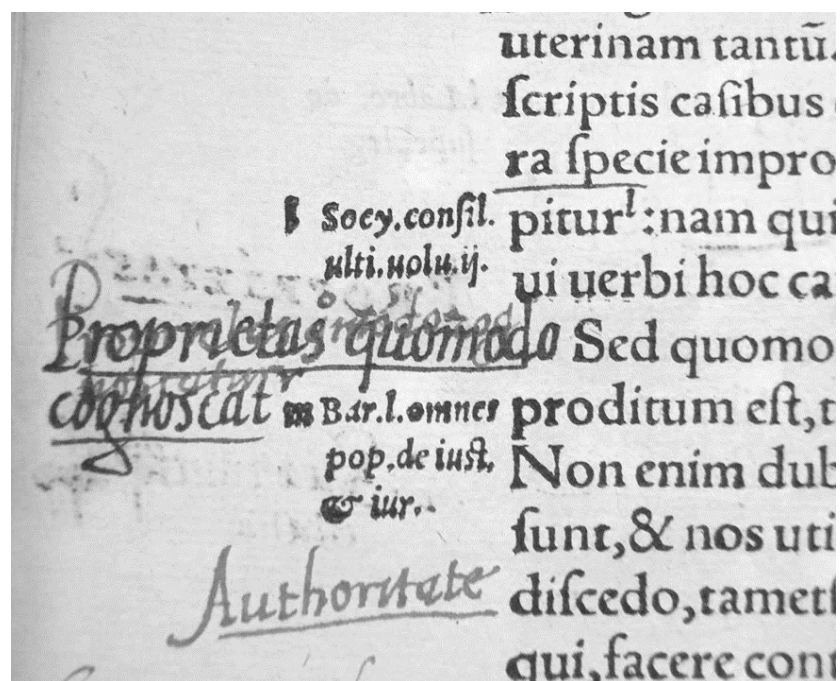


Fig. 43. Alciato (1537).

Alciato begins with the idea that words signify themselves, i.e. that their meaning is inherent, and also that the *species* to which they correspond will be understood from

their names: *cognoscitur autem ex eo, quod verba ipsa indicant* (p. 5).⁴⁵² Of the words themselves, Alciato says that there are four classes, which are defined by the methods through which they take on their meaning: *ex proprietate* (proper use according to inherent quality), *ex improprio* (improper use *not* according to inherent quality), *ex usu* (i.e. through popular use and custom), & *per interpretationem* (through interpretation) (ibid.). This statement clearly includes both the positions expressed in *DLG* and *DAS*, in which language clearly had an inherent force, but the meaning of language was established by customary use. As should be clear to us by now, only the class of words understood *ex proprietate* (proper use) is useful in a legal sense, the others being potentially dangerous. Indeed, quoting Quintilian,⁴⁵³ Alciato now divides *proprietas* into three, as Smith notes. The first class involves those words signifying the thing to which they correspond (“*la Sua cuiusq[ue] appellatio*” (ibid.)), though this is also where *katachresis* is introduced: some words, having no equivalent in Greek or Latin (as we saw in Smith’s Galen with body parts), have to be provided with one through a kind of forced translation (*cum multa sint & Graece & Latine non denominata, quae per translationem vel katachresim necessario dicimus*); here Alciato uses Quintilian’s example of two words that visually evoke the javelin or *iaculatus*, which has no specific name, being literally a “thrown” or “hurled” thing: *ut iaculatus est sudem* (i.e. “stake”), *vel pilam* (“pillar”) (ibid.). As Alciato says, and as Smith notes in the margin, for all the restrictions around *kata poda* translation in the *CJC*, a well-translated word can be understood *ex proprietate*, i.e. according to its proper meaning: *Unde quae suo loco & bene translata sunt, propria dici possunt* (ibid.). Indeed, returning to the idea of the *force* of a word, Alciato notes – following Aristotle – that understanding the “proper”

⁴⁵² ‘From this it is recognised, because the words themselves indicate it.’

⁴⁵³ Cf. Quintilian, *Institutio Oratoria; The Orator’s Education*, 8.2, trans. Donald A. Russell (Cambridge, MA: Harvard University Press, 2002), vol. III.

quality of a word is not reliant upon the name, but upon its *force*; not as it is heard, but as it is understood: *Proprietas igitur non ad nomen, sed ad vim significandi referenda, nec auditu, sed intellectu perpendenda est.*⁴⁵⁴ Evidently this is where Smith got the idea.

This leads Alciato to the second definition of *proprietas*, involving words that refer to multiple things, which Alciato calls *metaphora* (“2a Dua q[u]asi Metaphora” (ibid.)), and in a related sense, to the third class, involving words that have taken on several meanings through communal use or custom (“3a Co[mmun]e nome[n] fit p[r]o[r]iu[m]” (ibid.)): *cum res communis pluribus in uno aliquo habet nomen eximium.*⁴⁵⁵ Later, in the fourth book, when Alciato returns to these ideas around *proprietas*, we find Smith putting these terms, *katachresis* and *metaphora*, into Greek script, along with a third term, *paroimiai* (which he glosses into Greek script from the Latin transliteration (pp. 84-85)), meaning a maxim or proverb, a perfect example of the *commune nomen*, or customary understanding; *paroimiai* is also a kind of translation, in which old sayings are given a new gloss or meaning (*scita quapiam novitate insigne*). All of this would seem, therefore, to go against Smith’s rather hardline argument in *DLG*, which is that words correspond to specific things, and that custom corrupts their meaning. Indeed, as Smith notes in his Alciato, according to Quintilian’s fourth case, there are also certain things that can be referred to specifically by a general name (*cum res generali aliquo nomine appellatur*), which might also be used to refer to other things (like *urbs* for Rome), in which case the *species* will be understood from the *genera* (“Species generi p[r]oprie inest” (ibid.)). In fact, Stephen Gardiner appealed to this idea, and to Smith’s legal sensibilities (hitting him where it

⁴⁵⁴ ‘The proper sense must therefore not be applied to the name, but to the force as it must be understood; that is, it must be considered not according to what is heard, but what is understood.’

⁴⁵⁵ ‘With many things of common use, one might have a particular name for one thing as for another.’

hurts, as it were), in the argument over Aristotle and whether meaning was natural or customary, which we encountered earlier: Gardiner insisted that “convention” (*placitum*), or customary usage, could be defined along the lines of Quintilian’s fourth definition, which relied entirely on common understanding (*commune*): *Nam et pactum et foedus et conventum placitum continet ut genus species*.⁴⁵⁶ Smith’s insistence on the authority of antiquity over custom in *DLG* is opposed, therefore, not only to his admission in *DAS* that meaning was conventional (*ex pacto*), but even to ideas expressed by legal humanists like Alciato.

Alciato poses an instance of *katachresis* in *De verborum significatione*: the *Lex Julia de adulteriis*, a moral law introduced by Augustus proscribing adultery, specifically refers to adultery with another man’s wife (*adulterium stuprum* (p. 85)). Alciato observes, however, that the law is commonly understood (*generalissimo nomine usa* (ibid.)) to refer to fornication of any kind (given in Greek as *phthora*, or “corruption” (ibid.)), which is an example of interpreting the law *katachrestically* (in Greek, *katachrestikos* (ibid.)); similarly, parricide is used to refer to those who murder their mothers (*parricidam dicimus, qui matre[m] interfecit* (ibid.)). A good lawyer must be able to navigate mistakes and corruptions just as easily as the written law itself; the words are not the force of the law. This saying is, after all, a defence against the spoken, customary interpretations of the law, the *vulgaris*, as much as it is an expression of the potential for such customary usage to take on legal force, contrary to the original texts of the law (but a part of the law nonetheless). Smith is equally complicit in the host of contradictions at play here: we must write just as we speak, he says in the works on

⁴⁵⁶ For “convention” [also] includes “agreement” and “covenant” and “compact” as *genus* includes *species*’ (p. 206); for the Latin text, cf. James Arthur Muller, *Letters of Stephen Gardiner* (Cambridge: Cambridge University Press, 1933), pp. 104-105.

Greek pronunciation, just as we must speak the language as it was originally spoken. However, this only applies to dead languages: Smith was perfectly happy to re-invent the orthography of English for the same reason, which is that we must write exactly as we speak! This falls into the same gap in civil law between that which is written and spoken, and that which is understood. This is a paradoxical principle of civil law, that what really matters is the original text of the law, but what also *really* matters is not the written or textual expression of the law but rather the intention of the author.

The original language of the law expressed jurisdiction and authority, which was the true force of the law. Alciato, as Smith notes, certainly saw jurisdiction (“jurisdictio” (p. 6)) as an important part of legal language, putting this, rather like Gardiner did, in terms of specific (*specialis*) and general (*generalis*) signification, referring to the jurisdictions of *merum* (pure) and *mixtum* (mixed) jurisdiction, on which more later: *Sed & si quod verbum sit, cuius specialis, itemque generalis possit esse significatio, utroque modo accipitur, nec altera censebitur impropria: ut cum lex jurisdictionem alicui concedit, non de speciali tantum censebitur actum, sed de mero quoque & mixto imperio* (pp. 6-7).⁴⁵⁷ Jurisdiction is therefore the same, says Alciato, as certain words which cannot be applied to any one *species*, but can be taken one way or another, like “sister” (*Soror*), which can be *conjuncta*, *consanguinea*, or *uterina*, all to the same legal effect: *Idem quoque dicendum de his nominibus, quae variam significationem alicuius speciei habent, & non magis proprie uno quam alio modo accipiuntur, ut Soror*.⁴⁵⁸

Smith has chosen to gloss this passage with the supplied Greek term “homonyma,”

⁴⁵⁷ ‘But if there should be any word, the meaning of which may be general or special, it is understood in both ways, nor will it be considered improper in either: as when a law grants jurisdiction to someone, it will not be considered only in terms of the specific action, but in terms of *merum* and *mixtum imperium*.’

⁴⁵⁸ ‘The same must also be said of those nouns which can signify multiple *species*, and are not more properly understood one way or another, such as *Soror*.’

meaning to have the same name, which is also the stem for the Greek terms for german (*homopatria*) and uterine sisters (*homometria*). A similar process of glossing occurs in Smith's copy of the second volume of the *Digest*, the *Infortiatum*, in which familial relationships are glossed from Latin into Greek, and vice versa: "Socer (father-in-law){ *ekyros*; *pentheros* ... Socr[us] (mother-in-law){ *ekyra*; *penthera* ... Dæer [sic] (brother-in-law); leur [sic, i.e. *levir*] ... Galos (sister-in-law); Glos (etc.)" (fp.424v) (all of this could have been found in Smith's Greek consanguinity tables in his Theophilus, which we saw earlier). Significantly, the text of the *Infortiatum* uses Homer as its authority for one of these terms (*ut est apud Homerum relatum*), when Helen refers to herself as the *daer* of Hector, i.e. his brother's wife.⁴⁵⁹ Familial names are understood by Smith and by Alciato in terms of legal succession as well as textual authority: some names have only one meaning, like those derived directly from Homer. Indeed, according to Alciato the term *dominus*, or "lord", is different from that of *soror*, with its multiple significations; in this case, the force of the word (*vi verbi*) will take its meaning from the most powerful signification of authority (like *basileus*, or king), which is understood directly and inherently (*proprie de directo accipitur*), and from its inherent nature (*ex vi verbi hoc casu potentior significationem accipetur, quae ex proprietate descendit* (ibid.)).⁴⁶⁰ The name of *dominus* has an inherent force, authority and jurisdiction, which is highly significant for inheritance.

Like language, authority can be understood specifically or generally, just as jurisdiction can be pure (*merum*) or mixed (*mixtum*), as Alciato stated previously; this is one of the crucial elements of civil law as Smith understood it. Jurisdiction is a matter of issuing

⁴⁵⁹ Note that Smith deliberately inserts a diphthong ("dæer") when glossing this from the text (*daer*), clearly with the "ancient" pronunciation of the two vowel sounds in mind, as opposed to one.

⁴⁶⁰ 'In this case the more powerful meaning is accepted out of the force of the word, descending from *proprietas*.'

and interpreting the law, which is a question of the original language and intention of the lawgiver, and how this is interpreted. Having defined *proprietas* according to how it is formed or used, Alciato now defines it in terms of how it is understood (“*Proprietas quomodo cognoscat[ur]*” (Smith has overwritten this) (see Fig. 43; *ibid.*)). Alciato provides three definitions, all noted by Smith in the margins: “*Authoritate*” (authority), “*Etymol[ogia]*.” (etymology), and “*Diffinitio*” (division, for example into *genera* or *species*). Meaning can therefore be taken either from the authority of the author (*authoritate*) (though this comes with numerous caveats), from the origin of the word (*etymologia*), or from its definition in relation to other things (*diffinitio*), which, as we have seen, is often customary or based on common use. Authority and etymology are therefore the chief means of comprehending a word (*de etymologia vero & allusione* (i.e. allusion to an authority) *ita demum proprietatem vocabulorum cognosci proditum est*),⁴⁶¹ whereas *diffinitio* is presented as a means of overturning both authority and etymology (*si diffinitioni non ad versarentur*), as Smith notes in a maxim: *Diffinitio autem in jure omnis periculosa est: rarum est enim ut non subverti possit* (*ibid.*).⁴⁶² This same common saying (*vulgatam regulam*) is marked by Smith in Viglius Zuichemus’s commentary on Theophilus’s Greek paraphrase of the *Institutiones*, which we encountered earlier (“*Definitio; regula*” (p. 8)). Zuichemus gives the maxim an extra force, so that even maxims themselves are seen to be untrustworthy: *Verum nec ea satis patrocinator: ibi enim definitionem pro regula accipi, verius est* (*ibid.*).⁴⁶³ Indeed, Viglius takes an extreme position against anything that does not constitute authority when describing the etymology of the word “*Testamentum*”, i.e. a will and testament: *Quod si vero voluerimus linguae Latinae usum inspicere, neutrum significabit allusio,*

⁴⁶¹ ‘Only then by etymology and allusion, truly, is the *proprietas* of words revealed to be known.’

⁴⁶² ‘But *diffinitio* in law is entirely perilous, for it is indeed rare that it cannot be overturned.’

⁴⁶³ ‘But neither is this sufficiently supported in the maxim: for taking in the same the “definition” to mean “rule”, it is even truer.’

neque etymologiam, neque vocabuli similitudinem vel quandam agnominationem (p. 4).⁴⁶⁴ If allusion and etymology cannot convey meaning, therefore, we are left with authority, *auctoritas*, which is expressed solely in the original written text.

Smith likewise seems to want to protect the status of specific legal language (authority), as shown by some telling erasures in his Alciato: *etiam si poenam irroget, eatenus verba generaliter capi, quatenus sermonis proprietates ferre potest, nisi aliam loquentis mentem coniciamus: ea mens in dispositione legis facilius dignoscitur, quam in hominum verbis* (p. 7).⁴⁶⁵ And, moreover, *Si ratio in lege expressa sit, ex ea & augeri & minui decisionem: quoniam leges non tam in verborum forma quam in ratione consistunt* (ibid.).⁴⁶⁶ The *form* and *force* of the law might not be important, but the words and the intention are undoubtedly important; Smith has excepted the words (*verba*) of the law from Alciato's outright insistence on *mens* (intention), which is equivalent to the force of the law. Alciato is simply repeating his point that the force of the law is derived from the legislator's intention and not from their words; Smith, on the other hand, seems to be maintaining the importance of the written words of the law, even if he agrees that the form (*forma*) in which they appear is subservient to reason (*ratio*). However, all this time Alciato has been arriving at the example provided by Smith in *DLG* for why words *are* important in legal documents: if you write the wrong names for items in a will and testament, then that will be the (incorrect) form of the will, regardless of what you *intended* to write. Smith seems to have glossed the rule

⁴⁶⁴ 'So that truly if we wish to look into the use of the Latin language, neither allusion, nor etymology, nor the similitude of words, nor "hononyms", will signify it.'

⁴⁶⁵ 'And if a penalty is imposed, words are taken generally as far as language's *proprietates* can bear; unless we infer a different intention of the speaker; his intention (*mens*) is more easily discerned in the disposition of the law than in the words of men.'

⁴⁶⁶ 'If reason is expressed in the law, from it the decision may be augmented and diminished, because laws consist not so much in the form of the words as in reason.'

governing this point as a “general rule” or maxim (“R[egulorum]. G[eneralium]” (?)), as he does throughout the texts of the *CJC*: “Uniuscuiusq[ue] verba sive in contractibus, sive in testamentis ad dispositionem juris referri debere ... Quilibet secundu[m] leges sive quiritiu[m], sive municipales, agere voluisse praesumitur” (ibid.).⁴⁶⁷ However, as Smith notes in the margin, the first part of this rule is as follows: your intention is null if you get the words wrong, because intention cedes to the *proprietas* or meaning of the words: *quoniam conjectura mentis verborum proprietati succumbit* (ibid.). Error, or abuse (*katachresis*), as an element of custom, is part and parcel of language and law, regardless of intention. However, the inherent meaning of words, their *proprietas*, is important for understanding the *ratio* or *mens* of the law, and this also necessarily relates to the written form in which they appear. The safest thing, therefore, in terms of authority and etymology, and of reason and intention, is simply to go back to the original written form of the law, which occurs on tablets and inscriptions, as Smith advocated in *DLG*; with this we are back at the case law that was governed by the Twelve Tables and which made up the *Digest* of Justinian’s *Code*. Smith was therefore a legal humanist with an antiquarian spin.

vi. Laws from inscriptions.

Another of Smith’s references to Alciato in the *CJC*, and one which again refers to the accuracy of linguistic understanding, is to the proscription of five feet in the *Codex*, which states that you cannot build anything within five feet of your neighbour’s property (*Quinque pedum praescriptione summoti* (3.39.5)). This was one of Alciato’s

⁴⁶⁷ ‘The words of each individual, whether in contracts or wills, ought to be referred to the interpretation of the law ... It is presumed that every person has acted according to the laws, whether these be civil (*quiritium*) or municipal.’

earliest published dissertations on civil law, and it appears alongside *De verborum significatione* in Smith's sammelband of works by Alciato, where it is unannotated (*In digestorum sive pandectarum libri xii* (Lyon, Gryphius, 1538)).⁴⁶⁸ In the *Codex*, however, Smith adds the following to an extensive piece of commentary: "Vide Alciatu[m] qui libellu[m] de hac. L[ex]. co[n]scripsit" (fp. 129r). Accompanying this piece of commentary is a sketch of a supposed medieval glossator called Petrus Baylardus, described in Alciato's text, who failed to correctly understand the law of five feet: *Sed Petrus Baylardus qui se iactavit quod ex qualibet quantumcunque difficili litera traheret aliquem sanum intellectum: hic dicit, nescio.*⁴⁶⁹ This is, indeed, how Alciato begins his dissertation, with a boast that Petrus Baylardus (who is also, apparently, a fabrication) was completely defeated by the law of five feet, a failure of understanding that, for Alciato, embodied the need to understand Roman civil law from a linguistic perspective. Alciato's aim was, therefore, to reconstruct the meaning of the original Roman Republican laws, the basis for the *CJC*. His fame in this regard is expressed in a book that we encountered in the chapter on Smith's historical reading, Lazius's *Commentariorum Reipublicae Romanae*, which used the evidence of inscriptions from Roman military *tumuli* or gravestones to show the changes made to imperial Roman jurisdictions in colonies such as Pannonia. Alciato is mentioned in Lazius's preface, in which he makes clear the relationship between ancient inscriptions and law. Lazius begins with the conventional gratitude for Alciato's restitution of civil law as a discipline based on good Latin, adding that (as a physician by training) his gratitude is more acute because of his own legal shortcomings: *Deinde vero dubia ex jure civili pleraque (tametsi multa longe doctissimus vir ALCIATO restituerit) hactenus*

⁴⁶⁸ H.1.19(3); A68.

⁴⁶⁹ 'But Petrus Baylardus, who claimed that he could draw at least some sense from even the most difficult of words, here said: "I don't know".'

tanquam nullius momenti, vel corrupta a Bartolistis illis (doctor semper excipio) vel rejecta a consideratione Juris, quod literatoribus istis bilem forte commovebit, a Medico illo suo, cui tantopere vel laborem improbum, vel lectionem multijugam invident, ad verum sensum soluuntur (p. 7).⁴⁷⁰ Lazius follows this reference to the necessity of legal humanism for historical studies with a discussion of the various insignia that are continuous between the ancient Roman *imperium* and that of the modern Habsburgs (*quod familiae tuae, Rex inclyte, Austriae Principum insigne ornamentum est* (p. 8)).⁴⁷¹ Of particular importance is the poet's laurel crown, in terms of which Lazius begins with Virgil's *Aeneid* (*Fronde super galeam...*), thus referring to the insignia's pre-Republican origins. Lazius's remaining examples here are all drawn from poetry; this is an important point on the role of language, for, as Lazius complains, grammarians twisted the words and meanings of the poets, while historians aimed to make sense of them: *Adeo multa sunt, quae passim apud autores historiarum occurrunt, quae grammatici & interpretes vel surdis auribus transeunt, vel alio sinistre, male intellecta detorquent*.⁴⁷² In this Smith differed from Lazius, having argued in *DLG* that grammarians (or at least modern grammarians) were a useful kind of antiquarian humanist. Lazius, however, saw history as being more important: *Quae ipsi mehercule neque apud Nonium, aut Festum, neque in Cornucopiis, aut Calepino, Thesauroque Latinae linguae, ita ad fidem historicam reperient explanata, uti in Commentariis his*

⁴⁷⁰ 'Then truly, there was no more movement in the many uncertainties of the civil law (notwithstanding that that most learned man, ALCIATO, had long since restored it), but either by the destruction of Bartolus (this doctor always being cut out) or the rejection of his consideration of the law, Alciato, as the physician of the law, forcefully moved the bile of his writings: his bad work, and multiplicity of language, which many despise, now being resolved to good sense.' Budé likewise used medical metaphors for the butchery of the *Digest* (or *Pandects*) by commentators like Tribonian: "not assembled but rather dissected" (quoted in op cit. Kelley (1979), p. 69).

⁴⁷¹ '... which in your family, renowned King, is the insignia for the Duke of Austria' (referring in this instance to the peacock's tail (*pavonum cauda*)).

⁴⁷² 'I dare say there are many things, scattered about the ancient historians, which the grammarians pass by in their interpretations with deaf ears; or, worse, twist them with their poor intellects.'

nostris prolixè semper, autorum locis & adductis & collatis, definiuntur (p. 12).⁴⁷³

Grammatical texts were redundant: to explain the Latin language you instead went straight to the sources, which were Roman inscriptions. Taking lines of Horace and Persius that mention a *cippus* (tomb), Lazius refers to the proscription of *quinque pedum*: *Qui versus ex jure possent solui, quod tamen nec Jureconsulti satis in Codice animadverterunt, quum in lege quinque pedum .§. finium regundorum* (i.e. the law for defining allotments of land at five feet, from the *Codex*) *disserunt* (p. 9).⁴⁷⁴ Historians should be looking at ancient inscriptions for the origins of the laws espoused in the *CJC*: the *lege quinque pedem* was an article of Republican law that had survived into the *Codex*. Lazius does not relate Alciato's brilliance to the textual tradition of the *CJC*, however, but to "monuments": *Erant autem cippi, tumuli militares, ex lapidibus quadratis secus publicam viam positi*.⁴⁷⁵ Lazius's point is that just as the texts of Roman civil law were evidence of Roman customs, the boundary-markers, tombs and way-stones left by the Romans could help to reconstruct the original texts of Roman civil law.

Inscriptions appear in the margins of Smith's *CJC*, where a particularly nice example is the tablet appearing besides "praefectus praetorio", i.e. the praetorial prefect, which appears in the first volume of Smith's *Codex* (Fig. 44; fp. 38v). The text is a series of carefully inscribed Roman capitals, which are in fact nonsensical: Smith's Roman majuscule simply signifies an inscription, while the tablet signifies that the praetorian

⁴⁷³ 'Goodness me – such things aren't in Nonius, or Festus, or Cornucopius, or Calepino; nor in the treasurehouse of the Latin language; therefore they might be found explained in accurate history. As always in these our long commentaries of the same, in which the authors are delineated: located, brought together and collated.'

⁴⁷⁴ 'These lines can be elucidated by the law – though the lawyers do not discuss it sufficiently in the *Codex* – in which they discuss the law of designating land allocations no closer than five feet apart.'

⁴⁷⁵ 'There were also gravestones, military monuments (tombs) and stone *quadrates* (boundary-markers) placed along the public way.'

prefect could issue laws in a general sense, despite being unable to amend the intention of the *praetor* (*si generalis fit, & minime legibus vel consitutionibus contraria* (ibid.)). The legal tablet, which appears throughout Smith's books on law and history, signifies the written law, i.e. the law as it is issued; for Smith it also represented modern legal texts, i.e. treaties, as we have seen. The clearest example, however, of how the tablet could simultaneously represent both ancient and modern texts is to be found in Smith's copy of Cantiuncula's *Topica* (with its title-page of the Gallic Hercules, which we encountered earlier). Like Smith, Cantiuncula was an admirer of Budé (of whom Alciato was also a disciple) and his linguistic efforts to save Latin from its corrupted state; Cantiuncula uses a convoluted and fussy Ciceronian Latin. This is Smith's *DLG* and his legal humanism summed up in a single passage of Cantiuncula's *Topica*: Quod Cicero, quod Quintilianus quod prisci primique meriti scriptores dixerint, scripserint: quam rem cumque inter monumenta sua reliquerint, eiusce [sic, recte *eiusne*] rei aeterna ac sacrosancta autoritas esto.⁴⁷⁶ Corruption has crept in, however, through customary use, and so these ancient authors are no longer of any use: Quod secus (ut sunt humana) dictum in eorum cuiusque libros irrepserit, obrepserit, fefellerit: qui de eo dicto indagandae veritatis ergo addubitet, addubitaverit, quaestionum referat, retulerit (p. 86).⁴⁷⁷ It is through Budé's commentaries that the Latin language has been restored: *Hactenus Budaei verba reddidimus*. Smith marks this passage, across two pages, with examples of his legal tablet *nota*, on which he has written: "BUDAEA LEX" (Figs 45.1-2; pp. 85-86). That Smith uses it here, where there is no actual legal text in question, but rather a description of the act of reconstructing ancient Roman civil

⁴⁷⁶ 'That which Cicero, Quintilian and the earliest and best writers have said, and written, let whatever thing which they have left among their monuments, be an eternal and sacred authority.'

⁴⁷⁷ 'That which is against the sense (*secus dictum*) of [the original writers] was gradually introduced into these books (as is human): it crept in and caused error. Therefore, he who must trace out the truth of these sayings, if he is in doubt, he will be in doubt; if he might be rebuffed by the question, he is rebuffed.'

law *via* the Latin language itself, is indicative of the close correlation in legal humanism between the texts of the law and legal authorities, both ancient and modern. Indeed, these tablets are used to represent non-Roman traditions, including in Smith's copy of Josephus in the University Library, in which he also used the tablet *nota* to indicate legal decrees and treaties (e.g. "summachia p[ros] t[ais] romanous (p. 578)). This is an extremely important text for ideas of *auctoritas* and kingship, with Smith providing portraits of kings throughout, and in one instance noting (along with doodles showing their various crowns) different kinds of *basilous*, or monarch: "Pharaones; Ptolemaios (i.e. a named example); Kaisar (i.e. the Roman Caesar)" (p. 240). Smith has also used a double tablet, however, to indicate the Mosaic *Decalogue* (Fig. 46; p. 69), so the tablet stands for divine law just as well as for civil law (Smith tentatively implied the presence of lettering but obviously did not feel confident enough to add Hebrew text). The important fact in each of these cases, however, is that the tablet indicates who the *auctor* of the law was; in the latter case, God Himself.

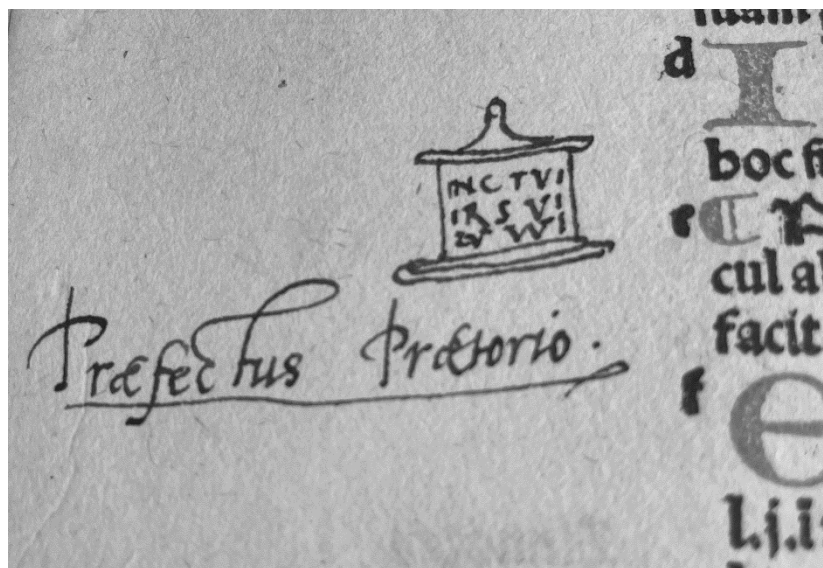
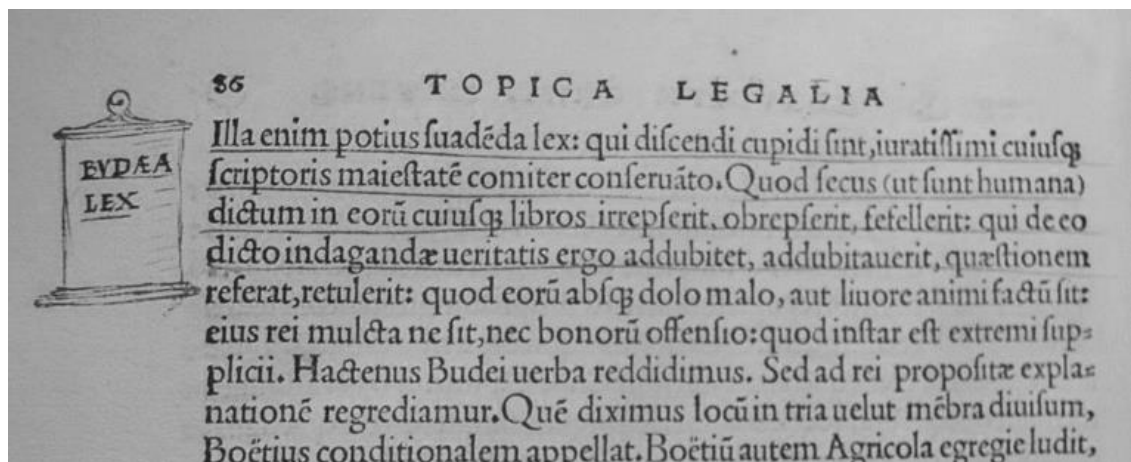
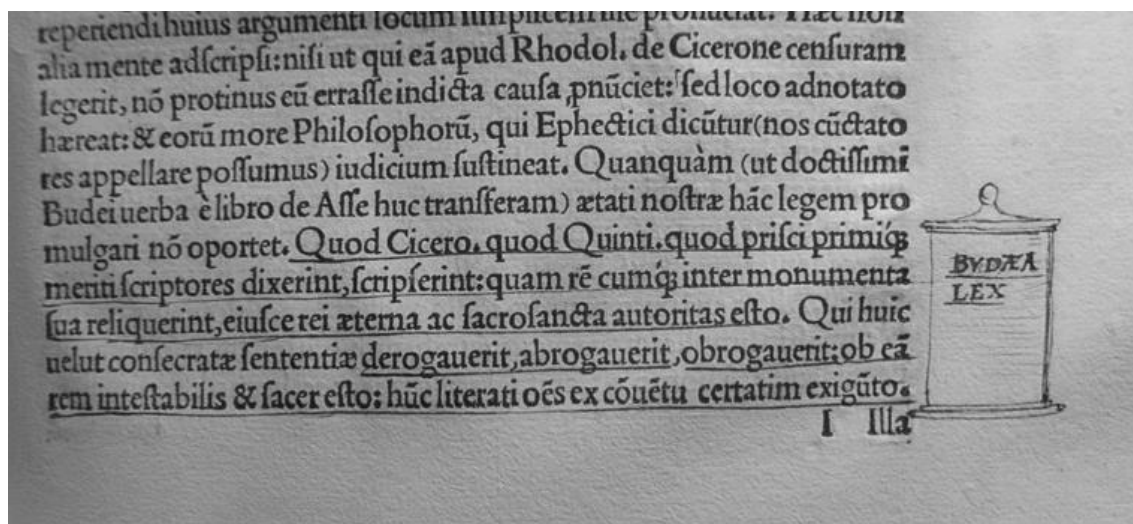


Fig. 44. *Codex* (1540).



Figs 45.1-2. Cantiancula (1520).

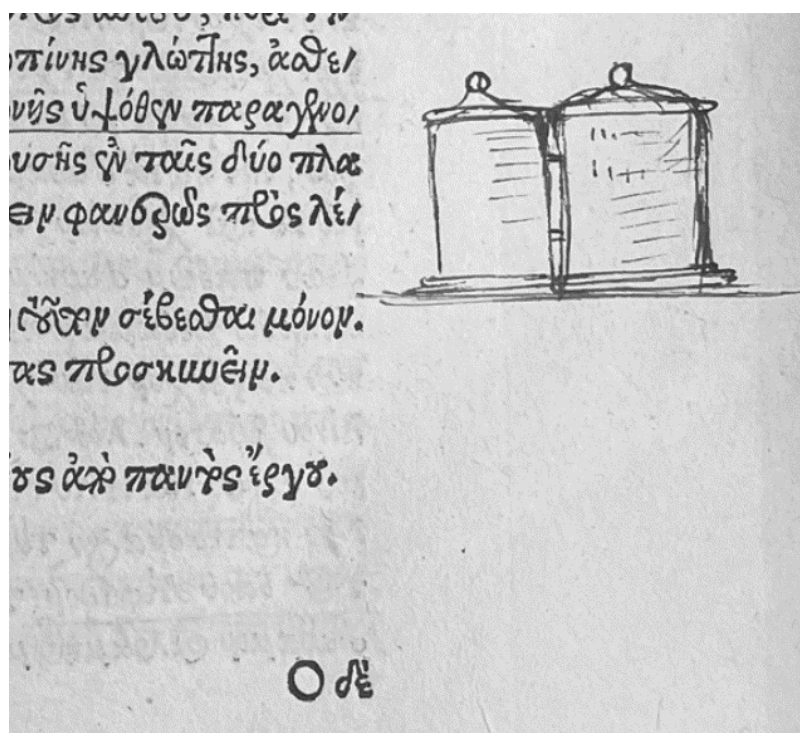


Fig. 46. Josephus (1544).

The tablet appears in truly monumental form in Smith's copy of Alciato's *Parergon juris*, or "obscure points" of law (Lyon, Gryphius, 1538),⁴⁷⁸ the last work to appear in Smith's sammelband. This work shows Alciato at his most esoteric, with Smith responding to disquisitions on the vocabulary for various colours, such as the varying tones of the sunrise: *aurora croceis ... fulvus* (deep yellow), which Smith has noted in the margin (p. 26). Smith is essentially back in Aristotelian mode here, adding English glosses to the Latin terms and also noting colours in Greek: "Castaneus: brown bay; Spadix: bay ... Báīs" (i.e. the green colour of a palm branch); it is significant that these annotations appear to be in Smith's "medical" hand, given the importance placed on visual recognition in his medical reading. Alciato is returning to the ideas expressed in *De verborum significatione* that many words or *species* can express one *genera*: there

⁴⁷⁸ H.1.19(5); A68.

are more words for colours than there are colours themselves; moreover, Latin is insufficient to describe them all: *Colorum omnes appellationes Latine expressim ostendere vix quisquam possit, tam enim hac in re varia natura est, ut quod in aliis plerisque accidit, rerum multitudo vocabula superet* (p. 25).⁴⁷⁹ We must be certain, therefore, where these names originate from: if we know their etymology, we can understand their authority. Indeed, what really excites Smith in the *Parergon* is an ancient Roman inscription noted in large capitals towards the end of the work, now installed above a portal to St. Peter's in Rome (*Extat Romae in divi Petri ad vincula aede vetustissimus titulus his verbis* (etc.) (Fig. 47; p. 30)), for humanists to go and look at. The edict itself was issued by a Roman prefect, Turcius Apronianus, so Alciato uses it to illustrate a discussion on *auctoritas*, or authority. He begins by noting the Greek origins of the Latin word *auctor* (author), defining it (and this should be familiar from *DLG* and from *De verborum significatione*) as the first originator of a "work" (*qui opus facit significat ... qui primus inventor persuasorque est* (ibid.)). Alciato specifically relates this to the conventions for the monumental inscription of laws, where the abbreviation *AUC.* (for *auctor* or *auctoritas*) frequently appeared to denote the author (*plurimis veterum monumentis semper observarim auctorem legi*) and therefore the authority. Next comes the *diffinitio*, Alciato outlining five kinds of authority, the first of which is explicitly connected to a law of the Twelve Tables, the *Lex Atinia* ("Auctoritas"): *Quod surreptum erit, eius rei perpetua auctoritas esto*.⁴⁸⁰ Authority therefore describes concepts such as the original state of a property (*res*), which will always remain in that same state in law, as well as ownership, such as a creditor's right to something ("auctoritas titulus" (ibid.)). The final definition, however, describes

⁴⁷⁹ 'It is scarcely possible for anyone to express all the names of the colours in Latin, for the nature of this matter is so varied that, as is the case in many other things, the multitude of things surpasses words.'

⁴⁸⁰ '[Lit.] If something is stolen, of that thing let there be a perpetual authority.'

authority in terms of issuing laws: the ability to abolish taxes and impositions (*de indulgentiis reliquorum*), specifically when these are “mandates” of the senate or the emperor (*ubi pro mandato, & jussu principis, se senatus accipitur* (ibid.)). The inscription provides the evidence for this, stipulating that the sale of every portion of cattle carcasses must be done by weight (*sub exagio ... ut adpenso* (p. 31)) and not by estimate; this way, the buyer will know what is due to them from the seller (*commodis omnibus*), while any excess will be forfeited to the officers (*praeda damnata* (ibid.)). Why has Smith seized upon this edict with his monumental slab? He is evidently interested in which officers are due taxes on the sales (*commodis omnibus & praeda damnata*), against the *venditor* and *emptor*: tribunus, officium, cancellarius (underlined twice) & scriba (ibid.). Also in evidence here is a crucial point of law in terms of jurisdiction (*mixtum imperium*) which is the power of Turcus Apronianus to punish by the sword (*sub gladii periculo perpetuo custodienda mandatur* (ibid.)), expressed in a decree issued by the emperor or the senate. Above all, however, the tablet *nota* signifies the power to issue laws, wherein the written text of the law (its inscription) also stands for the authority of the text itself. This is something that Smith brought to his copy of the *Parergon* from his own reading of the Roman civil law texts: these tablets appear throughout the margins of the *CJC* to signify where a certain *lex* or edict has been issued. Perhaps the clearest example is the *Lex Regia*, or the investiture of the emperor by the people with the power to issue laws. Smith marks this in Justinian’s *proemium* to the *Digest* (I, fp. 1r), where the emperor’s power to create laws is set up against the danger of *antinomia*, i.e. the confusion of laws.

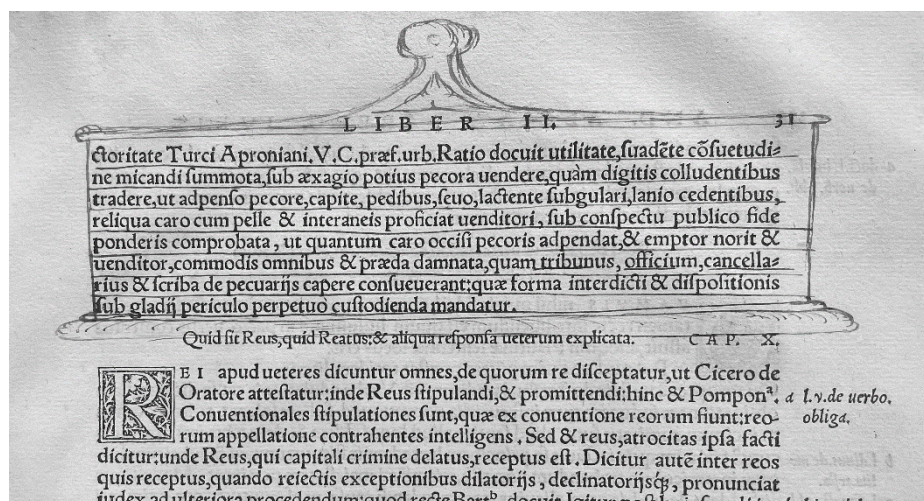


Fig. 47. Alciato, *Parergon* (1538).

The question of the origin of the law, and of the original form of its texts, is one that occupies Smith in his reading of the *CJC*. Indeed, this is an obsession with textuality itself, an obsession we have observed in Smith's historical and medical reading. It is unsurprising that Smith's main focus on the textuality of the law comes in the second part of the *Digest*, the *Infortiatum*, which (as we saw earlier) contained case law on familial succession and inheritance.⁴⁸¹ We have seen how Smith, in his copy of Alciato, sought to block out the text of the law as it appeared on a Roman inscription; in the margins of the *Infortiatum* he uses the same visual register to extract examples of textual law, i.e. laws as they were set down in writing, from the text of the code itself. In doing so he also noted the different authorities who issued the laws, categorising them, therefore, according to jurisdiction. Smith notes, for example, using the legal tablet ("Edictu[m]" (fp. 427r)), that the *praetor* has the power to transfer *bonorum possessio*, i.e. a form of inheritance, but only according to the decree of the senate (*Praetor ait, Uti me, quoque lege senatusve consulto bonorum possessionem dare oportebit, ita dabo* (ibid.; 8.14.15)). The edict is therefore marked as the decree of the

⁴⁸¹ Smith notes the laws governing the bequests of books and libraries ("Bibliotheca") on fp. 221r.

praetor, but also stands in for the power of the senate to issue decrees in general. Smith also demarcates the texts of edicts themselves, for example with a large tablet marked with “Edictum”, and senatorial decrees with the designation “S.C.”, i.e. *senatusconsultum* (Fig. 48.1; fp. 152r). In this case, where the senatorial decree and edict appear side-by-side, the texts are marked with numerous textual corrections and amendments by Smith, because he initially forgot to add the crucial negatives before the verbs.

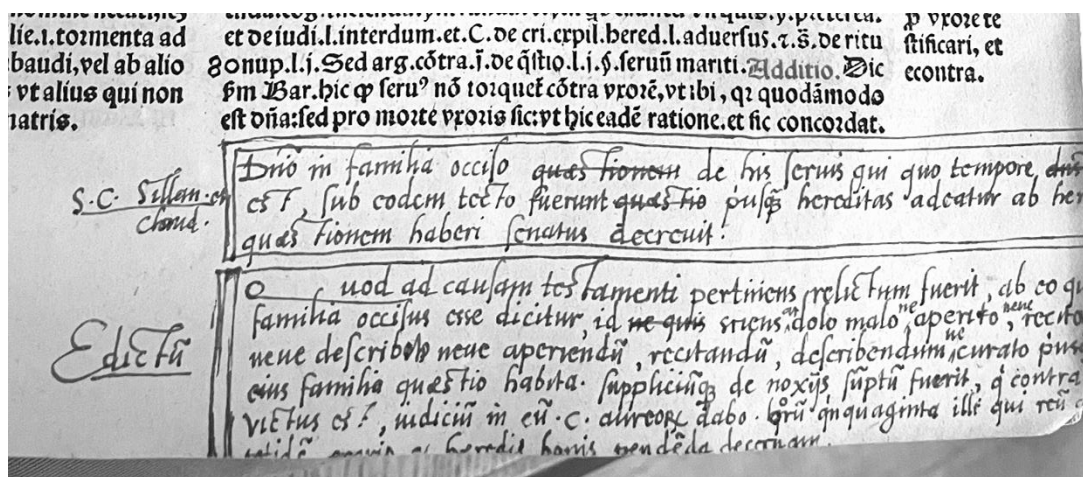


Fig. 48.1. *Digest*, vol. II, *Infortiatum* (1539).

These last edicts are added to a passage about the designation of “dominus” in a will, referring to attempts by servants to murder their masters and profit from their estates: Smith notes that the senate can instigate an enquiry before any inheritance is given (fp. 152r). As we noted earlier, the name *dominus* is to be understood directly, and this is the crucial element of a bequest (“D[omi]ni appellatio[n]e d[omi]nor[um] accipiu[n]tur” (ibid.)): *Domini appellatione etiam filii famulius, caeterique liberi qui in*

potestate sunt continentur (29, 5.1.7; *ibid.*).⁴⁸² Smith picked this up in his sammelband of works by Ulrich Zasius (1461-1535/6), in the *Intellectus juris singularis* (Basel, Isingrinus, 1541);⁴⁸³ Smith described Zasius and Alciato in his civil legal lectures as his guides through the *CJC*, and clearly purchased and read both sammelbands prior to his lectures in 1543 (the Zasius also contains a signature dated 1542).⁴⁸⁴ Zasius describes the force of “Directa verba” (p. 356), as Smith notes, in relation to inheritance, and in this case to the power of the testator (*dominus*) to make a direct declaration of who will inherit when changing heirs (*substitutio*). We therefore return to the idea of rhetoric and the shift towards particulars: *Priora illa verba ad substitutum pertinentia, sunt in triplica genere: aliqua enim directa, aliqua obliqua, aliqua communia nominantur. Directa sunt, per quae substitutus directo & per se, non per mediam personam ad haereditatem pervenire potest ... nominat directo directa, ut est verbum, haeres esto* (*ibid.*).⁴⁸⁵ As Smith notes, this is simply a statement of rhetorical particulars, in which something is said to be one thing, and another thing is said to be another: “Haeres esto; D[omi]n[u]s esto” (*ibid.*). Property (as in legal property) is therefore equivalent to the correct meaning of a name (*proprietas*), which pertains to the simple argument made in *DLG*, that you can change the names (*substitutio*) but you cannot change the substance of a thing, which is conveyed by the force of the word (*directa*

⁴⁸² ‘The term *dominus* (“master”) covers a “son-in-power” and the other children who are in [parental] power’ (p. 438).

⁴⁸³ H.2.8(1); A69.

⁴⁸⁴ ... *certe circiter id tempus et Pandectarum quinquaginta ille volumina et Codicem a Bibliopolis emi, quibus Alciati quaedam ac Zasii Ferrarii que admixti opuscula*; ‘Certainly around this time (presumably 1540; Smith calls this the time he was accepted into the Senate of the University, which might describe his Regius Professorship, as opposed to receipt of any of his degrees), I purchased at a bookseller in Cambridge the fifty books of the *Digest* and the volume of the *Codex*, with which I mixed some works of Alciato, Zasius and [Johannes] Ferrarius (1486-1558)’ (Op. cit. MS Top. Ox. E.5, f. 12). Only Zasius and Alciato are singled out for praise, however: *laudabo & Zasium et Alciatum, duo clarissima juris prundentiam lumina*; ‘I shall praise Zasius and Alciato, the two most brilliant lights of jurisprudence’ (f. 11). Smith’s Ferrarius has not survived.

⁴⁸⁵ ‘These words which we have discussed before relating to the substitution are of three kinds: direct, indirect and some which are called “common” (colloquial). Direct are those in which the substitute can come into the inheritance directly, i.e. personally and not via a third party ... naming directly that which is direct, as when the testator says, “this is the heir.”

verba): an heir is an heir, and the *dominus* is the *dominus*. It was important, therefore, to get the original text of the law right, but mistakes could be made, as we have seen. Elsewhere, Smith notes a “rule” governing wills and testaments (“Reg[ula] Catoniana” (Fig. 48.2; fp. 290v)), preventing wills that were originally void from ever being valid, regardless of changes in circumstances; Smith places this on a scroll, even including the irregular edge of the parchment, the “key” that matched it to its copy, which was always cut from the same piece of parchment. Smith uses the same symbol as a marginal *nota* to mark bequests which include servants (“Servus qu{i} legat{ur}” (Fig. 48.3; fp. 176r)). Smith was not opposed to Alciato and Vuichemus’s deep suspicion of the written law and of legal language, but he was more closely allied to Zasius’s simple, rhetorical explanation of the terms, which maintained the right of the testator. Indeed, Smith’s brand of legal humanism seems to have pushed him towards a *formal* understanding of the law: as in the case of wills, language had an inherent form, which was also the original text of the law as it appeared in the *CJC*.

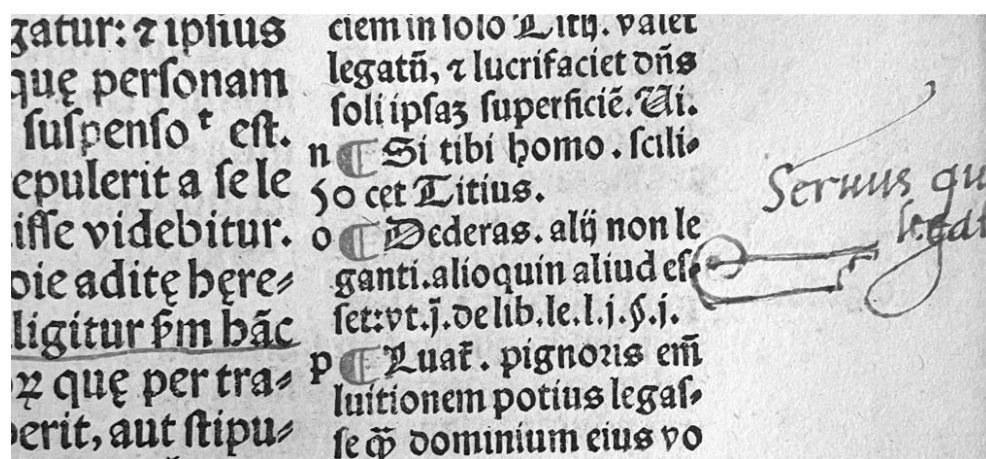


Fig. 48.2.

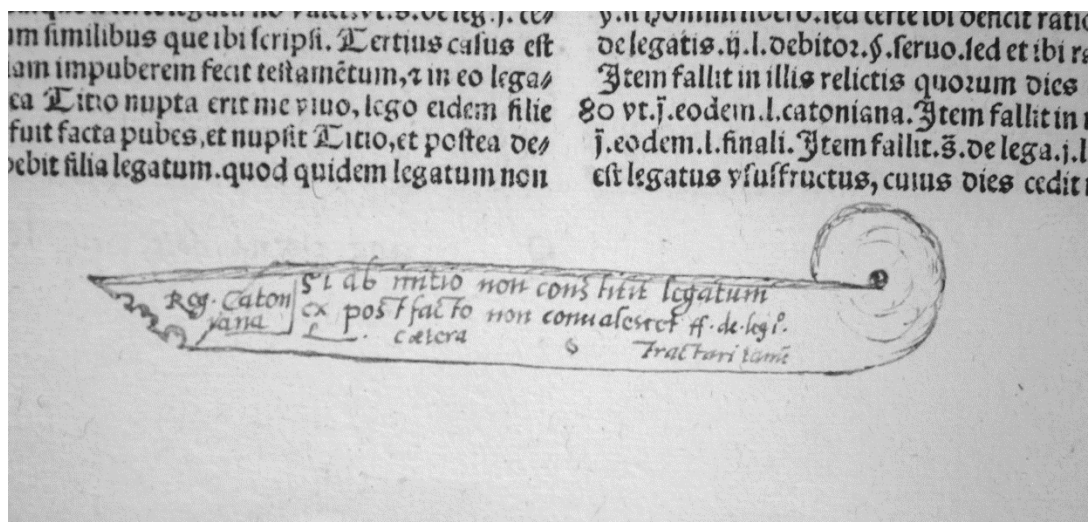


Fig. 48.3.

vii. Conclusion.

Who issues the law and who can interpret it? These questions are fundamental to Smith's understanding of civil law and to the texts of the civil law itself. As we have seen, civil law arose from the need for contracts, when natural law and conscience was no longer sufficient. Language was required to create the law and set it down, but this inevitably subjected the law to corruption by customary usage (*vulgus*), an awareness that greatly influenced Smith's understanding of the *CJC*, as it did for Alciato and other legal humanists. The move from *genera* to *species* involved, as we saw in Smith's medical reading, a process of the corruption of ancient linguistic terms; Smith's obsession with the written law stems from this awareness that custom created the law and that custom could change it, as it had changed language. In the following chapter we will see how Smith's interest in textual authority led him to see the edicts and decrees of Roman law in terms of English common law and statutory law, which had ramifications for his *DRA*. Conceiving of Roman civil law in English terms naturally involved the translation of words from one legal system into another. As this chapter

has demonstrated, this was really a concern of naming jurisdiction and determining the inheritance of property (*bonorum possessio*) through legal contracts, which equated to the separate jurisdictions of the *imperator* and *praetor* in Roman civil law, or the king and the Chancellor in the English system of common law (according to Smith). However, as was the case between Greek and Roman law, the translation of legal terms did not always work, as we shall see.

CHAPTER 5: JURISDICTION IN CANON AND CIVIL LAW.

“You have not, I hope, forgotten that I was not only an English judge, but, what is more, a reader in English law.”⁴⁸⁶

F. W. Maitland, ventriloquising Sir Robert Rede (d. 1519).

i. Introduction.

Smith is usually cited as a political theorist for his *DRA*. This work described England’s “mixed monarchy” (though Smith never actually used the term), which in Aristotelian political theory was a system combining elements of monarchy, aristocracy (or oligarchy), and democracy. In English common legal terms, Smith expressed this as a “separation of powers” – the separation of the executive, the legislature and the judiciary – firstly in terms of the monarch’s prerogative to make laws and wars, to appoint magistrates, and to make absolute judgments without appeal, and secondly Parliament’s possession of many of the same prerogatives, especially the right to make laws (not taking into account the rarely used royal veto) and to issue absolute judgments of their own (e.g. attainders). Finally, Smith saw the Chancellor as a separate (equitable) jurisdiction, equivalent to the Roman *praetor*. Smith’s other fixation in *DRA*, however, was the participation of the noble classes in legal and public institutions, in accordance with their wealth or “estate” (aristocracy), as well as the common man’s participation as a member of the jury in trials. Smith’s direct comparison of English common law offices with the legal offices of Republican Rome has led some recent

⁴⁸⁶ F. W. Maitland, *English Law and the Renaissance: The Rede Lecture for 1901* (Cambridge: Cambridge University Press, 1901), p. 2. A “reader” was a senior barrister who delivered lectures at the Inns of Court.

literary scholars to identify *DRA* as a proto-republican work of English political theory.⁴⁸⁷ However, while scholars have addressed the legal-political character of *DRA*, the intellectual origin of Smith's work has not been adequately grasped; the means of doing so lies in his annotated books. The material evidence of Smith's annotated books of Roman civil and Roman Catholic canon law reveals the intellectual genealogy behind his published work, in this case the back-and-forth of various legal jurisdictions. In this chapter and in the final chapter of this thesis, I will argue that Smith's approach to English common law (given his apparent lack of any formal training in the discipline)⁴⁸⁸ was via Roman civil law. Moreover, the influence of Roman law on Smith's conception of delegated monarchical authority is what allowed him to conceive of an imperial monarchy that was absolute but not tyrannical, and which co-existed simultaneously with Parliament, whose authority was also described by Smith in *DRA* as being "absolute".

The influence of Roman civil law should not be particularly surprising given Smith's intellectual background, which we have already observed, but the confirmation of this influence can only be revealed by close study of the material evidence, as I hope this thesis has already demonstrated. In this chapter I will look at Smith's annotations in a small group of canon law books and in his texts of the *CJC*, which have never been

⁴⁸⁷ Patrick Collinson in "*De republica Anglorum*: or, History with the Politics put back" in *Elizabethan Essays* (London: Bloomsbury, 1994); adherents include op. cit. Hoak; Paul Raffield, "The Monarchical Republic, Constitutionality, and the Legal Profession" in Lorna Hutson, ed., *The Oxford Handbook of English Law and Literature, 1500-1700* (Oxford: Oxford University Press, 2017), pp. 163-179; Anne McLaren, "Reading Sir Thomas Smith's *De republica anglorum* as Protestant Apologetic" in *The Historical Journal*, 42.4 (1999), pp. 911-939; and Cathy Shrank, *Writing the Nation in Reformation England, 1530-1580* (Oxford: Oxford University Press, 2004).

⁴⁸⁸ Smith seems to have been made an Honorary Benchet of the Middle Temple sometime in the 1550s or 1560s, though the accession records for this period have been lost; a stained-glass panel with his name and coat of arms appears in the oriel window of Middle Temple Hall (op. cit. Williamson, p. 45)). I am grateful to Renae Satterley and Barnaby Bryan for this information. Smith also became a member of Doctors' Commons in 1574, most likely another honorary appointment (George Drury Squibb, *Doctors' Commons* (Oxford: Oxford University News, 1977), p. 160).

properly studied. Smith's collection of (largely unannotated) antiquated canon law books, which he purchased in the 1530s from the Cambridge stationer Garrett Godfrey (d. 1539), came to Queens' as part of his bequest.⁴⁸⁹ In Smith's reading of his canon law books, he addressed a significant legal question in Reformation England: how did English common law relate to ecclesiastical law now that Henry VIII was Supreme Head of the Church of England?⁴⁹⁰ Moreover, how did common law stand in relation to the monarch's power now that his jurisdiction was total? Smith's answer, as a practising civil lawyer, was apparently to look for English common law statutes that were equivalent (or so Smith thought) to edicts in Roman civil law. This was because the written statutes of English common law allowed comparison with the written code of Roman civil law in which Smith had been trained, while also emphasising the independent and superior jurisdiction of the monarch (or emperor (*imperator*), in the language of Justinian Roman law), especially over the church, something that was inherent in the texts of the *CJC*. This chapter therefore identifies an early intellectual precedent for Smith's most famous "political" work in his annotated books of canon and civil law (which were to some extent combined), while also reinforcing the idea of Smith as a "pragmatic" reader, in the sense of someone who was willing to accommodate the relative jurisdictions of church and state, or monarch and parliament, wherever necessary.

⁴⁸⁹ See A59, 60, 61 (see also A63), and 77.

⁴⁹⁰ Since the Act of Supremacy of 1534 (26 Hen. 8, c. 1).

ii. Traditions of canon, civil and common law.

In the previous chapter we observed Smith operating between two legal traditions: the ancient Roman and the ancient Greek, which were fundamentally different in character and yet linguistically intertwined within the Byzantine tradition of the *CJC*. Quentin Skinner has referred to seventeenth-century republicanism as being “neo-Roman” in character, i.e. derived from Justinian’s code and from the texts of Cicero, Sallust, Livy and Tacitus.⁴⁹¹ Eric Nelson, on the other hand, argued that Plato and the ancient Greek tradition must be seen as separate, as part of a distinctive tradition from Justinian and the ancient Roman Republican authors, and with different legal and philosophical characteristics.⁴⁹² The Greek tradition has, indeed, loomed large in accounts of *DRA*: Patrick Collinson pointed out that Smith’s conception of the English mixed monarchy would have been derived from Plato and Aristotle, and indeed Plato and More’s *Utopia* are both contrasted by Smith with his own aim of describing a real commonwealth in *DRA*.⁴⁹³ Benjamin Straumann provides an alternative view, arguing that the Greek political tradition, grounded in the “eudaemonistic” view of virtue,⁴⁹⁴ was in fact totally unconcerned with any constitutional, republican system, and therefore could not really serve as a model for early modern republicanism; the Roman system, on the other hand, with its legal code, was perfectly capable of articulating a coherent republican constitution.⁴⁹⁵ Markku Peltonen has also articulated the role that “classical

⁴⁹¹ Quentin Skinner, *Liberty before Liberalism* (Cambridge: Cambridge University Press, 2012); cf. Eric Nelson, *The Greek Tradition in Republican Thought* (Cambridge: Cambridge University Press, 2004), pp. 8-9.

⁴⁹² *Ibid.*, p. 4.

⁴⁹³ *Op. cit.* Collinson, p. 17 (Collinson was discussing *Utopia*); cf. *op. cit.* Raffield, who described *De republica anglorum* as “Aristotelian” (p. 175); Smith, *De republica anglorum* (London, Middleton for Seton, 1583), p. 118.

⁴⁹⁴ Benjamin Straumann, *Crisis and Constitutionalism: Roman Political Thought from the Fall of the Republic to the Age of Revolution* (Oxford: Oxford University Press, 2016), p. x.

⁴⁹⁵ *Ibid.*, p. 1.

humanism”, broadly defined, but more explicitly focussed on the ancient Roman tradition, played in (otherwise overlooked) mid-Tudor conceptions of republicanism. The role of the Justinian, *imperial*, civil law, however, rarely features in scholarly discussions of republicanism, perhaps for obvious reasons.⁴⁹⁶ Quentin Skinner noted only two central “legal” tenets of the *CJC*: firstly, that the emperor was, essentially, the sole authority expressed in the Justinian code,⁴⁹⁷ and secondly, that “all men and women are either free or are slaves.”⁴⁹⁸ Both of these tenets will be explored in the following chapter, but the first must be considered in terms of its imaginative possibilities for describing the English context in the 1530s, during which Henry VIII banned the teaching and reading of canon law in the universities in 1535⁴⁹⁹ and became Supreme Head of the English Church and State. What if, instead of looking for the influence of neo-Roman republicanism in *DRA*, we looked instead for a combination of pure Justinian imperialism (*merum imperium*) and the model of mixed monarchy that is more usually associated with the purely Greek tradition of Plato? Smith undoubtedly borrowed from the ancient Greek tradition in *DRA*, but the most pertinent concept for his definition of monarchical absolutism was that of *merum imperium* or “pure power”. The connection between Tudor despotism and the Justinian code was made by F.W. Maitland, who observed that the imperial civil law offered Henry VIII a model of absolute *imperium*, which Maitland called “Byzantinism”: ‘there was

⁴⁹⁶ Markku Peltonen, *Classical Humanism and Republicanism in English Political Thought, 1570-1640* (Cambridge: Cambridge University Press, 1995).

⁴⁹⁷ Quentin Skinner, *The Foundations of Modern Political Thought, Vol. I: The Renaissance* (Cambridge: Cambridge University Press, 1978), p. 8; Skinner was describing the conception of the *CJC* by the medieval glossators.

⁴⁹⁸ Skinner, *Visions of Politics, Vol. II: Renaissance Virtues* (Cambridge: Cambridge University Press, 2002), p. 289; this reference was in the context of John Milton’s neo-Roman republicanism.

⁴⁹⁹ Peter D. Clarke, “Canon and Civil Law” in Candace Barrington and Sebastian Sobcecki, eds, *The Cambridge Companion to Medieval English Law and Literature* (Cambridge: Cambridge University Press, 2019), p. 39; Clarke notes that private study could not, however, be banned. Both Cambridge and Oxford continued to issue degrees *in utroque iure* (i.e. in both civil and canon law) throughout the sixteenth and seventeenth centuries.

pleasant reading in the Byzantine Code (i.e. the *CJC*) for a king who wished to be monarch in church as well as state: pleasanter reading than could be found in our ancient English law-books.’⁵⁰⁰ Justinian used a Christian conception of imperial majesty because he was, of course, a Christian emperor himself. However, this “Byzantinist” (or Greco-Roman) influence has rarely, if ever, been applied to Smith’s *DRA*. Instead, it is the ancient Greek tradition, especially Aristotle’s *Ethics*, that looms largest in the scholarly treatment of his work. Smith, however, would not have seen the Greek and Roman legal traditions as being entirely distinct, as we saw in the previous chapter. Instead, as I will argue, the Greco-Roman Justinian code offered Smith a stage on which the interactions of the royal prerogative, the ecclesiastical jurisdiction and the “equitable jurisdiction” of English common law could be played out. This jurisdictional drama, enacted between the secular and ecclesiastical courts in the *CJC* and the *Decretals* of canon law, reflected changes that were occurring in England during the time that Smith read his *CJC* in preparation for his civil law lectures, which he delivered in 1543.

In the 1530s and early 1540s, Thomas More was embroiled in debates concerning changes made to the heresy laws, in which the rights of the ecclesiastical courts to call people to trial based on accusations was restricted by the introduction of secular, common law elements to the process. This was, therefore, a question of the rights of the clergy in relation to Parliament and, ultimately, the royal prerogative, a question

⁵⁰⁰ Op. cit. Maitland, p. 14; Maitland also referred to “Marsilianism” as an alternative name for this movement, noting that the first translation of Ficino into English by William Marshall (d. 1540?) was published in 1535 and paid for by Thomas Cromwell (1485-1540); this was ‘the best book in English against the usurped power of the bishop of Rome’ (p. 61). The ancient books of English law he referred to were medieval authors like Lynwood, Glanville, Fitzherbert and Bracton.

which had first surfaced (arguably) with the publication of More's *Utopia* in 1516.⁵⁰¹ More's antagonist in these debates was Christopher St. Germain (1460-1540), a common lawyer, who argued the common law case; St. Germain was a Protestant, whereas More was a trenchant Catholic. The essence of the debate revolved around whether ecclesiastical judges could act as both the accuser – the one who brought the defendant to trial – and the judge in heresy trials, as in the Continental inquisitorial system, which had led to abuses.⁵⁰² The assumption was therefore that ecclesiastical judges were not behaving correctly, whereas the secular judges of English common law, who were operating according to inherent and unwritten principles of natural equity, were: 'Anything that was commonly done by [common law] justices was lawful; that is the way the common law worked'.⁵⁰³ St. Germain's pedagogical dialogue *The Doctor and Student: or Dialogues* (etc.) (1523; first English ed. 1530)⁵⁰⁴ presented common law as being inherently rational and equitable, and containing the equitable jurisdiction (nominally separate from common law) represented by the Court of Chancery. English common law, St. Germain argued, was lawful and equitable because it was based on particular time-honoured customs, which, 'because they be not against the law of reason, nor the law of God, though they be against the said general customs or maxims of the law, yet nevertheless they stand in effect, and be taken for law.'⁵⁰⁵ Here St. Germain indicated the absence of written law from English common law, referring only to "maxims" and general "customs". This was either a problem for or an

⁵⁰¹ Quentin Skinner puts More's *Utopia* into the context of a "neo-Roman" concept of liberty; op. cit. Skinner (2012), p. 31.

⁵⁰² Henry Asgar Kelly, "Mixing Canon and Common Law in Religious Prosecutions under Henry VIII and Edward VI: Bishop Bonner, Anne Askew, and Beyond" in *The Sixteenth Century Journal*, 46.4 (2015), p. 927-928.

⁵⁰³ Henry Asgar Kelly, "Thomas More on Inquisitorial Due Process" in *The English Historical Review*, 123.503 (2008), p. 851.

⁵⁰⁴ Smith does not seem to have owned a copy.

⁵⁰⁵ Christopher St. Germain, *The Doctor and Student*, ed. William Muchall (Cincinnati: Clarke and Co., 1886), p. 34.

advantage of English common law, depending on how you looked at it. St. Germain saw “conscience”, which we observed in the previous chapter in terms of natural law, as being the ability to discern right from wrong, and so equity naturally flowed from conscience; equity, essentially, was the ability of Chancery (with its separate jurisdiction and mechanisms) to provide an exception where the common law courts offered no defence.⁵⁰⁶ However, as Peter Ibbetson has pointed out, St. Germain’s conception of equity was based on civil law concepts: ‘the use of foreign models which had been developed in very different contexts. The tools in his tool-box were simply not the right ones for the job.’⁵⁰⁷

R.H. Helmholz agreed that St. Germain’s concept of equity was a difficult one to maintain because, unlike Roman civil law, English common law did not have a corpus of texts (the *CJC* of Roman civil law and the *Decretals* of canon law) to provide precedents for what was rational or equitable;⁵⁰⁸ the Romans also possessed the *jus honorarium*, or system of magistrates’ and praetorial edicts, whereas there was not yet any real body of (or tradition of recording) English common law cases or precedents.⁵⁰⁹ When English common lawyers did attempt to find solutions to the gaps in the literature of English common law by turning to the textual tradition of the Roman law (via Bracton, for example, on which more later), they rarely found the two traditions compatible. Helmholz writes of the opposition of the customary English common law to the statutory Roman civil law: ‘The fit was not perfect. There would have to be some

⁵⁰⁶ Cf. St. Germain, Chapters 15-16 and D.J. Ibbetson, “A House Built on Sand: Equity in Early Modern English Law” in Egbert Koops and W.J. Zwalve, *Law & Equity: Approaches in Roman Law and Common Law* (Leiden: Brill, 2013), pp. 57-60.

⁵⁰⁷ *Ibid.*, p. 60.

⁵⁰⁸ Helmholz, “Christopher St. German [sic] and the Law of Custom” in *The University of Chicago Law Review*, 70.1 (2003), p. 139.

⁵⁰⁹ Ian Williams, “Early-Modern Judges and the Practice of Precedent” in Paul Brand and Joshua Getzler, eds, *Judges and Judging in the History of the Common Law and Civil Law* (Cambridge: Cambridge University Press, 2012), p. 52.

pushing and pulling – some serious efforts at adjustment – if intelligent use were to be made of what one learned from the Continental sources.’⁵¹⁰ On the other hand, G.R. Elton saw this process as one of compromise:

It is true that equity was influenced by the principles of the Roman (or civil) law, especially since the lesser officials in [Chancery] were usually trained in that law. But when the common lawyers ... established a monopoly over the Chancellor’s own office, equity came to be adapted to the common law. It always remained a separate body of law, but instead of resting on a hostile set of rules it became an ally: the two understood each other.’⁵¹¹

Chancery and the principle of the equitable jurisdiction was not Roman, Elton argued, but thoroughly English (the common lawyers would undoubtedly have agreed): ‘the law administered in the court was more like that of England than that of Rome.’⁵¹² Smith seems to have occupied a similar position in his approach to synthesising Roman civil law concepts with those of English secular common law, especially in the relation of secular law to ecclesiastical law, which in England still operated according to Roman civil law (there were several kinds of mixing going on here). This was a question of *values*, much like the differences of values and customs between Greek and Roman law, or the opposition of natural law (or divine law) to customary law. English common law did not “fit” with Roman civil law or canon law, especially to the extent that the English law was unwritten. Indeed, there were places in which English customary law was directly opposed to statutory or civil law, such as the English practice of primogeniture, i.e. only the first son inheriting. The problem, if we are viewing Smith and his work through the lens of the Roman Republican language in which *DRA* was

⁵¹⁰ Op. cit. Helmholz, p. 139.

⁵¹¹ G.R. Elton, *The Tudor Constitution: Documents and Commentary* (Cambridge: Cambridge University Press, 1962), p. 151.

⁵¹² Ibid., p. 152.

written, is that the written statutes implicitly emphasise the precedence of the monarch over the ecclesiastical law, but also over the common law of England, which was unwritten and customary. St. Germain naturally opposed the ecclesiastical jurisdiction in England, but his legal philosophy was, moreover, medieval and emphasised custom over statutory law: ‘In an age in which statute law was gradually asserting its supremacy over franchise and corporation and even custom, there is nothing in [the *Dialogues*] which even faintly resembles the modern idea of sovereignty.’⁵¹³ In 1539 the Act of Proclamations⁵¹⁴ was passed, which emphasised the status of royal proclamations in line with parliamentary statutes.⁵¹⁵ Statute, in the context of the years in which Smith left Plato behind and began reading Roman civil law, was therefore as much about royal authority in the common law tradition as it was about the status of common law equity. Smith seems to have been open to the relatively new possibilities offered by statutory law, indeed this seems to be one of the methods by which Smith sought to understand English common law in terms of the mixed monarchy described in the Roman civil legal tradition.

When reading and annotating his *CJC*, what Smith appears to be doing, at face value, is synthesising two largely (but not necessarily wholly) incompatible systems of law: Roman civil law and English common law. This had everything to do with written or statutory law – such as parliamentary statutes – and the common law concept of equity. For St. Germain, the purpose of the equitable jurisdiction of Chancery within English common law – in a case in which a statute is found to be both unequitable and against

⁵¹³ Franklin Le Van Baumer, “Christopher St. German [sic]: The Political Philosophy of a Tudor Lawyer” in *The American Historical Review*, 42.4 (1937), p. 639.

⁵¹⁴ 31 Hen. 8, c. 8.

⁵¹⁵ Op. cit. Elton, pp. 21-23: ‘The [Act of Proclamations] of 1539 was not ... of very great significance ... One need not be very surprised that its repeal in 1547 made no difference to proclamations. Elizabeth, without the act, issued them more freely than had Henry VIII with it.’

reason – was to provide equity by interpretation. The Doctor in his *Dialogues*, questioning this, quotes a statute forbidding any judgment given by the Court of the King’s Bench to be redressed by either Parliament or Chancery (appeals always took the form of new cases, made in a different court): ‘for the judgment cannot be reformed without an examination, and the examination is by the said statute prohibited.’⁵¹⁶ The statute in question is opposed to customary law because it is unreasonable (preventing equity), whereas custom is inherently reasonable (providing equity). The Student’s response is to argue that although one person might lose from the said statute, many more will be saved from vexatious claims, which is the more broadly equitable outcome: ‘And it is much more provided for in the law of England, that hurt nor damages should not come to many, than only to one.’⁵¹⁷ In his copy of Justinian’s *Codex*, Smith tried to find a civil law equivalent for an English statute, governing the idea that when someone attempts to influence their case through bribery or by appealing to authority, they will lose it (“*iactura causa*”): *ut iactura causae afficerentur ii qui sibi potentiorum patrociniū advocassent* (2.13.1; fp. 66r).⁵¹⁸ Smith has glossed this with the concept of “Mayntenaunce & Embracerye” (ibid.), which (though he doesn’t give the date of the statute) was entered as an Act by Parliament in 1540.⁵¹⁹ The Maintenance and Embracery Act proscribed people from seeking the same undue influence over their cases that is described in the civil law *lex*. Smith’s comparisons in his *CJC* are therefore about legal *character*: the opposing and shared characteristics of different legal jurisdictions. The character of the law was also manifested in the character of its principal actors: the accused, witnesses, and the judges. Such a conception of legal

⁵¹⁶ Op. cit. St. Germain, p. 50.

⁵¹⁷ Ibid.

⁵¹⁸ ‘... that those who had sought for themselves the judicial support (*patrociniū*) of the powerful (*potentiores*) should be punished with loss of their case’ (p. 505).

⁵¹⁹ 32 Hen. 8, c. 9.

character also had ramifications for jurisdiction, especially in debates around clerical rights in secular courts, and the encroachment of the temporal law into the spiritual realm, the internal jurisdiction of *intention*.

iii. Witnesses and judges.

In the 1530s calling witnesses was of the utmost importance in arguments over inquisitorial process, which so exercised More and St. Germain.⁵²⁰ Continental Catholic inquisitorial procedure was perceived to be unfair, which led to a mixing of ecclesiastical and secular procedures in England:

... from the time of Henry VIII's breaking up with Rome, there were efforts to modify [inquisitorial] procedure with "improvements" taken from common-law methods, such as the use of grand or petty juries, lay judges, and lack of oath [i.e. witnesses not taking an oath], because of a continued perception that inquisitorial procedure was unfair. A further impetus for this sort of mingling undoubtedly came from the king's newly recognized status as Supreme Head of the Church of England, dating from 1534, with an emphasis upon his authority to prosecute religious offenses.⁵²¹

After the Heresy Act or Treason Act of 1534,⁵²² English common law judges were able to call people to trial based on *fama publica*, i.e. public reputation or imputation of crime (or previous conviction of a crime, like bankruptcy), and not on formal accusations, as in the inquisitorial tradition.⁵²³ Furthermore, the Treason Act also insisted on the use of two reliable witnesses to determine guilt, pointing to the

⁵²⁰ Op. cit. Kelly (2015), p. 932.

⁵²¹ Op. cit. Kelly (2015), p. 930.

⁵²² 26 Hen. 8, c. 13.

⁵²³ Thomas A. Fudge, *The Trial of Jan Hus: Medieval Heresy and Criminal Procedure* (Oxford: Oxford University Press, 2013): 'While jurists such as Irnerius believed that every heretic should automatically be considered *infamia*, judges were required to establish *fama publica*' (p. 80).

deficiencies of the medieval statutes, though (as More pointed out to St. Germain) this had always been the case in Catholic heresy trials.⁵²⁴ In fact, the secular judges, who were now in control of these trials, began taking evidence from perjured witnesses or sometimes even only one witness.⁵²⁵ Such adaptations and abuses of the ecclesiastical system were really concerned with jurisdictional mixing. Helmholz has shown that the rule of witnesses was very much tied up with the encroachment of common law into canon law jurisdictions:

Such common law cases deprived the civilians of the right they thought undeniably theirs, that is the right to say what Roman canon law was. Probably the most objectionable example of this sort of common law intervention involved the “two-witness” rule. The law of proof of the *jus commune* required the testimony of two trustworthy witnesses to establish a point of fact ... It was vital because it allowed [the civilians] to discriminate between fully and imperfectly proved cases.⁵²⁶

As Henry Kelly has shown, successive acts of legislation in the 1530s and early 1540s blended the use of “accusations” – a canon law concept in which the accuser (often the judge) was also the prosecutor – and “indictments”, i.e. the imputation or suspicion of a crime by a secular grand jury. The Act of Six Articles in 1539,⁵²⁷ for example, allowed bishops to receive accusations from two persons, while secular judges and JPs could receive indictments, though in both cases the heresy trial was before a mixture of secular and ecclesiastical judges, and before a jury; for the worst crimes, such as denial of transubstantiation, the sentence was burning, while in all cases the canonical

⁵²⁴ Op. cit. Kelly (2015), p. 932.

⁵²⁵ I am heavily indebted to Paul Cavill for this interpretation: cf. “The Prosecution of Heresy in the Henrician Reformation”, paper delivered January 19 2023, Jesus College, Oxford.

⁵²⁶ R.H. Helmholz, *Roman Canon Law in Reformation England* (Cambridge: Cambridge University Press, 2009), p. 179.

⁵²⁷ 31 Hen. 8, c. 14.

procedure of recantation was ignored.⁵²⁸ As Kelly noted, ‘all of this was really new.’⁵²⁹ What was at stake here, therefore, was not only the two-witness rule – since a 1543 act made reference only to “sufficient witnesses”⁵³⁰ – but also the authority of judges (secular and ecclesiastical) to bring the accused to trial and to call witnesses, two concepts that were at the heart of the concept of jurisdiction in Roman civil law.

The jurisdiction of the monarch is a different concept to that of the jurisdiction of judges, but in England in the 1530s the competing monarchical and ecclesiastical jurisdictions were nonetheless tied to the relative jurisdictions of ecclesiastical and secular judges. The case was somewhat simpler in Roman civil law, in which the jurisdictional separation of church and state was implied; here, mixed monarchy was more concerned with the separation of powers. In the Justinian civil law, therefore, royal authority was also concerned with the delegation of judgments to the judges by the monarch or *imperator*, and therefore the ability of the monarch to provide equity. There are two legal systems of *imperium* in the Justinian *CJC*: *merum* (i.e. whole) and *mixtum* (i.e. mixed). These two terms are used to define jurisdiction in civil law, as Smith noted in the first volume of his *Digest* (and as we have already seen in his Alciato): *Imperium aut merum, aut mistum est. Merum imperium est habere gladii potestatem ad animadvertendum in facinorosos homines ... Mistum imperium est, cui etiam jurisdictio inest: quod in danda bonorum possessionum consistit. Jurisdictio est etiam iudicis dandi licentia* (I, fp. 25v; 2.1.3).⁵³¹ The *mixtum imperium*, which can be

⁵²⁸ Op. cit. Kelly (2015), pp. 932-933.

⁵²⁹ Ibid., p. 933.

⁵³⁰ Ibid.; 34 & 35 Hen. 8, c. 1.

⁵³¹ ‘*Imperium* is simple [i.e. pure] or mixed. To have simple *imperium* is to have the power of the sword to punish the wicked; this is also called *potestas*. *Imperium* is mixed where it also carries jurisdiction to grant *bonorum possessio*. Such jurisdiction includes also the power to appoint a judge’ (I, p. 40).

transferred, is with whoever the jurisdiction is residing in (*inest*), whereas *merum imperium* can never be transferred. According to this definition, jurisdiction is the imperatorial right of delegating the jurisdiction to the judges, as well as the right of judges to delegate to one another. Smith draws a large table, in which he presents the duties of the judges (“Officium judicis” (Fig. 49; *ibid.*)), dividing them into three parts: “nobile sive merum; mercenarium, mixtum; adversarium”. The *merum* judges or nobles make their own judgments and motions (“quod suo quasdam jure magistratus facit, quod per se stat, sive judex ad postulationem alterius sive suo motu faciat”),⁵³² whereas the *mixtum* or “mercenary” judges are only able to make judgments on specific actions (“quod per se non stat, sed deservit actiones”).⁵³³ The role of the magistrates in Roman civil law also reflected the concepts of equity that St. Germain described in terms of exceptions to statutory law. Smith notes in his *Digest* that when a law is against sense it is up to the magistrate to interpret it (“A contrario sensu ... Jure magistratus competere” (I, fp. 23r; 1.21.1)); in doing so, a magistrate is a magistrate exactly because he corresponds to that office, and so this kind of syllogistic interpretation defines what a magistrate is, as Smith notes in the commentary: *ergo jure magistratus aliquid alicui competere quod competit eoipso quod magistratus est* ... (*ibid.*).⁵³⁴ Later in the commentary, but following the same point, Smith refers for guidance to his copy of Alciato’s *De verbum significatione* (“Arg[umentum]. a contr[aria sensu]. Vide alciat[um]. de verb[orum]. sig[nificatione]. liber. 2º. .55º. .f[olio].” (*ibid.*)). The point being made in the *Digest* is really about delegation: a judge can transfer their jurisdiction, but not the power (*merum imperium*) conferred on them by a statute.

⁵³² ‘That [judgment] which the magistrate makes, it stands by itself, whether made upon his own authority or at the request of another judge.’

⁵³³ ‘That [judgment] does not stand by itself, but refers to actions.’

⁵³⁴ ‘Therefore by the law, something corresponds to the person who is the magistrate because that same person corresponds to the office of magistrate.’

However, Smith's annotation is directed at a paradoxical point, which is that the delegation of judicial authority was specifically allowed by a particular statute: the *Lex Julia de adulteriis* (ibid.).

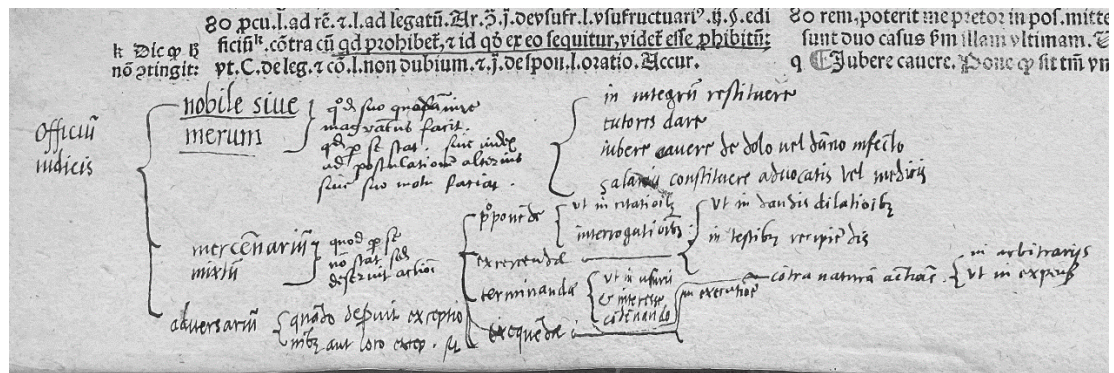


Fig. 49. Digest, vol. I, Digestum Vetus (1539).

Alciato asks, therefore, if it is ever possible to argue against the statutes if they are contrary to sense (“Argumentu[m] a co[n]trario sensu” (p. 55)): *Sed nunquid in statutis argumento a contrario sensu locus erit?*⁵³⁵ His first example is that of special cases (“a speciali” (ibid.)), in which a written law (*lex*) is found to be against common law, in which case the context of the case must be considered (*ex ipso contexto*), rather than the intention behind the law (*ex mentis conjectura*): *nam si lex aliquid specialiter induci dicat, consequens est, ut jus commune in contrarium sit, & hoc casu tale argumentum dicitur, non ex mentis conjectura, sed ex ipso contextu sumi* (ibid.). In this case, therefore, the character of the witness (*damnatus*) is not necessarily pertinent. The example used by Alciato is the *Lex Julia de adulteriis* itself: if a woman is going to be convicted of adultery on the basis of testimony, the judge should really hear from the woman who is on trial (*ex lege Julia, quae damnatam adulterii dicere testimonium vetat, probatur regulariter Mulieris testimonium recipi* (ibid.)), something which

⁵³⁵ ‘But is it certain that there is never any place for argument contrary to the statutes?’

explicitly goes against the statute of the *Digest* forbidding a convicted adulterer from testifying (1.28.20.6).⁵³⁶ A point about delegation therefore becomes, via Alciato, one about written law, and the power of those in possession of *mixtum imperium* to override the statutory law. Elsewhere, Alciato makes the distinction between a *sententia* and a *decretum* (“Sententia; Decretum” (p. 24)): the former, a common-sense judgment, results in either an acquittal or a conviction, whereas the latter requires the interpretation of a judge (*ex ea regulariter aut absolutio sequitur, aut condemnatio, in decreto solum iudices auctoritatem suam interponunt* (ibid.)). Smith refers again to the petty judges, repeating and clarifying the table of *mixtum* and *merum* judges that he drew in the *Digest*: here, in Alciato, the magistrate and the ordinary delegated judges (“Is cui Mandata est jurisdictio”) dealing in general causes (“universitatem causarum”) are able to make their own judgments (“sententiam suam exequitur”) and call witnesses (“contumaces coercet”), and are therefore in possession of jurisdiction or *mixtum imperium* (“Mixtum imperium habent” (Fig. 50; ibid.)); the minor judges, on the other hand, such as the *pedanei*, *auditores* and *arbitri*, to whom specific causes (“unam causam”) can be delegated, can neither make their own judgments, nor call witnesses, nor are they in possession of *mixtum imperium*. What defined the nature of a magistrate in terms of *mixtum imperium* (for *merum imperium* can never be transferred (1.21.1.1)) was therefore their ability to make judgments on statutes that are contrary to the *jus commune*.

⁵³⁶ ... *aliis autem posse testem esse mulierem argumento est lex Julia de adulteriis, quae adulterii damnatam testem produci vel dicere testimonium vetat*; ‘... but as an argument that otherwise a women can be a witness, there is the *lex Julia de adulteriis*, which specifically forbids a woman condemned for adultery to be produced as a witness or to give testimony’ (I, p. 359).

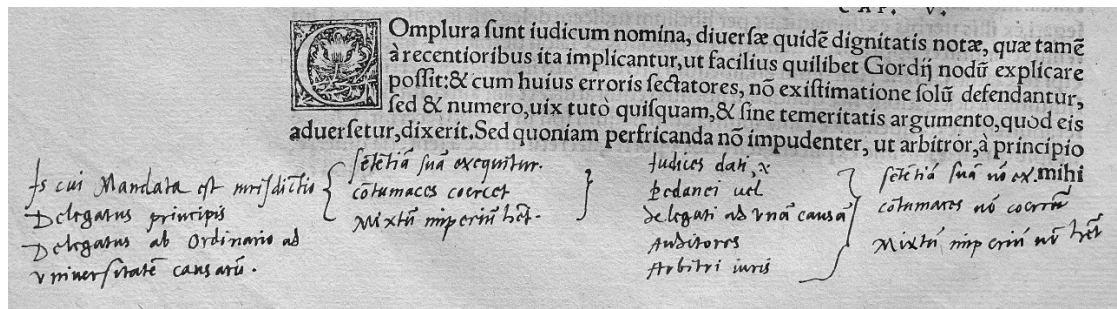


Fig. 50. Alciato, *De verborum significatione* (1537).

iv. Conscience, equity, and the statutes.

We have seen how the transfer of jurisdiction in Roman civil law was concerned with the ability of judges to call witnesses – one concern pertinent to the intrusion of common law on the jurisdiction of the civilians in the 1530s – but also to make judgments based on existing laws. We have also addressed the idea of the equitable jurisdiction in English common law, the court of Chancery, which provided relief from the statutes when the common law courts offered none. For Christopher St. Germain equity was founded on “conscience”, which allowed judges to refute the unjust statutory law. Smith appears to have seen *conscientia*, which we earlier saw him apply to questions of ancient customary laws, as a concept equally applicable to English common law as to the Roman conception of *jus commune*. In his copy of Johannes Oldendorp’s (c.1486-1567) *Variarum lectionum* (Colgone, Gymnicus, 1540),⁵³⁷ Smith has glossed the term in secretary hand as “Conscyence” (fp. A4r) (as he did in his copy of Connan, with regard to ancient Spartan laws that were permitted but still naturally unjust (*justum non fuit*)), often a sign that he is translating a legal concept into the English context rather than just transliterating a legal term. Smith, with Oldendorp and

⁵³⁷ H.2.15; A70.

Connan, treats *conscientia* as part of natural law (“Lex naturale” (ibid)). Oldendorp saw nature (“Natura” (fp. A3r)) as signifying force or “inclination”, i.e. animal instinct, but also custom and “motion”: *naturae vocabulam ... variis modis transferunt ad significandam, alias vim seu inclinationem, alias consuetudinem seu motum* (ibid.). Law (“Jus” (ibid.)), which is akin to *lex* (*Jus ... idem est quod Lex*), was therefore the divinely inspired ability to tell right from wrong according to one’s nature: *Et sic Lex est notitia naturalis a DEO nobis insita, ad discernendum aequum ab iniquo* (ibid.). Justice, on the other hand, was the expression of this divine law in written law (*primum, Juri naturali, deinde scriptis Legibus*), a definition which Oldendorp derives from Cicero. Indeed, following Justinian, the force of justice is expressed in the force of the will (*voluntas*) or the intention: *Justitia est constans & perpetua voluntas, Jus suum cuique tribuendi* (ibid.).⁵³⁸ Smith notes the same definition in Oldendorp: *Jus esse executionem Justitiae. Imo, Justitia est executione Juris per voluntatem prodeuntem ad opera honestatis* (ibid.).⁵³⁹ However, there is a problem, which is that nature is corrupt (“Natura Corrupta” (fp. A4r)); in a postlapsarian world (*de praesenti statu post lapsum Adae*) the will cannot be trusted, and so conscience becomes more important than the systems or mechanisms of written law. Punishments (*poenas*) are less effective than the agony of the conscience (*non ardentibus taedis ... sed angore conscientiae fraudisque cruciatu* (ibid.)),⁵⁴⁰ and Oldendorp puts a twist on a common legal saying: better the conscience than a thousand witnesses (*Conscientia, mille testes* (ibid.)). Importantly, the judgment of conscience cannot be deceived: *Conscientiae Judicium, non fallitur* (ibid.). As in St. Germain, the concept of natural equity within civil and canon law therefore arises from that of conscience, the will to do right, which is expressed as the

⁵³⁸ ‘Justice is the constant and perpetual will to give to each his due according to the law.’

⁵³⁹ ‘Law is the execution of justice; on the other hand, justice is the execution of law through the direction of the will towards honourable deeds.’

⁵⁴⁰ ‘Not by burning torches, but by the anguish of conscience and the agony of deceit.’

jus gentium, the law of nations: *ergo ibi Jus Gentium pro Jure quod omnium gentium auctoritate passim receptum fuit ubique* ... (fp. A5r).⁵⁴¹ However, as Smith notes, even the *jus gentium* is sometimes unjust (“Jus gentiu[m] aliqua[n]do non justu[m]” (ibid.)), for example, in the case of tyrannous rule (*An si quae Leges essent Tyrannorum* (ibid.)), and cannot always be taken as just or equitable: *Neque enim sequitur: Gentes id constituerunt, aut in usum admiserunt: Ergo est Jus naturale aut aequum. Imo, saepe iniquissimum est* (ibid.).⁵⁴² Smith’s annotations to Oldendorp’s treatment of testimonies, made in red crayon, concern the custom common to tyrannical governments of allowing witnesses to be absent during the trial (*sicut multis Civitatibus Tyrannus mos obstruit*), which can be nothing else but an affront to freedom of speech (*Nam, quid aliud hoc est, quam libertatem dicendi testibus adimere?* (fp. Z2v)); Smith has marked this section with a huge, sleeved manicule. Both customary and written law was subject to inequity, therefore, and it was only by adherence to rational, equitable principles – such as the two-witness rule of the *jus commune* – that justice could be preserved.

The appeal to divine law and to conscience – the internal jurisdiction – was both a weakness and a strength of canon law. As in English common law, conscience (*conscientia*) provided the escape mechanism from the inherent corruptibility of statutory law. Alongside the invisibility of this jurisdiction, however, was an anxiety about the impossibility of inscribing divine law in a written system of decrees, which was reflected in the inherent opposition of unwritten law, *jus gentium* or *jus commune*, to the mechanisms and institutions of written, civil law, and vice versa. Helmholtz has

⁵⁴¹ ‘Therefore there is the law of nations, which has been accepted as law by the authority of all the nations everywhere.’

⁵⁴² ‘However, it does not follow that because the nations have established the law and admitted it for use, that it is natural or equitable. In my opinion, it is often most unjust.’

shown that “civilian” lawyers responded by using common law traditions to defend against the common lawyers:

If there is one theme that runs throughout the ecclesiastical reports it is this: *Statutum contra jus commune stricte interpretandum est* [i.e. any statute that goes against common law must be strictly interpreted]. This is, of course, a familiar maxim of the English common law. But in the hands of civilians, the maxim became the engine by which the Roman canon law was defended against the English common law itself.⁵⁴³

In other words, statutes had an inherent *ratio* or reason which allowed them to be interpreted according to equity, so that a statute was automatically weakened by having to be strictly or narrowly interpreted, in that it could not bend to accommodate a reasonable or equitable interpretation.⁵⁴⁴ However, in the English context of the encroachment of common law on canon law jurisdictions, this narrowness of interpretation of statutes was exactly what protected the statutory law against the demands of equity: for the civilians, equitable or not, the statutory precepts *had* to be maintained exactly as stated in the written law.⁵⁴⁵ As Smith noted in his copy of Alciato’s *De verborum significatione*, the basic principle of restricting the law referred to the reason (*ratio*) of the law: “Lex generalis cessante r[at]io[n]e restringitur” (p. 9).⁵⁴⁶ For example, the statute declaring that a murderer will be killed (*Quapropter si statutum sit, ut quicumque quoquo modo aliquem occiderit, occidatur* (ibid.))⁵⁴⁷ operates without reference to any distinction (*non distinguemus*) between guilt (*culpa*) and malicious intention (*dolo*), so that the law is upheld in a general sense: “Quicu[n]q[ue] q[u]oq[u]o modo”. However, as Smith notes twice, in Latin but in a secretary hand, an impediment

⁵⁴³ Op. cit. Helmholz (2009), p. 167.

⁵⁴⁴ Op. cit. Ibbetson, pp. 56-57.

⁵⁴⁵ The equity of the statute was also concerned with the sovereignty of Parliament: a foundational case was the Earl of Oxford’s Case of 1614, in which it was upheld that equity takes precedence over (statutory) common law.

⁵⁴⁶ ‘In general when the reason for the law ceases, the law itself ceases.’

⁵⁴⁷ ‘Wherefore it is established, that if someone kills another by any means, they shall be killed.’

of common or international law will restrict the statutory law: “Injuriae ubi impeditur jure naturali vel gentium contingit” (ibid.); *Quod si impedimentum jure naturali vel gentium sit, tunc semper lex quibuscunque verbis concepta sit restringitur, & de eo jure idoneis intelligitur*.⁵⁴⁸ Smith notes in two related rules (*regulae*) that statutes must therefore be interpreted according to common law (“Statuta secundum jus commune Interpretationem accipiunt”), as well as to the specific situation to which they refer (“Statuta quoties de aliqua re, persona, loco, verba faciunt de Idoneo et habili debent intelligi” (p. 12)).⁵⁴⁹ The protection of statutory law against the “impediments” of common law was therefore its specificity, and when specificity was involved, the question of specific jurisdictions necessarily follows.

v. Invisible and visible jurisdictions.

Smith addresses the opposition at the heart of canon law in his copy of the *Liber Sextus Decretalium* of Pope Boniface VIII (Paris, Thielmann, 1519):⁵⁵⁰ “Consuetudo et statutum (fp. 4v).” Smith is annotating the canon stating that the pope can issue new laws. New laws not only supersede old laws (*Nova constitutio principis tollit primam contrariam quamvis id non exprimat* (1.2.1; fp. 4r)),⁵⁵¹ but also ignore the specificity of old statutes and customs to specific places and persons: *quia tamen locorum et personarum singularium consuetudines: & statuta (cum sint facti & in facto consistent)*

⁵⁴⁸ ‘So that if there should be an impediment according to natural law or the law of nations, then the law is always restricted, no matter in what language it might be conceived, and is understood according to the appropriate legal principles.’

⁵⁴⁹ ‘Statutes are interpreted according to the interpretation of common law ... Statutes, wherever they concern a particular matter, person, place, or thing, should be understood according to what is appropriate and suitable.’

⁵⁵⁰ I.6.12; A79.

⁵⁵¹ ‘A new decree of the ruler (*principis*) abolishes the first contrary law, even if it does not say so explicitly.’

potest probabiliter ignorare (fp. 4v).⁵⁵² Having said this, new papal laws will be understood according to those customs which are reasonable (*Ipsis (dum tamen sint rationabilia) per constitutionem a se noviter editam (nisi expresse caveatur in ipsa) non intelligitur in aliquo derogare* (ibid.)).⁵⁵³ There is, therefore, a contradiction of terms here: a new general law will abolish an old one, and it can override the specific mechanisms of both customary and statutory law, but if these customs and statutes are reasonable, they cannot be overruled. The solution was especially troubling, from an English common lawyer's perspective: the commentator on this text suggests that the question of what constitutes a reasonable custom ("Rationabilis consuetudo quae sit" (ibid.)) is best left to the ecclesiastical judges (*Utrum consuetudo sit rationabilis necne: reliquendum est iudici* (ibid.)). Another possible solution is even less amenable to those who opposed the Catholic jurisdiction: what is in use and said to be reasonable (*consuetudo est usus ... et bene dicit rationabilia*) must be considered reasonable, because the Church would never defend that which is unreasonable (*quia hoc solum quod rationabile est defendit ecclesia* (ibid.)).

The canon *Licet Romanus Pontifex* therefore attempted to give the pope – in whose personhood all power was held (*qui jura omnia in scrinio pectoris sui censetur habere* (fp. 4r))⁵⁵⁴ – the power to issue written decrees, as William Bassett observed: 'The Roman Pontiff [i.e. the Pope], whose will made the law in the West, had succeeded Justinian. The Pontiff had universal jurisdiction, *juris dictio*, that is, the right solemnly

⁵⁵² '... so that he may correctly ignore the customs of particular places and persons, and statutes (since these are factual and consist in facts).'

⁵⁵³ 'From these same statutes and customs (provided they are reasonable) the newly established constitution is not understood to derogate in any way, unless it is explicitly expressed therein.'

⁵⁵⁴ '... who is considered to have all laws in the chest of his heart.'

to declare the law.’⁵⁵⁵ However, the following canon in the collection (1.2.2)⁵⁵⁶ acknowledged the limitations of the canonical jurisdiction, which only customary law or the *jus commune* could overcome, with its local specificity. Some people may be ignorant of a law (*ignorantes*), and a crime such as theft might take place outside of an ecclesiastical jurisdiction; an ordinary statute cannot truly be said to bind the ignorant (*ligari nolumus ignorantes*),⁵⁵⁷ and a thief committing a theft outside of an episcopal jurisdiction might be immune from excommunication (*excommunicatis sententia*) by the bishop within it: “extra territorium jus dicenti ne pareatur impune (fp. 5r)”; *minime ligari noscuntur*.⁵⁵⁸ These are, in fact, two very distinct points, one about the abstract capacity or extent of the canonical jurisdiction, and the other about its physical territory, but both concern the limitations of the statutory law over universal law. The spiritual jurisdiction was, after all, both abstract and physical, and in England, by the 1540s Henry VIII was firmly in possession of both. It is no surprise, therefore, that Smith approached the laws of the *CJC* concerning ecclesiastical and royal authority via contemporary Henrician statutes, neither is it surprising that these statutes seem to emphasise the physical, territorial jurisdiction of the monarch.

The question of where papal authority existed was inevitably tied up with its relationship to royal or temporal authority and therefore, in England, to the opposition of two systems of statutory or written law. Whenever the jurisdiction of canon law was in doubt, this usually also meant that the royal prerogative was in question. In Smith’s

⁵⁵⁵ William W. Bassett, “Canon Law and the Common Law” in *Hastings Law Journal*, 29.6 (1978), p. 1404.

⁵⁵⁶ *Duo sunt dicta. Primum quod statuta ordinarium non ligant probabiliter ignorantes. Secundum quod statutum episcopi extra suam diocesim subditam non ligat*; ‘There are two sayings. First, that ordinary statutes do not correctly bind those who are ignorant. Second, that the statute of a bishop does not bind that which lies outside of his diocese.’

⁵⁵⁷ Literally ‘we do not wish to have bound the ignorant.’

⁵⁵⁸ ‘They are known not to be bound.’

reading, what we have just seen expressed in terms of the spiritual limits of ecclesiastical authority took on the usual spatial characteristics of his “chorographical” annotation. In Boniface’s *Decretals* Smith engaged with an extremely complicated case, in which the Abbot of Rousillon also claimed jurisdiction of the town from the Aragonese king, despite the original royal foundation of the abbey, because the town itself had been under Saracen jurisdiction at the time of donation. It appears that Smith illustrates the town in both abbatial and Saracen jurisdictions, and therefore at two different points in time (Fig. 51; 2.43.3; fp. 122v). A case with similar implications is illustrated in Smith’s copy of Cino da Pistoia’s (“Cinus”) (c.1265-1336) lectures on Justinian’s *Codex* (Vicenza, Sachon, 1517),⁵⁵⁹ in which Smith sketches a murder: a man shooting another man with an arrow (Fig. 52; fp. 92v). But where (and when) does the murder take place: where the bow was fired, or where the arrow finds its mark? Where, indeed, should the punishment be enacted (*dubitatur ubi debeat puniri*)? The answer, simply put, is that the murder takes place where the archer was standing and only here can the crime be punished (*solum a iudice loci ubi existerat cum traxit arcum* (i.e. where he drew the bow) *puniri poterit* (ibid.)). This is a legal commonplace expressed in the *locus delicti*, that a crime must take place at an established time and place, just as the same facts must be established for non-criminal acts like donations of investitures (i.e. church offices), as Smith noted in his Boniface: “Locus et Tempus” (fp. 124v); geography and chronology were the two eyes of the lawyer, as well as the historian. However, the legal commonplaces of Cinus’s example conceal a more important fact: the man shooting the arrow is standing on a royal estate (*in terra regis*), while his hypothetical victim is standing in either an episcopal jurisdiction or the estate of another lord (*in terra episcopi vel alterius domini*). The real question, therefore, is which

⁵⁵⁹ G.11.3; A59.

jurisdiction takes precedence in punishing the criminal: in this case the royal jurisdiction takes precedence, but this appears to be by chance (clearly the episcopal or lordly jurisdictions would take precedence had the archer been shooting from an episcopal or lordly territory into a royal one). However, this case implicitly expresses the inability of the bishop to punish a malefactor outside of his episcopal jurisdiction, even when, as in this case, the victim was on his land.

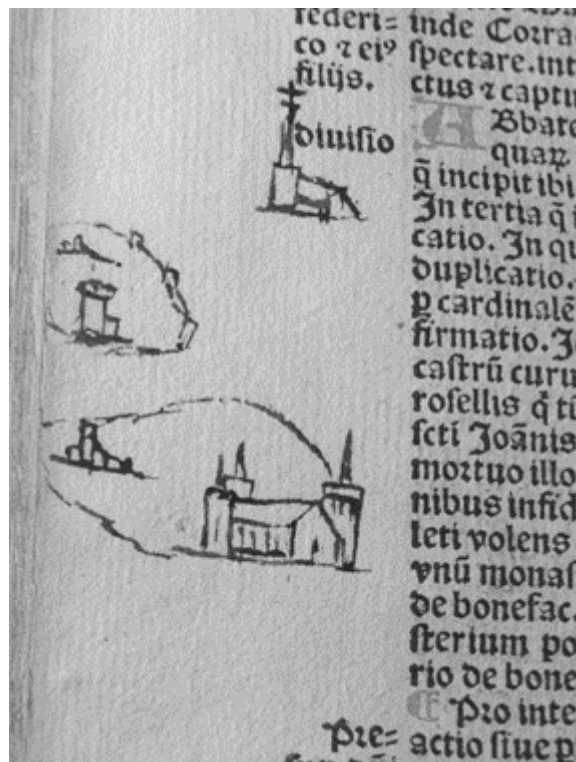


Fig. 51. Boniface (1519).

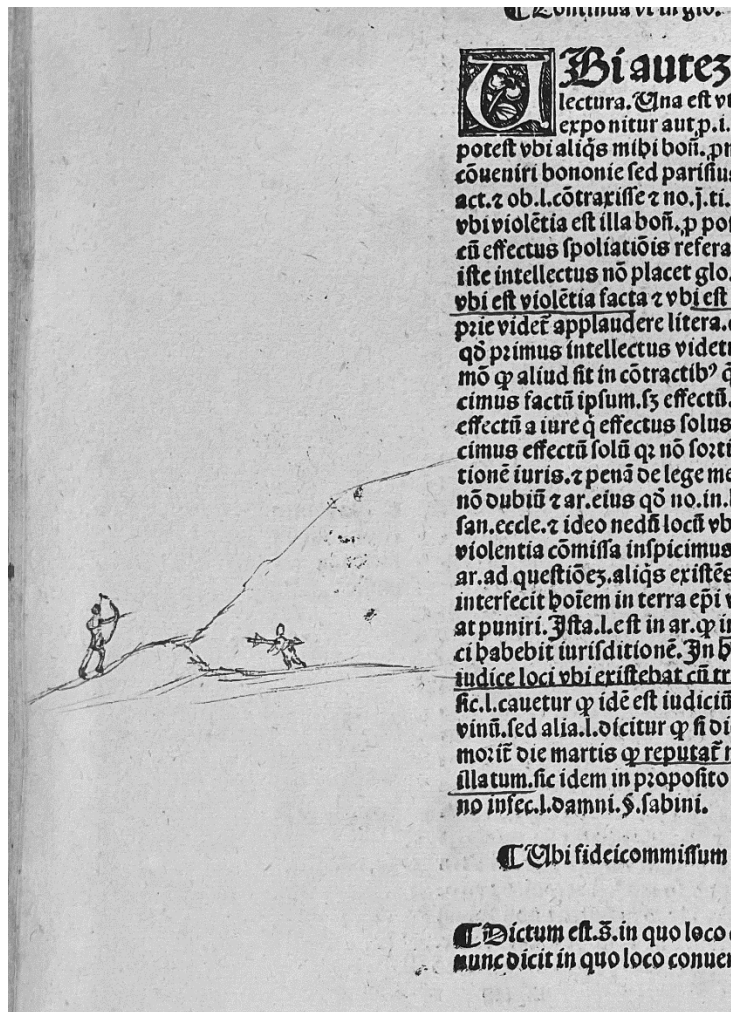


Fig. 52. Cinus (1517).

The contested relationship between royal and papal power is also inherent in the law of asylum or sanctuary, which Smith takes up in his copy of Gratian's *Decretals*, in which we previously saw him attacking the doctrine of the real presence. The basic concept of asylum is set out in this canon: *Non liceat alicui hominem de ecclesia rapere* (17.4.1);⁵⁶⁰ Smith has glossed this with "Asylum" and a doodle of a ring-fenced church (Fig. 53.1; fp. 331r). Gratian explicitly sets out the right to asylum as regal pride having a fall in the face of divine power, citing the Biblical story of God making Nebuchadnezzar live like a wild beast, for having overreached his regal authority (*de*

⁵⁶⁰ 'One man cannot seize another from a church.'

potestate presumitur (ibid.)). Smith takes this matter up again in his *Codex*, where the same annotations appear: “Asylum”, again with a sketch of a ring-fenced church building (Fig. 53.2; fp. 28v). The law asserts the following: *ut si quisquam contra hanc legem venire tentaverit, sciat se majestatis crimine esse retinedum* (“Majestatis reus” (1.12.2; ibid.)).⁵⁶¹ The implication here, therefore, is that a crime against an imperial decree, though committed within the precinct of a church, is really a crime against the majesty’s person. Moreover, Smith annotates another law regarding asylum, which states that treason can be punished either for the act itself or simply for its plain intention: “Nuda cogitatione atque tractatu” (1.12.6; ibid.); *iis qui hoc moliri aut facere aut nuda saltem cogitatione atque tractatu ausi fuerint temptare, capitali et ultimi supplicii animadversione plectendis* [sic, recte *plectendi sunt*].⁵⁶² It is worth noting here that Henry VIII had abolished the law of “sanctuary” (or asylum) for those accused of high treason with the Treason Act of 1534.

⁵⁶¹ ‘... if anyone attempts anything contrary to this law, he shall know that he shall be held on charges of high treason’ (p. 247); Smith’s gloss turns this to “majestatis reus”, i.e. the criminal guilty of treason. Thanks to Richard Serjeantson for pointing this out.

⁵⁶² ‘Those who dare to plot, or do, or even merely contemplate it in mere thought and deliberation shall be stricken by capital and ultimate punishment’ (p. 251).

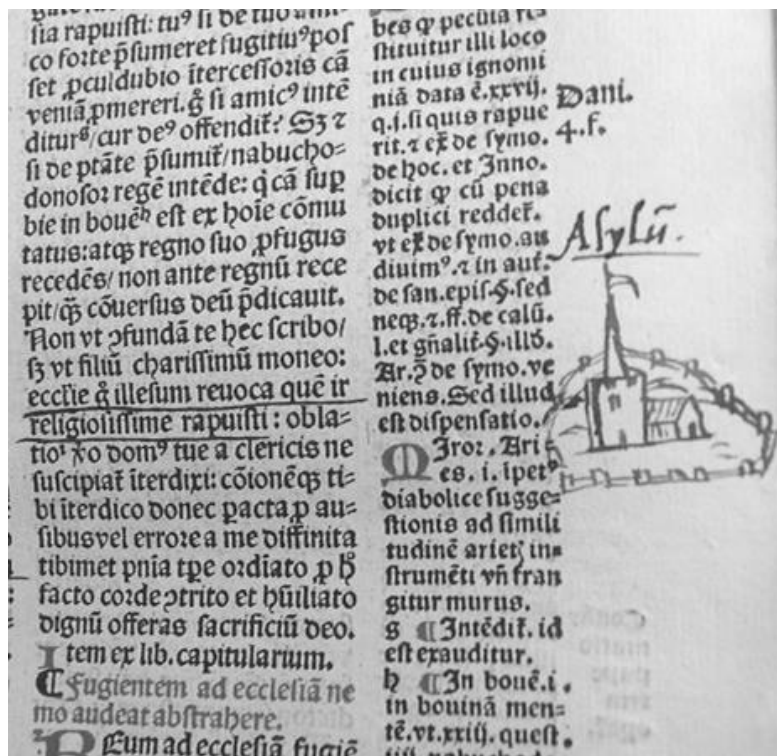


Fig. 53.1. Gratian (1522).

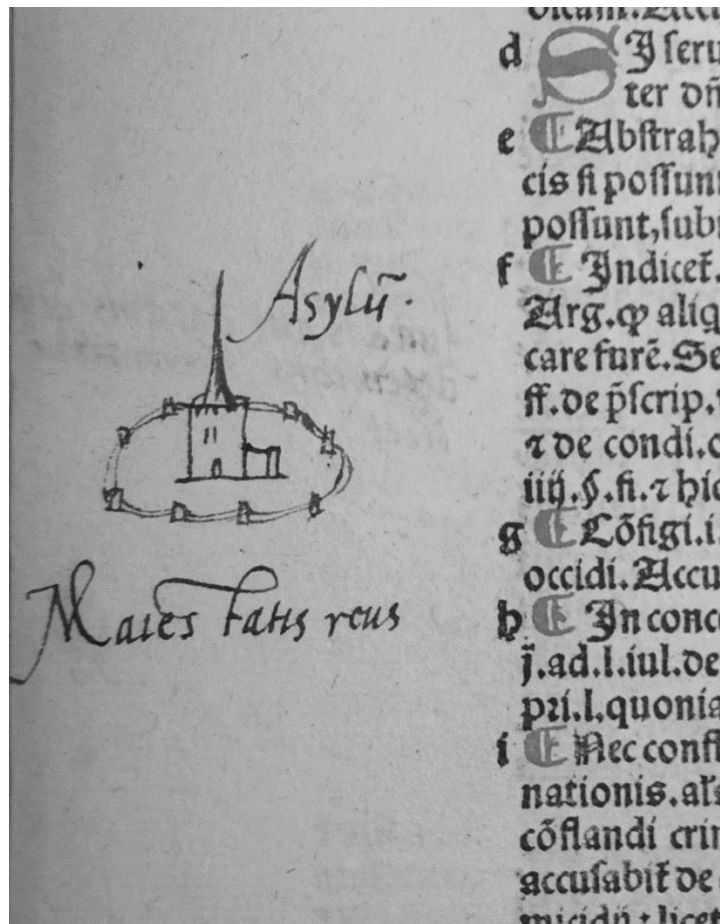


Fig. 53.2. Codex (1540).

The same explicit connection between asylum and treason (*criminis lesae majestatis*)⁵⁶³ is expressed in Smith's copy of Jean de Mille's *Praxis criminis persequendi* (Paris, Colines, 1541)⁵⁶⁴ – an illustrated and sequential description of a murder trial under Roman law, from the crime to the execution of the criminals – in which Smith used the symbol of a church building to illustrate the concept of a *locus sacrus* (fp. 18v). Here Smith notes the possibility that a local judge might override the law of asylum in criminal cases (*In criminalibus autem secus*): *Nam si judex verbum nuncupatum*

⁵⁶³ In *DRA* Smith noted the connection between treason and *laesae majestatis* (p. 84), though 'he does not clearly equate the two' (Ian Williams, "A Medieval Book and Early-Modern Law: *Bracton's* Authority and Application in the Common Law, c.1550-1640" in *The Legal History Review*, 79 (2011), p. 71, n. 132.

⁵⁶⁴ H.1.17(2); A83.

dederit, atque securitatem promiserit de restituendo reum extractum ab ecclesia, non tamen servabit (ibid.).⁵⁶⁵ Once again, therefore, there is the possibility of specific cases being used to override the written statutes or general laws, with the ecclesiastical jurisdiction being ignored. Almost to confirm this point, in his *Codex*, Smith has applied an English common law statute to the civil law *lex* stating that those who had fled to churches could not be pursued by their creditors, and that the bishops were not expected to pay their debts on their behalf (*nec pro his venerabiles episcopos vel religiosos oeconomos exigi quae ab ipsis debeantur*): “idem in statuto. h^o. 8^o. xxxv. ca. 4^o. (fp. 28v).” This refers to a statute of 1543 governing the common lawyers’ jurisdiction over the property of bankrupts:⁵⁶⁶ if a bankrupt fled to an *unknown place*, their creditors could not sue in the common law courts for their property, but it would instead be delivered to their executors for distribution to the creditors; settlements were provided by Chancery or the Privy Council, acting as the equitable jurisdiction in the form of the commissioners of bankruptcy.⁵⁶⁷ Smith is therefore using the Justinian code to assert the imperial jurisdiction over the ecclesiastical jurisdiction, and as a reference point for the jurisdictions of English statutory law. The implication here may well have been the increasing power of Chancery in relation to the ecclesiastical and to the other common law courts, since – in later years – it was Chancery that fully developed the potential of the Bankruptcy Statute of 1543, as Fleur Stolker has observed: ‘the Lord Chancellor ... developed an equitable insolvency procedure in the court of Chancery to supplement the bankruptcy statutes.’⁵⁶⁸ Indeed, it is important to note this temporal gap

⁵⁶⁵ ‘For if a judge gave a spoken word and promised security for returning the accused taken from the church, he will not keep it.’

⁵⁶⁶ Smith gets the regnal date slightly wrong for the statute, since he refers to 1542.

⁵⁶⁷ Statute of Bankrupts 1543 (34 & 35 Hen. 8, c. 4): ‘That if any such person or persons, which shall keep his or their houses, or flee to parts unknown [etc.]’ Cf. Fleur Stolker, “The Forgotten History of Bankruptcy, 1543-1624” in *The Journal of Legal History*, 44.3 (2023), p. 302.

⁵⁶⁸ Ibid., p. 323.

between Smith's reading and Chancery reaching its apogee in the late-Elizabethan period: as Ian Williams has observed, it was not until several decades after Smith's death that 'Chancery became intellectually tied to ideas of prerogative.'⁵⁶⁹ However, Smith seems to have been making this very connection when reading his books of Roman civil law.

There is another instance of this kind of forced assimilation of English and Roman law in Smith's *Codex*, this time concerning not a written statute but a royal proclamation. Smith notes the Justinian *lex* determining the fine for pointless or vexatious appeals, specifically when these are made by priests in secular courts: *frustratoriae dilationis causa, quinquaginta librarum argenti* (1.4.2; fp. 21v).⁵⁷⁰ Smith has glossed this with the proclamation of the new English weights for gold and silver, otherwise known as the Great Debasement of the English coinage: "1544 ann^o. henricⁱ. 8ⁱ. 36^o. { uncia argenti ... iiii s. [i.e. silver at 4 shillings per ounce] ... libra ... xlviii s.; uncia auri ... xlviii s. [i.e. gold at 48 shillings per ounce] ... libra {some figures erased} xxviii li. xvi s"; Smith's calculations are on the facing page (Figs 54.1-2; ffp. 21v-22r).⁵⁷¹ What exactly is Smith doing here? In terms of the direct application of this royal proclamation to the civil law text, the only obvious link between the *lex* of the civil law and the Henrician decree is that the fine for a vexatious appeal is to be paid in silver.

⁵⁶⁹ Ian Williams, "Developing a Prerogative Theory for the Authority of the Chancery: The French Connection" in Godfrey Mark, ed., *Law and Authority in British Legal History, 1200-1900* (Cambridge: Cambridge University Press, 2016), p. 34. Williams connects this to the circulation of Jean Bodin's works in England.

⁵⁷⁰ '... for delaying proceedings before a final ruling, he shall be compelled to pay a fine of fifty pounds of silver' (p. 149).

⁵⁷¹ The regnal date is wrong again: the calculations for gold correspond to a proclamation of 16 May 1544, formally entered as an "Establishment" on 28 May, that set the value of silver at 4 shillings and gold at 48 shillings (only the silver value was new from weights established in 1542). Smith is simply calculating the values for a pound: 48s for silver and £28 16s for gold (he initially miscalculated for gold). Cf. C.E. Challis, *The Tudor Coinage* (Manchester: Manchester University Press, 1978), pp. 87-88.

The clue possibly lies, however, in the surrounding commentary and laws. The *lex* concerning the fine for priests comes in a section on the jurisdiction of bishops: *De episcopali audientia, & diversis capitulis quae ad jus curamque et reverentiam pertinent pontificalem* (1.4.1).⁵⁷² Smith notes another *lex*, for instance, placing monasteries under royal protection (1.3.54.7; *Haec igitur omnia quam pietatis intuitu nostra sanxit aeternitas, omnes iudices, & religionissimi antistites*, etc.)). Here the emphasis of the law is on the eternal nature of the imperial decree, in this case that of the emperor Zeno (indicated, as usual, by Smith’s sketch of an imperial crown): “Nostra aeternitas” (fp. 21v). Significantly, the English law is not merely a statute, however, but a proclamation changing the coinage, issued without Parliament’s consent. In *DRA*, Smith described such royal proclamations declaring a change to the coinage as the single example of an “absolute” royal decree, as we shall see in the following chapter. It is therefore in relation to eternal, imperial law that Smith fully emphasises monarchical authority in relation to the jurisdiction of the church and of the common law; this is not really rational or equitable, in fact it is absolute. So, whereas in the case of the Statute of Bankrupts there was some delegation to Chancery, in this instance the monarch’s edict is considered in terms of the imperial right to make absolute laws (*sancire*).

⁵⁷² ‘On episcopal hearings and the diverse titles that apply to the care and reverence of pontifical law.’

methodica (Frankfurt, Egenolphus, 1543),⁵⁷³ a synthesis of classical and canon civil law, Lagus shows some similarity to St. Germain, despite both writers advocating for the supremacy of two different legal traditions and almost two decades apart (Smith was also reading Lagus in 1552, some ten years after his appointment as professor of civil law),⁵⁷⁴ in that Lagus interprets customary or common law as deriving from natural and divine law, and therefore from the Mosaic and Evangelical law, whereas civil law is prone, through human error, to inequity (“A naturali aequitate no[n]nu[n]q[uam] p[ro]pter p[er]versitate[m] ho[m]i[n]i recedit[u]r”; *quia nonnunquam a naturali aequitate longius recedant leges civiles. Nam hoc non juris, sed hominis vitio fit, qui sua intractibilitate cogant legislatores severiores ferre leges ... ut nonnihil recedant a naturali aequitate propter intractabilitatem hominum* (fp. 4r)).⁵⁷⁵ Natural equity is an unwritten concept (“Aequitas no[n] scripta naturalis aeq[ui]tas”; *Nam Aequitas non scripta a Jurisconsultis dicitur naturalis aequitas* (fp. 6r)),⁵⁷⁶ though Lagus also thought equity could be written. Clearly, however, Lagus saw the strict interpretation of law as being opposed to equity. Furthermore, Lagus advances the concept of equity providing recourse in the absence or deficiency of civil law: “Co[m]munis opinio p[ro]bata usu”; *Si vero nulla satis certa ex scripto aut sententia legis colligi potest, tum ea probanda est opinio intepretum, quae easu* {“usu”} *& consuetudine fori receptissima est, si modo usus & consuetudo, non prorsus pugnant cum ratione* (fp.

⁵⁷³ H.2.18; A85.

⁵⁷⁴ Smith’s annotations are dated: 13^o. Sept. 1552^o/.” (fp. A1r). Between this date and his earlier legal reading of the 1540s, he had been imprisoned in the Tower and seen his patron, Edward Seymour, Lord Protector, executed for treason in January of 1552.

⁵⁷⁵ ‘[Civil law] sometimes, by the perversity of men, departs from natural equity’; ‘For this happens not by the fault of the law but of man, whose intractability brings the legislators to devise stricter laws ... so that it is by the intractability of man that these laws in some way deviate from natural equity.’

⁵⁷⁶ ‘For equity, when not written by the legal doctors, is called natural equity.’

16v).⁵⁷⁷ Nothing is more powerful than natural obligation as expressed in customary use, which Smith has emphasised here: “*Juris naturalis potissima obligatio*” (ibid.).⁵⁷⁸

Civil law, or statutory law, on the other hand, can only operate through the consent of the populace: *Habent & collegia civitatum potestatem condendi statuta, sed quod eos tantum obliget, qui in id consenserunt* (fp. 4v).⁵⁷⁹ The end of the civil law, after all, is the public good; Smith calls up this maxim from the text, writing it out as a header to the page, as he did with maxims throughout the *CJC*, presumably as aids for his lectures: “*Summus omni legum finis est Salus Publicae*” (fp. 6r). Moreover, Lagus identifies two examples of positive law that fit awkwardly with this definition of public law as being that which is legally good: excommunication (“*excommunicatione praescriptione*” (fp. 5r)) and punishment for *laesae majestatis* (a form of treason), which we encountered earlier in the case of asylum. As Smith notes, Lagus is suspicious of such laws because they do not meet the threshold of public consent: *Extinguitur autem potestas condendi statuta per excommunicationem ecclesiasticam, adeo ut nec invalescere ab illis condita constituta queant, etiamsi recepta sint, nisi denuo nova rogatione confirmentur* (ibid.).⁵⁸⁰ This is, therefore, about how an unequitable law (excommunication) erodes the possibility of founding laws by public consent in a secular jurisdiction; meanwhile, as we saw in the case of treason in the law of asylum,

⁵⁷⁷ ‘But truly if from the written law or the decisions of law nothing that is sufficiently certain can be gathered, then the interpretation by opinion must be approved, which is by the most widely retained ease (“use”) and custom of the forum, as long as in this capacity they do not wholly conflict with reason.’

⁵⁷⁸ ‘The most powerful obligation is that of natural law.’

⁵⁷⁹ ‘Those laws, therefore, which have been promulgated by public authority and accepted by the consent of the obedient, are rightly said to consist in the civil law ... and what is established by a single populace is called municipal and statutory law ... Colleges and associations of cities also have the power to enact statutes, which only bind those who have consented to them.’

⁵⁸⁰ ‘The power of founding statutes (*potestas condendi statuta*) is on the other hand extinguished by ecclesiastical excommunication, so that even the established laws (*condita constituta*) cannot prevail, even if they have been accepted, unless they are confirmed a second time by a new request.’

the imperial incursion into the ecclesiastical jurisdiction could be expressed in terms of *intention (nuda cogitatione)*, i.e. without any reference to a specific cause, which was potentially tyrannical (i.e. arbitrary). In England, the ecclesiastical lawyers in fact relied on the written apparatus of English common law to carry out excommunications, requiring English common law officers to physically bring people to trial, as Smith showed in his copy of Justinian's *Codex*. Here we find a *lex* referring to the fact that an excommunicated person will remain under the imperial jurisdiction for one year (*Item quocunque communitas vel persona per annum in excommunicatione ... ipso jure imperiali banno subjaceat* (1.6.13; fp. 13v)),⁵⁸¹ during which time they can only be removed from this legal position by obtaining absolution (usually via penance) from the church (*a quo nullatenus extrahatur, nisi prius ab ecclesia beneficio absolutionis obtento* (ibid.)).⁵⁸² Smith has referred the case to the English context, "Apud Anglos": "Excommunicatus post XL. dies in carcerem truditur donec episcopo et ecclesiae satisfiat, aut de satisfacendo et parendo juri ... Cautum sit" (ibid.).⁵⁸³ He has then glossed this annotation with terms for writs that existed only within English common law, using his secretary hand: "in Registro. de excommunicato capiendo & de excommunicato liberando" (ibid), i.e. writs for seizing and releasing excommunicated persons. The jurisdiction of excommunication trials belonged to the ecclesiastical courts, but the enactment of the law was shared with the common law jurisdiction, because the presiding bishop would have appealed to the court of Chancery for the writs in question. The point here is that the statutory apparatus of the secular court – in the

⁵⁸¹ This was a "new constitution" (*nova constitutio*), i.e. a medieval canon law, and so does not appear in the modern translation: 'Likewise, any community or person who remains under excommunication for [more than] a year ... automatically falls under the jurisdiction (*bannus*) of imperial law.'

⁵⁸² 'And they shall not be released from excommunication unless they have first obtained the benefit of absolution from the Church.'

⁵⁸³ 'An excommunicated person shall be put into prison after forty days according to the satisfaction of the church or bishop, or according to the satisfaction of the legal judgment (*parendo juri*) ... He will have been imprisoned.'

case of England, the courts of the English common law – is what imposes excommunication on you and releases you from it, as opposed to the officers of the ecclesiastical court, who are doing the judging or dispensing the penance. Excommunication was certainly not under the jurisdiction of the common law courts (neither was it carried out according to common law precepts), but it was at least enacted through the *written apparatus* of common law. This was typical of Chancery, in which equity could be provided by a written common law mechanism (writ) used in an ecclesiastical court operating under Roman canon and civil law.

Smith's annotation in this case may simply have been intended to express the newly independent jurisdiction of the English monarchy from the papacy. It might also, however, as in the earlier cases of Smith's insertion of statutory laws, refer to the jurisdictions of specific English courts. Chancery was an appealing point of comparison for Smith between English common and Roman civil law because it used written mechanisms rather than oral pleadings, as most common law courts did, and was therefore more like a civil law court, as he stated in *DRA* (it was also packed with civilians). Meanwhile, it offered an appealing point of opposition to the ecclesiastical jurisdiction, as we have seen in spatial terms of asylum in Smith's texts of Roman civil and canon law. Smith notes in his *Codex*, with a drawing of a priest, that in some cases a priest may be tried by a secular court rather than an ecclesiastical one: *Clericus quocunque a iudice seculari punitur* (Fig. 55; fp. 22r). A contrary argument arises in Cinus's *Lectures*, where Smith notes that priests are not under the prince's jurisdiction, no matter what atrocities they commit: "Clerici non sunt de jurisdictione principis quantumcunque atrociter delinquent" (fp. 91r); the prince's jurisdiction cannot impose upon canonical jurisdiction. At the same time, statutory law – imperial decree – is

also, like canon law, limited by custom, which differs from written laws. Primogeniture, i.e. inheritance by the eldest son only (*quae maior natu totum habeat*), was one example – in Roman civil law all children of the deceased were heirs – and Cinus notes that in England this custom abolishes any written law that goes against it, which certainly included civil law statutes, but might also be taken to mean written or parliamentary statutes within English common law: *sicut est in Anglia tunc consuetudo tollit legem cui est contraria* (fp. 316r).⁵⁸⁴ To illustrate the point, Smith has drawn a map of England (without Scotland, unsurprisingly, since this operated under a different legal system), as a legal jurisdiction in which customary law (i.e. common law) abrogates civil law (Fig. 56.1; *ibid.*).⁵⁸⁵

A similar point might have been illustrated as early as the 1530s in Smith's reading, in a book that he shared with his former fellow Queens' student, the noted political theorist John Ponet (whose sharing of books with Smith has already been discussed), who wrote a famous treatise opposing Catholic tyrannical kingship (or queenship, since he was referring to Mary I, and wrote the book in Strasbourg during his exile there), *A Short Treatise of Political Power* (1556). In Smith's and Ponet's copy of Tacitus's *Histories* (Basel, Froben, 1519),⁵⁸⁶ there is a reference to an ancient British queen, Carthimandua, who allied herself with the Romans and was subsequently overthrown by the Britons. As in the Cinus, this section is marked with a similar (if less carefully rendered) map

⁵⁸⁴ 'Just as in England custom abolishes laws which are contrary to it.' In one of Smith's commonplace books, in which he appears to have been teaching himself the rudiments of English common law (as well as practising his Law French hand), Smith noted the specific Kentish custom (still in use) of *gavelkind*, in which the inheritance was divided between all male heirs: "le custume est use in Kent Gavelkinde (etc.)" (MS49, f. 29r).

⁵⁸⁵ For an English political conception of Scotland in which Smith's polemical role is also emphasised, cf. Lorna Hutson, "On the Knees of the Body Politic" in *Representations*, 152.1 (2020), especially pp. 25-26 and 34-36.

⁵⁸⁶ F.1.4; A19. The similarity between Ponet's and Smith's hands is striking: there is an inscription on the flyleaf, apparently in Ponet's hand, which Sherman thought was Smith's (op. cit. Sherman (1995), p. 77). It is possible that Ponet was emulating his tutor's handwriting.

of England (Fig. 56.2; p. 278). It is perhaps dangerous to assume with hindsight, knowing what became of Ponet, that the legal will of the people under a tyrannical queen is what was being considered here (it is also not entirely clear whether Smith or Ponet was annotating here, or whether this was even an instance of shared reading). However, the story of Carthimandua does raise the question of custom, which (as Cinus observed) can introduce law through the concept of *usus populi*, especially when the law is opposed to natural equity (as in a tyrannical government): “*Consuetudo vel actu judicario vel etiam non judicario introducitur (ibid.).*”⁵⁸⁷ The English common law was, in Cinus, said to be opposed to statutory law. Smith was perhaps trying to solve this problem by finding “equivalent” English common law statutes for the statutory laws of the *CJC*, either in a bid to shore up the authority of English statutory common law by comparison with imperial authority, or to emphasise the strength of properly codified English written law, represented in this instance by Chancery and Parliament. In this sense, statutory law in the English context offered Smith a route into the English system of common law (relatively unfamiliar territory for Smith with his civil legal training), while providing him with the means of strengthening English common law in relation to the ecclesiastical jurisdiction, by comparison with the institutions of imperial Roman civil law.

⁵⁸⁷ ‘Custom is introduced either by judicial action or even non-judicially.’

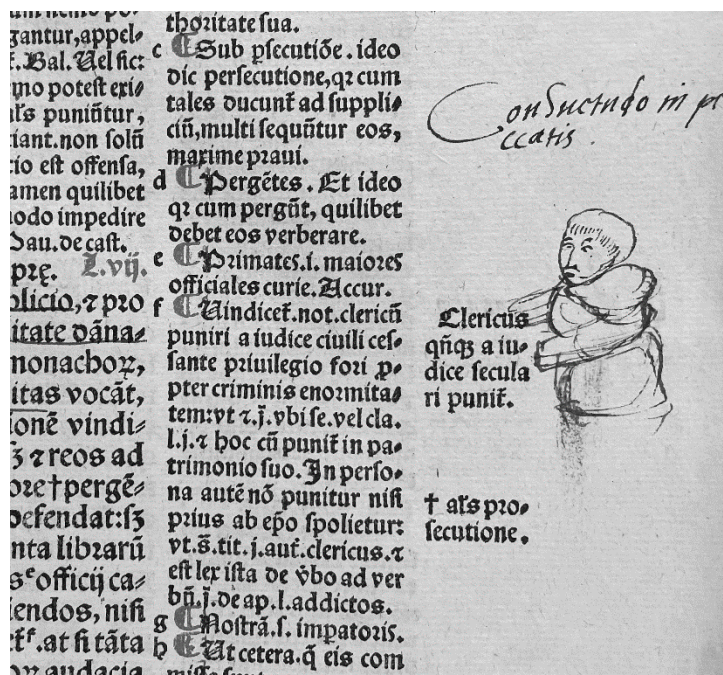


Fig. 55. Codex (1540).

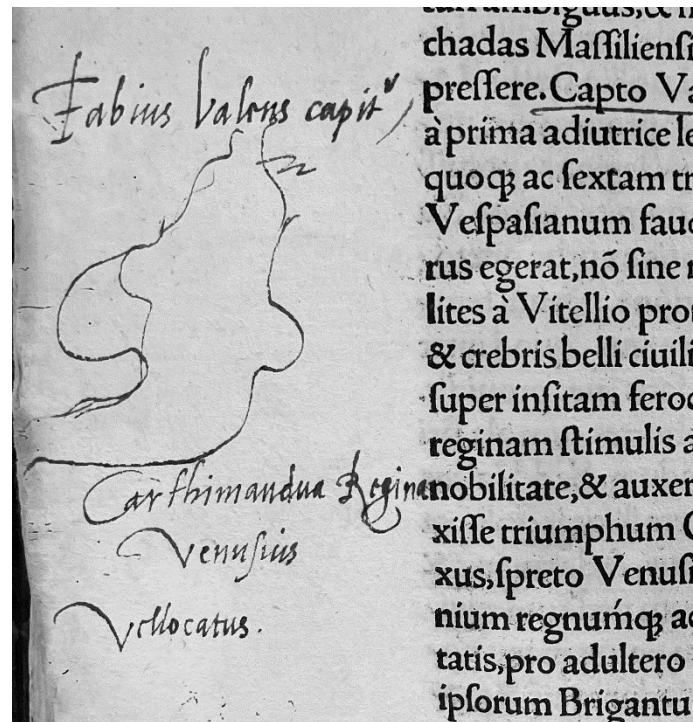


Fig. 56.2. Tacitus (1519).

vii. Conclusion.

Jurisdiction was defined in the Roman civil law as the delegation of the law to the magistrates or ordinary judges, who could pass judgments in cases where the written law contravened the *jus commune*. As we have seen, in the context of the *CJC*, this jurisdiction always (ideally) involved communication of the law to the people by their consent, on equitable terms and for the public benefit. English common lawyers also saw the end of the law as public good, whether customary or statutory. As St. Germain demonstrated, even in the most extreme circumstances – i.e. when the Court of the King’s Bench overreached the lower courts of the delegated judges – English common law was broadly equitable. Smith clearly understood the king’s statutes to be independent from customary law, since in his manuscript work, “Discourse of the

Queen's Marriage", written in the 1560s, he described them as being separate from the piecemeal agglomeration of ancient laws:

... our laws and customs of England which may evidently appear (except the acts of parliament) ... to be a thing made and gathered of the laws of the Romans, Danes and Normans, which three people have been in times past governors and heads of the Realm.⁵⁸⁸

Significantly this comes in the speech by the aptly named "Homefriend" (the personification of the argument for Queen Elizabeth's marriage to an Englishman), who declares that a foreign husband would love his own country's laws better than England's! The opposition of customary to statutory law was what made England legally independent from the Continent, but the same statutory written law was also the apparatus by which the English monarch's authority was asserted over ecclesiastical law and the English common law itself. It is perhaps somewhat surprising, therefore, that Smith sought proof of the independence of English common law and the prerogatives of the English monarch in an alien system of Roman civil law. In the first volume of his *Digest*, Smith makes a note of three officers of civil law in the Roman Republic and gives their common law English equivalents: *Aediles* ("Clarke of the market") ... *Quaestores* ("Receyvers & Collectors") ... *Quaestores parricidii* ("Justices of the common benche" (fp. 6r)).⁵⁸⁹ The comparison involves the jurisdiction of the common law courts: the court of the clerk of the market was an inferior court, just as the *aediles* were appointed from the *plebs* (*ex plebe constituerunt*); the Common Bench, on the other hand, was a court presided over by senior law officers, who were appointed (i.e. not elected), like the *quaestors* (*constituebantur a populo*). Smith would

⁵⁸⁸ BL Add. MS 48047, f. 126r. Spelling modernised; I am grateful to John Colley for sharing his transcription with me.

⁵⁸⁹ If the issuing of capital punishment is the significant fact in question here, then Smith appears to have got this wrong: a Justice of the King's Bench would be a far more appropriate comparison (thanks to Paul Cavill for pointing this out).

have known there was no direct comparison to be made here, but the point is that where the comparison *can* be made between Roman civil law and English common law, it always involves jurisdiction; either in the assertion of English common law statutes and Chancery writs over the ecclesiastical jurisdiction, or in the tacit assertion that English common law officers are the interpreters and enactors of the same statutes and writs. The failure of the two systems to completely synthesise (something that doesn't seem to particularly worry Smith) was to be borne out in *DRA*, where, eventually, comparisons between Roman civil and English common law break down entirely.

There is apparently no sense in which Smith's activities indicated his desire for the "reception" of civil law into English common law. F. W. Maitland was clear in his appraisal of the likelihood of a "reception" of civil law in England:

A Reception there was not to be, nor dare I say that a Reception was what our Regius Professor [i.e. Smith] or his royal patron [i.e. Henry VIII] desired. As to Smith himself, it is fairly evident that some time afterwards, when he had resigned his chair and was Elizabeth's ambassador at the French court, he was well content to contrast [in *DRA*] the public law of England with that of "France, Italy, Spain, Germany and all other countries which" to use his words "do follow the civil law of the Romans compiled by Justinian into his *Pandects* and *Code*."⁵⁹⁰

However, Maitland was in no doubt that, in line with Smith's apparent attempts to reconcile English common law with Roman law in the *Codex*, 'in the second quarter of the second century the continuity of English legal history was seriously threatened.'⁵⁹¹

Was Smith attempting to break this continuity and practically reconcile common and

⁵⁹⁰ Op. cit. Maitland, p. 16. John Baker has addressed the vexed question of whether Maitland was overstating the possibility of a Reception simply by mentioning it; cf. "English Law and the Renaissance" in *The Cambridge Law Journal*, 44.1 (1985).

⁵⁹¹ Ibid., pp. 16-17. This is no longer considered a tenable argument.

civil law, or was he simply content to draw comparisons? In Smith's *Digest* he appears dispassionate about the difference, merely pointing (using a characteristically elegant manicule) to a question raised in the marginal commentary: if the *testator* dies before the end of the term of a tenancy, the rent will not be apportioned between the tenant and the state, which takes ownership (*proprietas*) of the *usufruct* (*an dividi debeant inter haeredem fructuariae & rempublicam, cui proprietas legata est?*), but will instead pass to the heir (*fructuariae vero haeredem sua die integram pensionem percepturum* (7.1.58; fp. 180r)).⁵⁹² Smith notes: "This is not the law of England" (Fig. 57; *ibid.*).

⁵⁹² '... or whether it ought to be apportioned between the heir of the usufructuary and the state, to whom the bare ownership of the land has been left? ... The heir of the usufructuary would be entitled to collect the entire rent on the day before it became due.'

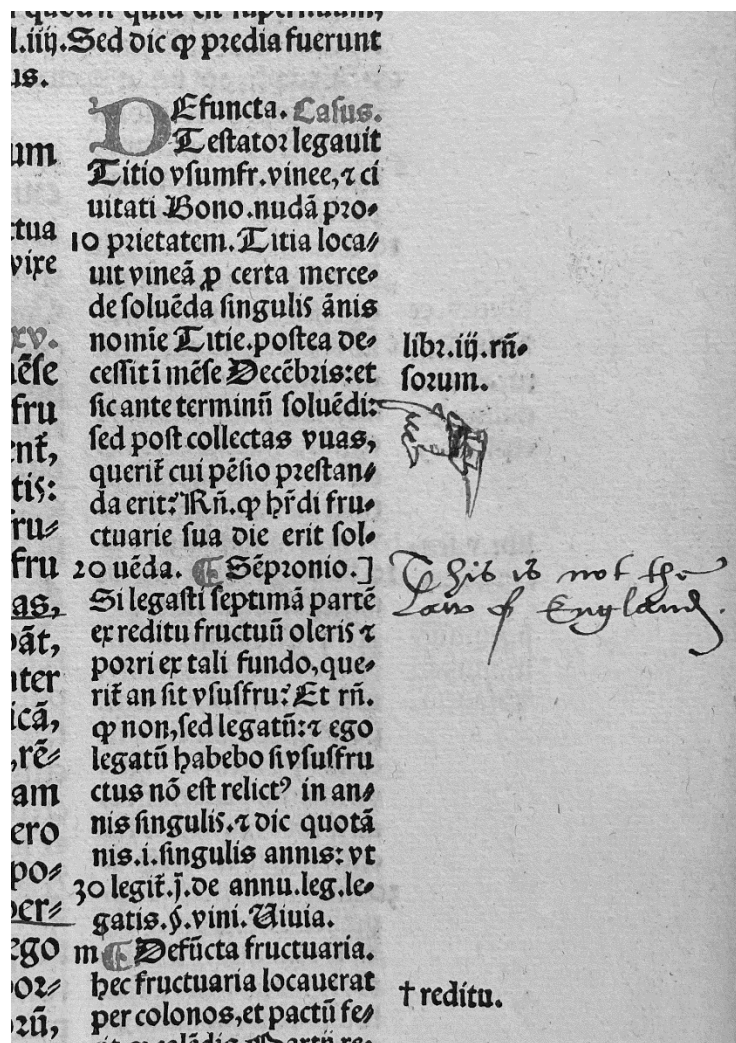


Fig. 57. Digest, vol. I (1539).

St. Germain describes a situation that is strikingly similar to the Roman civil law ruling, but the main difference seems to be that English common law refers to the ability of the heir to re-enter the property only *after* the due date of the rent, and does not consider the possibility of a demand for early payment, i.e. before the finish of the term, the concept to which the finger of Smith's manicule points in the commentary (*et sic ante terminum solvendi*).⁵⁹³ There were significant points of difference between English and

⁵⁹³ 'Also if a man make a lease for a term of years, yielding to him and to his heirs a certain rent, upon condition that if the rent be behind by forty days, etc., that then it shall be lawful to the lessor and his heirs to re-enter; and after the rent is behind, the lessor dieth, his heir entereth; in this case his entry is lawful both in law and conscience. But if the lessor had died before he had demanded the rent, and

Roman law; even if Smith was aware that there was no hope of a reception of civil law in England – even if this was something he did not want – he certainly seems, in his legal studies, to have been trying his best to assert the independence of English common law through its direct comparison with Roman civil law, while simultaneously asserting the royal jurisdiction (and perhaps even the royal prerogative) over the concept of the “equity of the statute” demanded by English common law. This establishes Smith as a typically English, Protestant legal humanist in the “civilian” tradition: equally resistant to the medieval encroachments of Roman canon law onto classical civil law as to the encroachment of canon law onto English common law, but also hostile to the affront made on statutory law by the equitable jurisdiction of the common law. Indeed, another of Smith’s apparent aims here was emphasising the rights and the jurisdiction of the monarch (i.e. prerogative) as expressed by the written law, albeit tempered by the mechanisms of the common law courts, specifically Chancery. In the final chapter, on *DRA*, we will examine how Smith saw these monarchical rights and jurisdictions expressed in the language of Roman civil law, and in terms of the legal rights of the citizen within English common law.

because it is not payed, he re-entereth; in that case his re-entry is not lawful in law nor conscience’ (pp. 57-58).

CHAPTER 6: *DE REPUBLICA ANGLORUM*.

*Omnem animam oportere subiici potestati superiori, sed suae non alienae, alioquin opus esset Gallos Hispano subiici, & Hispanos Germano: quod cum sit absurdum, conficitur oportere quemque suo Magistratui obtemperare.*⁵⁹⁴

Peter Martyr Vermigli, *In librum Judicum ... commentarii doctissimi*

*Rex habet superiorem, deum scilicet. Item legem per quam factus est rex. Item curiam suam, videlicet comites et barones, quia comites dicuntur quasi socii regis, et qui socium habet, habet magistrum.*⁵⁹⁵

Henry de Bracton, *De legibus et consuetudinibus Angliae*

i. Introduction.

In this chapter I will present Smith's most famous work, *DRA*, as the direct product of his legal and historical reading. In previous chapters I have argued that Smith's reading practices in his legal books were concerned primarily with questions of jurisdiction, which were abstract and spatial in character. I argued that Smith's strongly jurisdictional conception of the law was influenced by his reading of Roman civil law, wherein he augmented his copies of the civil law texts, the *CJC*, with English

⁵⁹⁴ 'Every soul should be subject to its own highest power and not that of another man. Otherwise it would require that the French be subjected to the Spanish, and the Spanish to the Germans. This is absurd, so we should confess that every person should obey his own magistrate'; Peter Martyr Vermigli, *Commentaries on Judges*, trans. Torrance Kirby, in *The Zurich Connection and Tudor Political Theology* (Leiden: Brill, 2007), p. 105; first ed. Zurich, Froschauer, 1561.

⁵⁹⁵ 'The king has a superior, namely, God. Also the law by which he is made king. Also his *curia*, namely, the earls and barons. That is why the earls are called the partners (*comites*), so to speak, of the king; he who has a partner (*socium*) has a master'; *On the Laws and Customs of England*, ed. George E. Woodbine, trans. Samuel E. Thorne, *De legibus et consuetudinibus Angliae* (Buffalo, NY: Hein, 1999), II, p. 110.

parliamentary statutes, royal proclamations (specifically governing the debasement of the coinage) and written legal mechanisms such as writs from Chancery. I argued that this was indicative of Smith's interest in attempts during the late 1530s and early 1540s to subordinate ecclesiastical jurisdictions in England (governed by Roman civil and canon law) to English common law, a process which Smith saw explicitly in terms of the monarchical jurisdiction. In the context of the Break from Rome, Smith was able to compare the jurisdiction (or prerogative) of the English monarch over common law with the superiority of the imperial jurisdiction (in Justinian civil law) over the church. In *DRA*, Smith presented the monarch or "prince" as being absolute in his (or her, as the case was in 1565, when Smith dated *DRA*, and when Elizabeth I was on the throne) legal jurisdiction within the realm; he declared proclamations concerning the control of the currency to be the one true expression of this absolutism, as has been mentioned previously. However, Smith also described Parliament as the highest court and authority within the prince's realm, and also presented Chancery (in the office of the Chancellor) as being like the Roman Republican *praetor*, who could issue exceptions to the common law, over which the monarch ultimately had jurisdiction.

Early on in his *Codex*, Smith noted this crucial difference between the imperial, post-Republican code of Justinian – in which Constantine asserted that he alone had the right to interpret questions of equity and law (*Inter aequitatem jusq[ue] interpositam interpretationem nobis solis & oportet & licet inspicere* (fp. 29v; 1.14.1)) – and the English system of common law. Smith adds in his secretary hand: "Quam auctoritatem Cancellarius sibi demu[m] datam hab[et]" (ibid.), i.e. the Chancellor afterwards granted this authority to himself. The separation of powers that a system of mixed monarchy implied, and which *DRA* described, was therefore a crucial element of Smith's

understanding of the *CJC*. With this in mind (and remembering that Smith also derived his model of mixed monarchy from the ancient Greek tradition), in this chapter I will aim to explicitly connect Smith's *DRA* with his reading of the Greco-Roman (Byzantine) imperial *CJC*. This conception will be used to counter the incorrect assumption that the Roman Republican (i.e. pre-imperial) model used by Smith to describe English law implied an incipient or nascent English republicanism; in fact, the Roman Republican model was, if anything, the least radical of all the elements of *DRA*. How, for instance, could the Republican model, which had no monarch but did include the institution of slavery, possibly describe the personal relationship of obligation between the English monarch and a citizenry that Smith said was entirely free from slavery, or inherent obligation of any kind? In this sense, the shared civil legal and common law concepts of "actions" was used by Smith to describe a relationship between monarch and people that was ostensibly based on property-based contracts and shared financial concerns. This was Smith's escape mechanism from tyranny, derived (I suggest) not only from the ancient Greek tradition and from the *CJC*, but also from a Swiss-based Reformed intellectual tradition, which did not conceive of an absolute monarch as being a tyrannical one, because of the mediatory financial relationships that existed between the prince (or magistrate) and the citizens. Finally, in relation to the relationship between monarch and citizen that Smith describes, I aim to show that Smith was applying the concept of absolutism not to constitutional questions but rather to specific prerogatives reflecting a limited set of concerns, which he apparently derived directly from Roman civil law.

ii. The influences on *DRA*.

Smith famously described *DRA* in chorographical and jurisdictional terms:

I have declared summarily as it were in a chart or map, or as Aristotle termeth it *os en tupoi* the form and manner of government of England, and the policy thereof, and set before your eyes the principal points wherein it doth differ from the policy of government at this time used in France, Italy, Spain, Germany, and all other Countries, which do follow the civil law of the Romans, compiled by Justinian into his Pandects and Code ... (p. 118).⁵⁹⁶

Smith's declaration of intent (which in fact comes at the end of the work) concerns legal jurisdictions: England used English common law, whereas the Continental kingdoms (and indeed republics) used civil law, as set out by Justinian in the *CJC*. As we demonstrated in previous chapters, Smith's reading of his civil law and canon law books (as well as the legal facets of his historical reading) was informed by the physical understanding of jurisdictional difference, which Smith expressed through stone legal tablets and legal inscriptions, whether abstract or real, as well as through chorography (which could be equally abstract or real), i.e. through maps. In *DRA* Smith expresses jurisdictional difference through the law of *praemunire* (i.e. forbidding the exercise of papal jurisdiction in England), his discussion of which immediately precedes his analogy of the map. However, in the case of *praemunire* the case was not so clear-cut: in England some civil law courts had remained, like the Admiralty (maritime) court, while the ecclesiastical courts still used Roman canon law (though combined with common law mechanisms, as we have seen). It is extremely telling, therefore, in terms

⁵⁹⁶ Apparently one of the oldest published uses in English of the term "map", alongside the more commonly used "chart" or "card" (I am grateful to Flynn Allott for pointing this out); cf. R. Thorne's "A little Mappe or Carde of the worlde", published in Hakluyt's *Divers Voyages* (London, Dawson for Woodcocke, 1582); *Oxford English Dictionary* (Oxford: Oxford University Press, 2023). NB: The spelling of the 1583 edition has been updated to modern English for the sake of legibility.

of my argument later in this chapter, that Smith expresses *praemunire* in terms of property and inheritance, given that inheritance from an intestate will will be shown to be one of the key definitions of the monarch's relationship with the people within common law:

Wherefore if I say the testament is false and forged, I must sue in the spiritual law, so also if I demand a legacy: but if I sue the executor or administrator (which is he in our law, who is in the civil law *haeres* or *bonorum mobilium possessor ab intestato*) for a debt which the dead ought me, I must sue in the temporal court (p. 117).

Anyone who uses the wrong court is guilty of *praemunire*, which is expressive of the supreme authority of the monarch within England:

... this court or form [i.e. the spiritual jurisdiction] which is called *curia christianitatis*, is yet taken as appeareth for an external and foreign court, and differeth from the policy and manner of government of the Realm, and is another court (as appeareth by the act and writ of *praemunire*) than *curia regis aut reginae* (ibid.).

However, as Smith notes, since the monarch was now the supreme authority in England, and since, therefore, any ecclesiastical court 'hath her force, power, authority, rule and jurisdiction, from the royal majesty and the crown of England & from no other foreign potentate or power under God', it is doubtful whether *praemunire* had any real legal force (pp. 117-118). Nonetheless, this establishes a key position in *DRA*, which is that the monarch's relationship with common law – and their personal relationship with the populace – is governed by the civil legal concept of *bonorum mobilium possessor ab intestato*, i.e. transfer of property from an invalid will.

Smith's statement on *praemunire* also demonstrates *DRA*'s assumption that the monarch is the absolute authority within the geographical jurisdiction of England: 'To be short the prince is the life, the head, and the authority of all things that be done in

the realm of England' (p. 47). *DRA* is also famous, however, for Smith's statement that Parliament is the supreme authority in the realm: 'The most high and absolute power in the realm of England consisteth in the Parliament' (p. 34). The simplest way of explaining this apparent paradox fell to Leonard Alston, the first twentieth-century editor of *DRA*, who suggested that since Smith's first statement implied that any court (either ecclesiastical or temporal) derived its authority from the English monarch, then Parliament must simply be another court, and therefore the highest court in England.⁵⁹⁷ Since Alston, however, the scholarly treatment of *DRA* has generally emphasised the role of Parliament in Smith's conception of the English political hierarchy. This began in earnest with Patrick Collinson's essay on *DRA*, which described the "monarchical republic" of Elizabethan England: 'Elizabethan England was a republic that also happened to be a monarchy, and vice versa.'⁵⁹⁸ Essentially, Collinson was arguing that the language of *DRA* and its insistence that Parliament was the highest authority in the realm (even though its authority was derived from the monarch, and limited by the monarch's power of veto), was expressive of the concept of mixed monarchy (he did note, however, that Smith never actually used this term). Collinson suggested that *DRA* was an expression of Aristotle's "politics of friendship", which emphasised the happiness of every citizen (as expressed in his *Ethics*), and from Plato's model of mixed monarchy as presented in the *Laws*, in which the senate rules in tandem with the monarch.

⁵⁹⁷ Smith, *De Republica Anglorum*, ed. Leonard Alston (Cambridge: Cambridge University Press, 1906), pp. xxviii and xxxiii. Alston, an unknown Australian graduate student, was working from the notes of his supervisor F.W. Maitland, who had given up on the project to edit *DRA* (cf. "Introduction"); it is somewhat surprising, therefore, that Alston took this line, since Maitland saw *DRA* as an expression of the sovereignty of Parliament (see below).

⁵⁹⁸ Patrick Collinson, "The Monarchical Republic" in *Bulletin of the John Rylands Library*, 69.2 (1987), p. 407.

Smith was undoubtedly influenced by the ancient Greek tradition (as I have stated previously), and we know that he read Plato in the 1530s, though his Aristotle is lost. However, Collinson also introduced an element of lower-case “r” republicanism into Smith’s use of these Greek models, suggesting that Elizabeth I’s lack of an heir meant that English politicians lived with the idea (and later even the genuine possibility, if only a temporary one) of England being governed without a monarchy at all.⁵⁹⁹ This has led to increasing claims of republicanism for Smith’s work, not least by literary scholars (anecdotally, historians of political thought, for whom *DRA* is an undergraduate reading-list staple, seem to be unaware of this trend and find it highly surprising). Paul Raffield, for instance, uses an Aristotelian conception of *DRA* to illustrate his analysis of *Gorboduc* (1561), a play performed by the Gentlemen of the Inner Temple before Elizabeth I, which openly advanced the rights of Parliament. Raffield writes: ‘In the canon of sixteenth-century humanist and neo-classical literature, republican sentiments ... were incompatible with the Imperium of the monarch.’⁶⁰⁰ Cathy Shrank goes as far as to say that ‘there are even signs of scepticism [in *DRA*] about the foundations of monarchical authority.’⁶⁰¹ I will argue that this is clearly wrong given Smith’s adherence to the philosophy of an imperial code of civil law; indeed, I will demonstrate that Smith derived the most radical (if not republican) elements of *DRA* from the imperial civil law, whereas it was from the tradition of Roman Republicanism, on the other hand, that Smith derived an extremely hierarchical, wealth-based class system, which he clearly felt the need to tone down in the context of English common law. A more convincing interpretation of *DRA*’s use of the Aristotelian model of friendship is Henry S. Turner’s discussion of Smith’s work in the context of his failed

⁵⁹⁹ Op. cit. Collinson (1994), pp. 18-19.

⁶⁰⁰ Op. cit. Raffield, p. 169.

⁶⁰¹ Op. cit. Shrank, p. 168.

“corporate” ventures of the 1570s: his attempt to produce copper from iron, and his projected colonisation of Ireland.⁶⁰² In the latter case, as in *DRA*, Smith used the language of pre-imperial, Republican Roman institutions (*colonia*) to describe a situation governed by a monarchical *imperium*.⁶⁰³ Casting his eye forward to an age of imperial expansion, Turner argues: ‘Smith is typical of a slow but perceptible shift in English culture from organic and mystical ideas of corporate unity toward contractual forms of corporate association in which the joint-stock company becomes an increasingly significant mode of collective identity and collective action.’⁶⁰⁴ Turner’s account therefore also usefully emphasises the economic, contractual elements of Smith’s political theory. However, this looks forward to the 1570s and beyond, to the full development of an imperial (colonial) outlook, whereas Smith’s legal intellect had been forged in the fires of the 1530s and early 1540s, when the *imperium* of the English crown was to the fore.⁶⁰⁵

In the previous chapter we saw the civil legal aspect of Smith’s understanding of English common law expressed principally in the importance of written law, which was opposed to common law concepts of natural equity: statutory law versus common law. This was very much borne out by the advancement of statutory law during Henry VIII’s reign. Richard Rex writes:

It is important to realise ... that it was statute, not Parliament, whose strength was established during this period. Although [Thomas] Cromwell (1485-1540) has been seen

⁶⁰² Henry S. Turner, *The Corporate Commonwealth: Pluralism and Political Fictions in England, 1516-1651* (Chicago: Chicago University Press, 2016).

⁶⁰³ Cf. Smith, *A Letter sent by I.B. Gentleman unto his very frende Maystet [sic] R.C. Esquire* (London, Binneman, 1572). For a full account of the colony cf. op. cit. Burnett, Simpson and Thorpe, pp. 53-66. See also David Harris Sacks, “Love and Fear in the Making of England’s Atlantic Empire” in *Huntington Library Quarterly*, 83.3 (2020), pp. 543-565.

⁶⁰⁴ Op. cit. Turner, p. 36.

⁶⁰⁵ Richard Rex, *Henry VIII and the English Reformation* (Basingstoke: Palgrave Macmillan, 2006), pp. 19-20.

as an exponent of parliamentary government, his essentially monarchical predilections are surely reflected not only in what he did for Henry, but also and more explicitly, in the way his client, William Marshall (c. 1540?), transmuted Marsilius [Ficino's] advocacy of representative government into an exposition of absolute monarchy. The reform statutes were drafted and pushed through by Cromwell and the king's council. There was discussion and debate in Parliament, even occasional opposition and amendment. But concessions by the regime were few. Parliament was a tool. It was there to make law of the royal will, and that was what it did.⁶⁰⁶

Smith's conception of absolute monarchy as being the ability to make absolute laws should point us more to this period, therefore, rather than to the end of his life. However, one concrete assertion that the English monarchy was absolute (even tyrannical) came from the *Six Books of the Republic* (Paris, Du Puys, 1576) by Jean Bodin (1530-1596), a book that Smith surely did not see in printed form before his death in 1577 (which was, in any case, long after he wrote *DRA*). Nonetheless, many scholars have discussed the similarity or dissimilarity of *DRA* with Bodin's work, or looked for parallels within a French Protestant and neo-Roman republican tradition, beginning with Maitland and Frederick Pollock, who saw *DRA* as 'a statement of parliamentary sovereignty.'⁶⁰⁷ Rory Rapple identified an earlier parallel (though still too late for *DRA*) in Bodin's *Method for the Easy Comprehension of History* (Paris, Juvenis, 1566), of which Smith did own a copy.⁶⁰⁸ Richard Simpson suggested Smith's contacts within "Francophone

⁶⁰⁶ Ibid., pp. 12-13.

⁶⁰⁷ J.W. Gough, *Fundamental Law in English Constitutional History* (Oxford: Oxford University Press, 1961); '[Maitland and Pollock] equated it with the doctrines of Bodin and Hobbes' (p. 7). This would seem, therefore, to be another instance of a scholar forgetting Smith's intellectual background, since, as we have seen, Maitland was aware of the monarchical absolutism inherent in the *CJC*.

⁶⁰⁸ Op. cit. Rapple, p. 26; see also David Harris Sacks, "The Prudence of Thrasymachus: Sir Thomas Smith and the Commonwealth of England" in Anthony T. Grafton and J.H.M. Salmon, eds, *Historians and Ideologues: Essays in Honor of Donald R. Kelley* (Rochester, NY: University of Rochester Press, 2001), p. 95. MS49, f. 92r; Leonard F. Dean, "Bodin's *Methodus* in England before 1625" in *Studies in Philology*, 39.2 (1942), p. 160: 'Strikingly enough, there appear to be no references to the *Methodus* in England before about 1580.' It is possible that Smith interacted with Bodin's ideas in manuscript while in France, or he may have met Bodin personally.

Calvinism” may have influenced his work.⁶⁰⁹ Anne McLaren has argued that *DRA* is a work of Protestant polemic, which looked to French Protestant theology to advance upward social mobility and the integration of all citizens into government; this is another instance of the Aristotelian model of friendship being used to advance the suggestion that Smith was questioning the strength of the royal prerogative; McLaren was in fact following Alston, who identified a greater affinity between Smith and the Huguenot François Hotman (1524-1590) in his *Francogallia* (1573; another work published decades after *DRA*) than with Bodin.⁶¹⁰ McLaren suggested Smith must have looked to French authors like Hotman and Claude de Seyssel (d. 1520) in his *Monarchy of France* (1515) to obviate the difficulties posed to a commonwealth under a female ruler.⁶¹¹ Smith, however, was apparently unconcerned with any specific king or queen. Instead, Smith’s similarity or dissimilarity with Bodin should be noted in the context of the latter’s refusal to allow for any independence of the English Parliament from the authority of the monarch; Alston even suggested that Smith’s apparently paradoxical assertion of Parliament’s absolute authority was simply intended to refute Bodin’s accusation that the English monarchy was tyrannical.⁶¹²

Bodin was crucially like Smith in two aspects of his definition of sovereignty. Firstly, in his statement that controlling the currency is an indicator of absolute power,⁶¹³ and secondly, in his understanding of power as being vested to a magistrate or “officer” for a limited amount of time and only by the consent of the people, a definition which Bodin explicitly adopted from Roman civil law: ‘it can happen that one or more people

⁶⁰⁹ Op. cit. Burnett, Simpson and Thorpe, p. 37.

⁶¹⁰ Op. cit. McLaren, p. 934, n. 86.

⁶¹¹ Ibid., p. 936.

⁶¹² Op. cit. Alston, p. xxx.

⁶¹³ Jean Bodin, trans. and ed. Julian H. Franklin *On Sovereignty: Four Chapters from the Six Books of the Republic* (Book 1, Chapter 10), (Cambridge: Cambridge University Press, 1992), p. 78.

have absolute power given to them for some certain period of time, upon the expiration of which they are no more than private subjects.’⁶¹⁴ Bodin had originally expressed such ideas in the *Method*, notably the separation of the prince from the private citizen, and therefore the separation of the legislative powers:

... the man to whom sovereignty is given, unless it is given temporarily, will no longer be an official, but a prince. As a matter of fact the right of deliberation about the state is conceded even to private citizens, and the administration of justice to the humblest man. These, then, do not pertain to sovereignty.⁶¹⁵

Such a separation, based on temporary office, between the prince and private citizens is the crux of *DRA*. Smith used it to define not only the relationship between the prince and private subjects in terms of property ownership, but also the central question of who is responsible for judgment as the public magistrate within the law. The most important influence of Bodin’s work on Smith, however (if such an influence even existed), is the shift of absolutism towards a set of prerogatives and away from constitutional status. As Brian Levack has pointed out, this was not a question of ‘whether sovereign power existed or even where it was located, but in what it consisted ... [Bodin], while stressing the breadth and unlimited nature of the sovereign’s power, nevertheless identified that power with a constellation of specific prerogatives, such as the right to make law.’⁶¹⁶

Those who have looked to the French tradition and to Protestant thought were not wrong, therefore, to identify such common threads between *DRA* and French republican authors like Bodin. However, I suggest (following the work of Torrance Kirby) that

⁶¹⁴ Ibid. (Book 1, Chapter 8), pp. 1-2.

⁶¹⁵ Jean Bodin, trans. Beatrice Reynolds, *Method for the Easy Comprehension of History* (New York: Columbia University Press, 1945), p. 156.

⁶¹⁶ Brian P. Levack, *The Civil Lawyers in England, 1603-1641: A Political Study* (Oxford: Oxford University Press, 1973), p. 98; see p. 102 for a brief analysis of *DRA*.

Smith was more likely to have been influenced by the Italian and Swiss Continental Reformers, Peter Martyr Vermigli and Martin Bucer, than by the French republicans. One problem with any appeal to Bodin or Hotman is dates, as we have seen; these books simply did not exist in print when Smith was writing *DRA*. On the other hand, Smith wrote *DRA* in France, where he was naturally without direct access to his library, and where he may in fact have interacted with these ideas in manuscript or even in person. Moreover, the presence of a book in Smith's 1566 library cannot be considered as concrete evidence of its influence on *DRA* because it might have arrived there in 1566, i.e. after *DRA* was written. However, since in the absence of surviving annotated copies we are speculating anyway, I argue that it is more profitable to suggest that Smith was influenced by works that he *did* list in his 1566 inventory: Vermigli's *Commentaries on Judges* (Zürich, Froschauer, 1561) and Bullinger's *Decades* (Zürich, Froschauer, 1549-1551).⁶¹⁷ As Kirby notes, Vermigli also derived his conception of the models of government from Aristotle's *Ethics* – monarchy, aristocracy and polity, along with their corrupt analogues of tyranny, oligarchy and democracy – noting that in all of these models there is a “magistrate”, by which Vermigli means the ruling civil magistrate, equivalent to the prince: ‘There is no single form for a magistrate.’⁶¹⁸ Vermigli noted, moreover, that in all cases this magistrate is divinely sanctioned; this is, perhaps, the chief difference between Vermigli's and Smith's interpretations of the politics of friendship: the aim of society for Vermigli was religion or godliness.⁶¹⁹ To this end, Vermigli's chief aim in his definition of the magistrate was to deny that the temporal powers received their authority from the Church, which received its authority directly from God; Vermigli argued that the temporal magistrate had a distinct authority over

⁶¹⁷ MS49, ff. 70r-70v.

⁶¹⁸ Vermigli, p. 76.

⁶¹⁹ Op. cit. Kirby, p. 59.

“external” matters, i.e. matters not touching upon the health of the soul, but that the temporal magistrate was also responsible for judging any citizens – including, crucially, ministers of the church – who broke temporal laws. There is, therefore, another facet of society expressed in Vermigli that is more Smith’s concern in DRA, which is the rule of law. Vermigli presents a mixed model of “two swords” (or indeed two crowns) that Smith would have recognized from his Plato or from his books of Roman civil law: the ecclesiastical and imperial jurisdictions were distinctly circumscribed but were, in the end, ‘after a sort interchangeable.’⁶²⁰ Vermigli, Kirby argues, imagines a power descending directly from God to the ecclesiastical power in the internal sphere, ‘without the mediation of the magistrate’, and to the civilian magistrate in the external sphere, in whom the civil and ecclesiastical jurisdictions are therefore united. In this way, the monarch could be absolute while, simultaneously, his absolutism was mediated by delegation of spiritual authority to the Church’s ministers, over whom he nonetheless possessed the power of punishment (*potestas gladii*).

Vermigli’s argument was in essence a legal one, because it depended so entirely upon a definition of the civil magistrate as one who passes judgment in the temporal sphere. However, its theological basis was a Pauline conception of the Church’s duty to obey the civil magistrate, derived from St Paul’s Epistles, in which the temporal magistrate was described as the one who will judge with the sword: *Nam principes non terrori sunt bene agentibus, sed male: non enim frustra gladium gestant.*⁶²¹ Heinrich Bullinger also used this mainstay of the Reformed conception of monarchical power in his

⁶²⁰ Vermigli, p. 70.

⁶²¹ ‘Princes are not a terror to good deeds but to evil ones; they do not bear the sword in vain.’

Decades, a French translation of which appears in Smith's 1566 inventory;⁶²² here the civil magistrate is the one responsible for the punishment of wrongdoers (*la punition des meschans*) and the enactment of civil laws (*loix judiciales*) as opposed to divine law.⁶²³ Bullinger was also interested in the authority possessed by the civil magistrate over ecclesiastical matters as expressed in the Justinian code. In the *Decades* Bullinger argued that Christianity had been instituted by imperial edict, and turned to Justinian's *Novellae* for examples of further edicts forbidding the Church's use of private property for worship and, moreover, insisting that any property so misused would revert to the imperial treasury.⁶²⁴ This returns us to the previous chapter and to the opportunity taken by Smith in his copies of the *CJC* to advance the prerogative of the English monarch in relation to the ecclesiastical jurisdiction, and against the common law concept of equity, through parliamentary statutes and royal proclamations. In the English context, and dating back to Henry VIII's reign, Smith could have found such an attack on canon law expressed in his copy of Edward Fox's *De vera differentia regiae potestatis & ecclesiasticae* (London, Berthelet, 1534), or "the true difference between royal and ecclesiastical power", which appears in Smith's 1566 library.⁶²⁵ Fox was entirely committed to the idea of government by consent, which is a crucial definition of civil law for Smith, as we have seen. Fox's argument is that there is no written or statutory evidence for the canon law claim – which Vermigli also attacks in the *Commentaries on Judges* – that ministers could not be punished by civilian magistrates: *At istis statutis nullibi paretur*.⁶²⁶ Fox was insisting upon the fact that this claim had no legal basis in

⁶²² French edition published as *Résolutions de tous les points de la religion chrestienne* (Zurich, Crespin, 1556). It appears in Latin in Smith's 1566 inventory (f. 70v), but with a French title in his 1576 inventory (f. 95v). Smith also possessed a copy of *100 Sermons on the Apocalypse* in French, listed in his 1576 inventory, f. 95r.

⁶²³ Bullinger, *Résolutions*, p. 85.

⁶²⁴ Bullinger (trans. op. cit. Kirby), pp. 49 and 52-55.

⁶²⁵ MS49, f. 70v; the book appears only in the 1566 inventory.

⁶²⁶ 'But this statute is nowhere evident' (my translation).

common law, but also, perhaps, in the Justinian code, in which there was some uncertainty over this point, as we have seen. Instead, Fox reverts (like Vermigli) to St. Paul, via Origen, who was one of the very few Church Fathers listed by Smith in his 1566 library:

Inter quos est Origines super eundem locum Pauli. Iudices mundi (inquit) partem maximam dei legis implent. Omnia enim crimina quae vindicari vult deus, non per Antistites et principes ecclesiarum, sed per mundi iudices voluit vindicari (fp. 42r).⁶²⁷

The Reformed tradition therefore espoused the idea of an absolute civilian magistrate, who was imbued with the qualities of *merum imperium* as described in Roman civil law: *potestas gladii* and *bonorum possessio*.

iii. The magistrate in *DRA*.

Alston was correct in identifying the true beginning of *DRA* (coming after Smith's delineation of the various methods of government, derived from Aristotle and Plato) as being his statement that all citizens are either public or private; magistrates or *not* magistrates: 'But the division of these which be participant of the common wealth is one way of them that bear office, the other of them that bear none: the first are called magistrates, the second private men' (p. 19).⁶²⁸ The question of who enacts a judgment in the English common law is therefore at the centre of the work:

⁶²⁷ 'Origen expounding the same text of Saint Paul where he saith: the Judges of the world do fulfil the most part of the law of God for all those offences which god would have punished, he would them to be punished not by the bishops and the rulers of the churches but by the Judges of the world' (trans. Henry Lord Stafford (1501-1563), p. lxix); for Smith's Origen see MS49, f. 70r.

⁶²⁸ Op. cit. Alston, p. xxv. Alston also notes that Smith may well have taken this framework from William Harrison's (1534-1593) description of Elizabethan England (pp. xvi-xvii). Cf. Dewar, ed., *De Republica Anglorum* (Cambridge: Cambridge University Press, 1982), pp. 157-162; Dewar suggested that Smith must therefore have had access to manuscripts of Harrison's work during the 1560s, since it was published as part of *Holinshed's Chronicles* in 1577.

And whereas as all common-wealths and governments be most occupied, and be most diverse in the fashion of five things: in making of laws and ordinances, for their own government: in making of battel & peace, of truce with foreign nations: in providing of money for the maintenance of themselves within themselves, & defence of themselves against their enemies: in choosing and election of the chief officers and magistrates: and fifthly in the administration of justice. The first and third we have shewed is done by the prince in parliament. The second and fourth by the prince himself. The fifth remaineth to be declared (pp. 47-48).

Crucially, it is the king's prerogative alone to choose magistrates:

The prince giveth all the chief and highest offices or magistracies of the realm, be it of judgment or dignity, temporal or spiritual, and hath the tenths and first fruits of all Ecclesiastical promotions, except in the Universities and certain Colleges which be exempt (p. 46).

It is important to note, indeed, that in Smith's copy of Dionysius of Halicarnassus's *Roman History*, Smith implicitly notes that the definition of the *populus*, i.e. the wealthy members of the *classes primi*, does *not* respond to the role of Parliament in *DRA*, this being compared instead to the *centuriatis comitiis or tributis* (p. 35): "P[o]p[u]lus author[itas?].{ Mag[ist]ratu[m] crea[n]d[um]; legu[m] scisce[n]dar[um]; belli decerne[n]di" (p. 164).⁶²⁹ In *DRA*, on the other hand, it is the king who appoints the magistrates and makes war, whereas Parliament approves the laws.

Of judges, Smith writes the following:

⁶²⁹ 'The people [are] the authors of: the election of magistrates; the abrogation of laws; and the declaration of war'; ... *quod trium rerum dominus ex lege veteri erat Populus, maximarum ipsarum maximeque necessarium: domi scilicet belli[ue] magistratuum creandorum, legum[ue] confirmandarum sive etiam abrogandarum, & de bello consistente indicendo[ue] decernere* (ibid.); '... by the ancient laws the people had control over the three most important and vital matters: they elected the magistrates, both civil and military; they sanctioned and repealed laws; and they declared wars and made peace' (III (1939), pp. 331-333).

Judex is of us called Judge, but our fashion is so diverse that they which give the deadly stroke, and either condemn or acquit the man for guilty or not guilty, are not called Judges but the xii. men. And the same order as well is in civil matters and pecuniary, as in matters criminal (p. 50).

The “twelve men”, or the jury, is a crucial element of the distinction between the magistrate and the private man, since the jury is made up of ‘commonly rude and ignorant’ men (p. 57). The elision of the office of *judex* with the jury must be considered in terms of Smith’s civilian understanding of how the act of judgment is passed down from monarch to jury member: the prince alone chooses the magistrate and provides his stipend; the magistrate or “judge” is responsible for summoning the jury; the latter are the body that passes judgment, or “give[s] the deadly stroke” (not, perhaps surprisingly, the judge; this is according to what Smith calls the ‘diverse’ fashion of English law (*ibid.*)). The jury is, however, a temporary body, as Smith states: ‘The xij. as soon as they have given their verdict are dismissed to go whither they will, and have no manner commodity & profit of their labour and verdict, but only do service to the Prince and commonwealth’ (p. 86). Authority, indeed absolutism, as Alston pointed out, was likewise a changeable state: ‘The King is most powerful *when* he is at the head of his army or *when* he is presiding over his parliament.’⁶³⁰ The temporary nature of the juryman is an important one for Smith, as we shall discover, since it informs the equally temporary nature of the relationship between a private tenant and their lord, in which Smith departs from the definitions provided by Roman Republican civil law and re-affirms the mediated, imperial monarchism of Justinian civil law.

⁶³⁰ Op. cit. Alston, p. 33; italics are Alston’s.

As Smith describes, in the two principal courts of common law, the King's Bench and the Common Bench, it is the Justices who interpret the law, but in the ordinary courts it is the jury of the "xii men" who make the final decision. They do so specifically in cases of *status facti*, which are issues or cases in which the law is not certain and must be disputed by the advocates, whereas in cases of *status juris* the judge is able to make a legal declaration out of hand on the matter in question (pp. 56-57). The defendant in cases of *status facti* is able to plead only one exception, but if the case is lost on this exception by judgment of the jury, then the whole case is lost, 'and the rest can serve him for nothing' (p. 57). There was, however, a method of appeal, in which a "writ of attain" was issued, allowing for a retrial with a new jury and the same judges, specifically in cases where the jury had misinterpreted the evidence; the penalties for the same sentence being issued a second time was a fine to be paid to the Crown by the defendant (p. 90). The jury's judgment was not absolute, therefore, in the sense that it was subject to appeal, the "writ of attain" being like the "writ of error" that served in civil law (though under a different name) for the redress of a legally wrong decision. For Smith, the right of appeal is *not* necessarily conducive to equity.

Other kind of appellation to revoke processes, and to make them of short, long, of long, infinite, which is used by the civil law, we have not in our common law of England. By supplication to the Prince and complaint to the Chancellor upon supposal of loss or lack of evidence [etc.] ... there is in our country as well as theirs both stopping and prolongation of Justice (p. 91).

So, whereas for St. Germain it was Chancery's offer of redress against the narrowness of the statutes that provided equity, the constant appealing against judgments in the courts was, according to Smith, vexatious: 'For what will not busy heads and lovers of trouble never being satisfied invent in any country to have their desire, which is to vex their neighbours, and to live always in disquiet?' (ibid.). In *DRA*, the question of what

is absolute and cannot be appealed is therefore at the heart of the common law. The more absolute the judgment, the less room for appeal.

iv. Courts, appeals, and statutes in *DRA*.

Smith gives the following three examples of absolute judgments: trial by Parliament, trial by battle, and the great assize. These are ‘absolute, supreme and without appeal’ (p. 57). Smith makes the same claim, however, for judgments given by the inferior courts in either *status juris* or *status facti* cases, even claiming that the lack of appeal is part of the common law’s equity and justice:

The people [are] accustomed to live in such an equality of Justice, & that in such sort that the rich hath no more advantage therein than the poor, the process, and proceedings to the judgment being so short, and judgments also being peremptory and without appellation (p. 64).

The people, Smith argues, would prefer not to *have* to appeal, in the same way that people ‘very seldom put in use’ the writ of attainder for questioning the jury’s verdict (p. 90). The question, then, is what is not subject to appeal or redress through Chancery or in the courts? What is an absolute judgment, and what, therefore, is absolutism? As I have previously stated, in *DRA* Smith is more concerned with specific absolute prerogatives rather than absolutism in a constitutional sense, and therefore with different kinds of written law and how absolute they are. For example, he draws a distinction between a parliamentary statute, which is treated like a legal writ or exception and therefore subject to legal interpretation and judgment by consent, for ‘the consent of the Parliament is taken to be every man’s consent’ (p. 35), and a parliamentary *judgment* between private men in property disputes, which is absolute.

However, once again Smith declares the latter to be a rare occurrence, like the equally absolute and ‘not much used’ trial by battle, because Parliament is already so occupied with matters of public importance (p. 48). As Alston argued: “‘Absolute’ ... would appear to be about equivalent to “without appeal”, though it is worth noting that one thing may be more absolute than another ... One is inclined to think it must have been a very fashionable sort of catchword.’⁶³¹

The question of absolute authority in *DRA* is entirely tied up with equity in the form of appeals made against judgments given (supposedly) according to the law. As has been stated, Alston argued that Smith did not distinguish between Parliament and the lower courts; Smith therefore refused to differentiate between the legislative and judicial functions in the courts:

He does not cut apart the legislative, judicial, and executive functions and endeavour to assign each to a particular element in the constitution. Rather he tends to blur together the first two, and while of course clearly understanding the great practical difference between statutes and the sentences of lower courts, to treat them as being, for theoretical purposes, members of the same group.⁶³²

In *DRA*, therefore, a statute is like a legal writ, and can be appealed or granted an exception, most pertinently in the form of the (admittedly rarely used) royal veto of parliamentary laws (though a parliamentary judgment, being absolute, cannot be appealed). There is one court, however, which Smith treats differently from others in

⁶³¹ Op. cit. Alston, p. xxxii. Cf. Plato, *Laws*, trans. Tom Griffith, ed. Matthew Schofield (Cambridge: Cambridge University Press, 2016), Book 6, 761e: ‘No judge or officer is to act as judge or officer without being subject to audit, the exception being those whose judgments – like those of kings – are not subject to appeal’ (pp. 212-213).

⁶³² Ibid., p. xxviii.

the realm, and this is Chancery. Indeed, Chancery, the court of the equitable jurisdiction, is not a proper common law court but behaves more like a civil law court:

... in [Chancery] the usual and proper form of pleading of England is not used, but the form of pleading by writing, which is used in other countries according to the civil law: and the trial is not by xij. men, but by the examination of witness as in other courts of the civil law' (pp. 54-55).

However, argues Smith, common law is like Roman civil law because it is an *akribodikaio*s or *jus summum*, i.e. a law that is 'taken so straightly that [the ordinary judges] may not depart from the tenor of the words even as the old civil law was' (p. 54). In civil law, equity, in the form of interpretation of the law, was therefore provided by the Praetor, as it was in common law by the Chancellor:

... [who] might *moderari illud jus summum*, give actions where none was, mitigate the exactness and rigour of the law written, give exceptions, as *metus*, *doli mali*, *minoris aetatis*, &c. for remedies, and maintain always *aequum & bonum* (ibid.).

Smith therefore likens the Chancery to a court in the pre-imperial Roman Republic, wherein the Chancellor 'hath the very authority herein as had the *Praetor* in the olde civil law before the time of the Emperors' (ibid.). In this sense, any written pronouncement of the law, including parliamentary statutes, could be subject to appeal. However, as we have seen, the argument used by the Doctor in St. Germain's *Dialogue* was that no judgment issued by the King's Bench could be redressed in Parliament or Chancery, which was an unequitable state of affairs; the Student's answer was that this was for the greater good, since it prevented many vexatious claims, which sounds rather like Smith's argument with regard to appeals. Indeed, Smith raises the same point in *DRA* in relation to Chancery, via Cato the Elder – who, when asked if an awning should be erected to shade the citizens making appeals, replied that he would rather caltrops were thrown under their feet to prevent them getting near the court at all – arguing that

it was rather the narrow window of appeal, i.e. the short duration of the four annual English common law “terms”, was what prevented legal “gawpers” from making their fruitless appeals (in his copy of the Greek *Institutiones*, Smith glossed the English “terme tyme” from *consilium* in Zuichemus’s commentary (p. 10)). Once again, therefore, Chancery was significant because of its useful comparison with Roman civil legal institutions, not least in its ability to give written actions and exceptions against the statutory “law written”.

The king’s absolutism in *DRA* was both statutory and non-statutory. The prince is said to be absolute by Smith during war, because he is at the head of the army and may arbitrarily execute someone without legal recourse (i.e. without appeal) (p. 44). However, Smith gives a specific example in *DRA* of an absolute kind of decree or edict, which, as I have previously mentioned, is the royal proclamation concerning currency: ‘The prince useth also absolute power in crying and decreeing the money of the realm by his proclamation only’ (p. 45). Indeed, as Alston noted, ‘of any power of suspending laws, or of issuing ordinances, except in the matter of the currency, we read nothing.’⁶³³ It is no wonder, therefore, that Smith employed the royal proclamation governing the debasement of the coinage in his copy of the *CJC*, apparently as a means of bolstering the royal prerogative against the Church. However, Smith evidently saw the debasement itself in entirely negative terms:

[The king] is deceived himself, as well as he doth go about to deceive his subjects. For in the same sort they pay the prince his rents and customs. And in time they will make him pay rateably or more for meat, drink and victuales for him and his, and for their labour (p. 45).

⁶³³ Ibid., p. xxxviii.

Smith, in his “Discourse of the Commonweal”, written in 1549, denounced debasement because it harmed the finances of the realm, and, since the people gave money to the king, it harmed the king more than anyone.⁶³⁴ The question of mutual subjection through payment was employed by Vermigli, who saw payments as “mediatorial” (*res esse medias*): ‘for they are at times paid to inferiors and at times to superiors. The tribute that we give to kings and princes serves as their stipends, partly serving to feed and sustain them, and partly to confess our subjection.’⁶³⁵ Here Vermigli was negating the argument of Pope Boniface that payment by someone of a tithe to the Church implied their subjection, because (as Vermigli argued) the inferior ministers of the Church also received stipends from above, i.e. from the Church itself. The idea of the stipend or the salary is crucial for Smith’s understanding of the hierarchical arrangement of the English legal system, in which the monarch was absolute. Once again this was a question of statutory law, wherein the financial relationship of the Parliament with the monarch was concerned with issuing law but also with financial interdependence, since the king relied on Parliament to approve taxes: ‘Legislation and taxation: these were the two functions which guaranteed that the English Parliament would survive when the trend of the age was hostile.’⁶³⁶

v. Hierarchies in Dionysius of Halicarnassus.

⁶³⁴ Smith, ed. Elizabeth Lamond, *A Discourse of the Common Weal [sic] of this Realm of England* (Cambridge: Cambridge University Press, 1893), pp. 35, 69 and 86. Lamond took Smith’s negative comments about the Royal Mint as an indication that the *Discourse* could not have been his, since he had expressed a positive opinion of the Mint in a letter to Lord Protector Somerset (p. xxix), instead attributing it to John Hales (d. 1572); it is, however, now widely considered to be by Smith.

⁶³⁵ Vermigli, p. 100; *sciendum est, mercedos & stipendia huiusmodi, res esse medias: quoniam interdum solvuntur inferioribus, interdum superioribus* (etc.) (fp. 187v). The English ed., *Most fruitful and learned commentaries of Doctor Peter Martir* (etc.) (London, Day, 1564), has *res ... medias* as “indifferent”, for which read “interchangeable” (fp. 261v).

⁶³⁶ J.E. Neale, *Elizabeth I and Her Parliaments: 1559-1581* (London: Cape, 1953), p. 15.

We have so far explored the idea of absolutism in English common law as being related to the common law's greater degree of equity than in canon law or Roman civil law. This is explicitly tied, by Smith, to the idea that absolute judgments and the narrow interpretation of the law both reduced the need for appeals, which he felt was more equitable; rather than the use of juries, this simply relied on restricting the time allowed for appeals to be made. In this Smith was perhaps like Budé, who, according to Donald Kelley, delighted in the Roman civil law's concept of equity: 'It pleased Budé ... that the Roman principle of equity was based upon a distribution of law (*isonomia*) which was proportional but not equal in terms of class structure: republican perhaps but democratic never.'⁶³⁷ We might argue, however, that Smith was constrained in 1565 by Elizabeth's insecure position, and he could well have taken an even harder line in favour of monarchism, as did his editor of 1583.⁶³⁸ Regardless, for Smith the monarchical prerogatives of selecting the magistrates and changing the coinage were temporary, mutually beneficial and, above all, financially based. Stipendiary payments were made to the prince for his wellbeing – as an affirmation of subjection – in the same way that stipends were granted by the prince and paid downwards to the inferior magistrates:

The Prince out of the numbers of those who have been Counsellors or Sergeants at the law, which be those who in Latin are called *causidici* or *aduocati*, chooseth two of the most approved for learning, age, discretion, and exercise, of whom the one is called Chief Justice of the Kings bench, or simply Chief Justice, the other Chief Justice of the common

⁶³⁷ Op. cit. Kelley (1979), p. 67.

⁶³⁸ Shrank suggests that Smith's posthumous 1583 editor removed the more radical language of Smith's original manuscript relating to Parliament and the royal prerogative (pp. 166-167). Dewar, however, noted that the changes were 'overwhelmingly ones of style, not substance' (op. cit. 1982, p. 14). However, she did note that Smith was more critical of the royal prerogative of governing lands in "wardship", i.e. held by minors (p. 16). Dewar suggested that the editor was not a lawyer because of his lack of interest in the written law (p. 20); in fact his defence of Littleton from Smith's attack (see below) indicates that he was probably a common lawyer.

place, and others to the number of six or more, which have each an ordinary fee or stipend of the Prince (p. 55).

That Smith was interested in the Roman civil legal stipendiary system is evident from his work of comparative historical numismatics, “On the Wages of a Roman Footsoldier”, written around 1562.⁶³⁹ Indeed, Smith’s historical interest in ancient Roman stipends (both Republican and imperial) was clearly related to *DRA*’s conception of monarchy. I will aim to demonstrate this through Smith’s reading of his copies of Suetonius’s *Twelve Caesars* and Dionysius of Halicarnassus’ *Roman Antiquities*, the latter being the text in Smith’s surviving library in which his annotations can most directly be linked to his writing of *DRA*. Smith’s interest in censuses and treasuries in Dionysius is explicitly linked to the limits of the magistrate’s external power, as expressed by financial relationships. From his reading of Dionysius and the *differences* Smith identified between English common law and pre-imperial Roman Republican law, we can infer that Smith saw in the English legal system something more akin to the mixed model of imperial Roman civil law expressed in the *CJC*, in which *majestas* is absolute in the personhood of the monarch, but also mediated through temporary financial relationships.

An interest in finances pervades Smith’s annotations to his copy of Suetonius. It would appear that Smith’s reading of this text involved three programmes: firstly, two closely related hands apparently dating to the 1530s; secondly, Smith’s “legal” hand of the 1540s, which aligns with his reading of the *CJC*; and finally, the hand associated with his books of history, dating to the 1550s and 1560s. The same is true of his reading in his copy of Dionysius, both books also having been bound by Garrett Godfrey and

⁶³⁹ Op. cit. Burnett, Simpson and Thorpe.

therefore having a purchase date before 1539. In the Suetonius, Smith's interest is in the stipendiary and one-off payments from the public purse to the soldiers and *plebs*, which are noted throughout the text. His first note on payments is to the commentary of Giovanni Battista Cipelli ("Egnatius") (1478-1553) on Julius Caesar's increased wages for Roman soldiers: "12 – 1; 15 – 1", which concerns the proportion of the value of gold to silver: *qui eam proportionem argenti ad aurum facit, quae est quindecim ad unum, cum justa videatur ea, quae est duodecim ad unum* (fp. 2r).⁶⁴⁰ Smith also notes that centurions received twice the amount of the ordinary foot-soldiers after a triumph, and the tribunes and knights four times as much: "V.M drach. militi; Centurioni. X.M ... Tribunis et eq[ui]tib[us]} XX.M" (ibid.); Smith notes the equivalent values of Roman and Greek coins: *mina enim Attica, id est argentea libra Romana quadringentos nummos H-S valet, id est denarius centum ...* (ibid.).⁶⁴¹ Mark Anthony, Smith notes, paid five thousand *drachmas* to his soldiers after the defeat at Philippi ("V.M. drach[marum.]" (ibid.)). In Suetonius's text, legionary pay ("Stipendium") is noted twice: *Legionibus stipendium in perpetuum duplicavit* (p. 6);⁶⁴² *Veteranis legionibus nomine in pedites singulos super bina H-S (quae initio civilis tumultus numeraverat) in equites vicena quaterna milia nummum dedit* (p. 8).⁶⁴³ This is connected with the distribution of land (*assignavit & agros*) and with the census: "Recensio Populi" (p. 9); Caesar reduced the number of the people receiving food from the public purse: *atque ex viginti trecentisque milibus accipientium frumentum e publico, ad centum quinquaginta retraxit*, these numbers both being noted by Smith in the margins

⁶⁴⁰ '... he makes the proportion of silver to gold fifteen parts to one, when twelve parts to one was seen to be fair.'

⁶⁴¹ 'The *mina* is a Greek silver coin, valued at four hundred Roman *sesterces*, and one hundred *denarii*.'

⁶⁴² 'He doubled the stipendiary pay of the legionaries for all time'; trans. J.C. Rolfe (Cambridge, MA: Harvard University Press, 1914), p. 69.

⁶⁴³ 'He gave each foot-soldier of the veteran legions twenty-four thousand *sesterces*, in addition to the two thousand he had given them at the beginning of the civil wars' (p. 83).

(“320,000; 150,000” (ibid)). Smith also notes the numbers sent to overseas colonies (“LXXX.M. missu[m] in transmarinas colonias” (ibid.)): *Octaginta autem civium milibus in transmarinas colonias distributis* (ibid.); nearly as many as the entire population of Rome in Tullius’s time.

In the account of Augustus’s reign, Smith’s interest in censuses is more closely aligned to various ranks and offices. He notes in *DRA* that the *equites* were chosen ‘ex censu, that is according to their substance and riches’ (a point he also noted when delineating the *classes* in Dionysius (“Equites” (p. 163)), adding that English knights are commonly chosen in the same fashion: ‘according to the yearly revenue of their lands being able to maintain that estate’ (p. 22). Smith notes, for example, the “Mag[istrat]i vicor[um]” (i.e. magistrates of the wards): *Spatium urbis in regiones vicosque divisit, instituitque ut illas annuas magistratus sortito tuerentur, hos magistri e plebe cuiusque vicinae electi* (p. 26).⁶⁴⁴ More censuses are noted, and related to taxes (“Census Senatorius; DCCC.M.; HS XIIies.” (p. 29)): *Senatorum censum ampliavit, ac pro octingentorum milium summa duodecies S-H taxavit* (ibid.).⁶⁴⁵ Smith notes the “Congiario” (*congiaria*) and “Frumentatio”, i.e. the public payment (of money and grain, respectively), including the values given to each class: “400; 300; 200; 50”. Finally, imperial payments to the people take on an explicitly legal character in the form of Augustus’s last will (“Testamentu[m] ... CCCies (Smith choosing to erase his first insertion of arabic numerals); XXVies; CCCies. HS.” (p. 44)): *Legavit populo Romano*

⁶⁴⁴ ‘He divided the city into regions and wards (*vicinae*); that the former should be under the charge of the annual magistrates picked by lot, and the latter under magistrates elected by the people of the wards’ (p. 195).

⁶⁴⁵ ‘He enlarged the senatorial census (i.e. the property required to become a senator), to one million, two hundred thousand *sesterces*, instead of eight hundred thousand’ (p. 215).

quadringenties, tribubus tricies quinquies S-H. praetorianis militibus singula milia nummorum ... Legionariis trecentos nummos ... (ibid.).⁶⁴⁶ In Claudius's reign Smith notes the "Procuratores ducenarii", a class of magistrate that was elevated to the rank of *equites* (p. 82). The interest in various ranks equates to Smith's interest in the *classes*, as is shown by his noting the structure of the Claudian army ("cohors, Ala (i.e. the wings), tribunatus, legiones" (p. 85)): *Equestreis militias ita ordinavit, ut post cohortem, alam: post alam, tribunatum legionis daret: stipendiaque instituit, & imaginariae militiae genus, quod vocatur super numerum, quo absentes ...* (ibid.).⁶⁴⁷ From the foundation of Rome (*ab exordio Urbis*), and from its Greek origins, the law had developed in terms of the aggregation of land and power according to the amount of military service given, as set down in the *census*.

Smith's interest in Roman financial history possibly began with his reading of Dionysius of Halicarnassus's *Roman Antiquities*, which was edited by Heinrich Glarean (1488-1563). Smith's earliest notes are on finances and the dictators of Republican Rome. The *dictatores* feature in *DRA* as the epitome of temporary, absolute power: 'And therefore the Romans did wisely, who would not suffer any man to keep the *Dictatorship* above five months, because the *Dictators* (for that time) had this absolute power, which some Greeks named a lawful tyranny for a time' (p. 8). In the same hand, Smith made a note on which ranks paid into which public treasuries (*thesauri*), giving the Greek name for one: "*eileithuia*; Juno Lucina; Veneris libitinae (p. 161)." Here Smith also used his characteristic symbol for coinage or public money

⁶⁴⁶ 'He left the Roman people forty million *sesterces*; to the tribes (*tribubus*) three million, five hundred thousand; to the legions three hundred thousand' (p. 307).

⁶⁴⁷ 'He re-ordered the equestrian militias, so that after the cohort came the *ala* (wings), and after them would come the tribunate of the legion: he instituted the stipends, and a kind of honorary militia, called the *supernumerus*, who [did their service] *in absentia*' (my translation).

(Fig. 58.1; *ibid.*), which also appeared in his 1530s reading of Plato, as we shall see. The basis for this interest in public payments and coinage, as well as military payments (designated according to the *classes*), was the “Census” (*ibid.*), described by Dionysius and noted by Smith: *His constitutis jussit Romanos, omnes describere & aestimare rem suam ad argentum, juratos ipsos legitimum juramentum, se vere & ex omni optimo aestimasse, ex quibus essent parentibus scribentes, & cuius ipsi aetatis, & uxores filiosque nominantes, & in quo Urbis habitarent loco, aut in pago regionis* (*ibid.*).⁶⁴⁸ Smith follows up the numbers (“LXXXV.M. trece[n]tis ademptis” (written in his earliest hand) (p. 165)) and, moreover, in Glarean’s appendices, corrects a table in which the payments are equated with the census (“XI.M.”, for 12,500 (Fig. 58.2; fp. AA6r)), as well as the derivations of the coinage from *mina* into *corona*, *drachma* and *aira*, for which Glarean cited Budé. Perhaps the clearest link between the treasuries and the census was discussed at the end of Chapter 2: Smith’s delineation of the Roman *classes* in the margins of his Dionysius. The ranks in Republican Rome were defined by the wealth of the members, just as Smith described English classes in *DRA*, such as the barons, described in relation to the *Census senatorius* from which the senators were chosen: ‘in England no man is created baron, except he may dispend of yearly revenue, one thousand pounds or one thousand marks at the least’ (p. 21).

⁶⁴⁸ ‘These practices he instituted to the Roman people, to number and set down the property and wealth of every person in terms of silver, taking a lawful oath that they had valued their property truly and to the best of their ability; from whom they are descended; of what age they are, the names of their spouses and sons, and which part of the city or in which district of the region they lived’ (my translation).

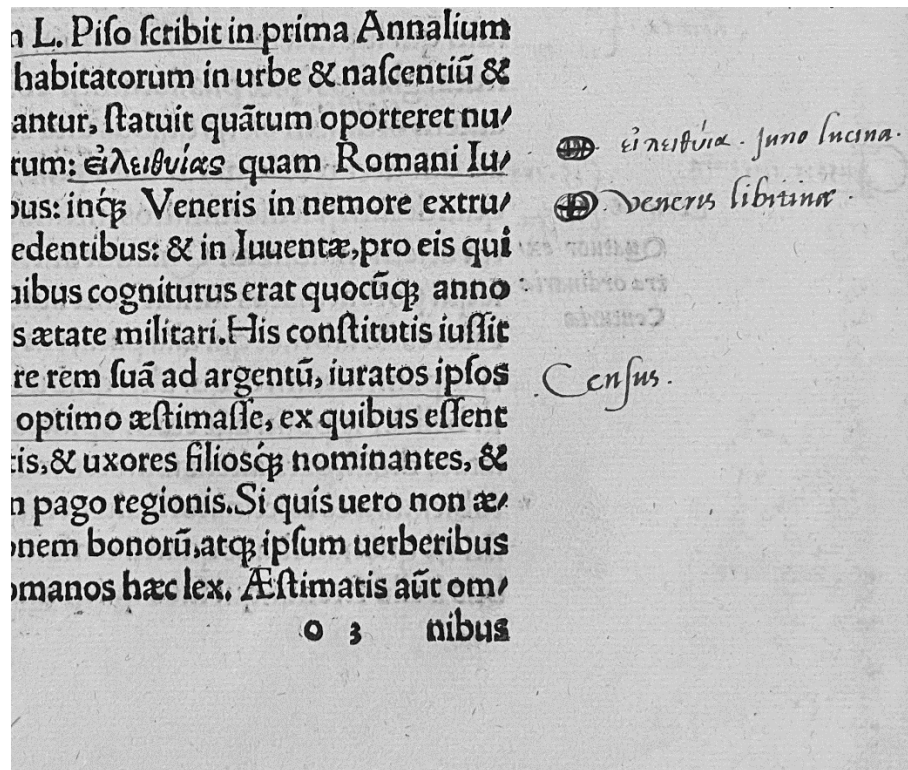


Fig. 58.1. Dionysius of Halicarnassus (1532).

GLAREANI ANNOTATIONES

rum facta, secundum quam tributa soluebantur, quam alij, patrimonium uo-
cant. Neq; unquam quod sciam ueteres authores pro annuo prouentu usurpa-
runt. Vt nostra ætate quidam iurisperiti solent.

Class.	Census	Peditū Centu.	Equitū Cen.	Arma oia ex ære.
sex	100000 Aeris	LXXX	XVIII	Clypeus, galea, tho-
I	10000 Drach.		Fabrum	rax & ocreæ
	1000 Coron.		II	Tela
	100 Minæ		Has duas fabrū Centu-	Hasta & gladius
			rias Dionysius adjicit se-	
	75000 Aeris		cundę Classi, Liū. prime	Arma.
II	7500 Drach.	XX		Galea, scutū ocreæ
	750 Coron.			Tela.
	75 Minæ			Hasta & gladius
	50000 Aeris			Arma
III	5000 Drach.	XX		Galea & scutum
	500 Coron.			Tela
	50 Minæ			Hasta & gladij
	25000 Aeris			Arma
IIII	2500 Drach.	XX		Scutum. Diony.
	250 Coron.		Tubicinum	Tela
	25 Minæ.		II	Hasta & pilū, aut
			Duas has Cēturias Dio-	uerutū, ut ait Liui.
	12500 Aeris		nysius adjicit. 4. Classi,	
	1250 Drach.	XXX	Liuius quinæ.	Tela.
V	125 Coron.			Fundæ ac lapides
	12½ Minæ			missiles.
VI			Capite Cenforum I	

Dionysius, ut author Græcus minis ac drachmis supputat. Liuius autem assi-
bus, qui ex ære erant. Quadrat autem utriusq; authoris ratio, cum Budæi sup-
putationibus. Ideoq; Coronatorum æstimationem huic ordini iniecimus, oppi-
do aptam, ut huius quoq; seculi æstimationem pecuniarum haberet lector. Mi-
na autem una, decem ualet Coronatis. Vnus autem Coronatus decem drach-
mis. Drachmæ porro cū denarijs Romanis idem habēt pondus, quare denis ua-
lent assibus. Est itaq; hæc diuisio per totū denaria. Et priorū quidē quatuor clas-

Fig. 58.2.

vi. Stipends in Plato's *Republic* and *Laws*.

As we saw in Chapter 4, Dionysius stated that the original Roman Republican statutes had been derived from ancient Greek antecedents. The ancient Greek tradition was, after all, the lens through which Smith would have first examined ideas of the hierarchical arrangement of city-states, as well as the idea that citizens paid their “guardians” (i.e. the government) a stipend. David Harris Sacks has written of the “anti-utopian” and “anti-Platonic” character of Smith's *DRA*, referring to his commitment to

Thrasymachus's view of justice, which was, simply put, the 'advantage of the stronger' (Plato instead preferring to see justice as an inherent virtue common to all citizens).⁶⁴⁹ According to Sacks, Smith's ideas were based on a distinctively economic formulation of the polity: all citizens striving for their own personal gain, an urge which could only be directed towards the benefit of the commonwealth through a highly legalistic conception of justice, achieved through the participation of all classes.⁶⁵⁰ Such an idea was, however, clearly evident in Smith's reading of Book 3 of Plato's *Republic*, expressed in the "noble lie" of gold, silver and iron souls; the lie being that if you told the guardians they had gold and silver in their souls, they would believe that they should give themselves up in service to the polity, and would do so, more importantly, without requiring payment in real silver and gold. One of the central ideas of this "noble lie" is therefore that of *misthos*, i.e. the "hire" of the city's guardians by the polity.⁶⁵¹ In his copy of Plato's *Opera* now at Lambeth, Smith drew a distinctly hierarchical city, peopled with the golden rulers ("chrysos archousi"), the armed silver helpers ("archyros epikourois"), and the iron ("sideros") and copper ("chalkos") farmers ("georgoi"), and tradesmen or artificers ("demiourgois"), who are shown holding their pitchforks and hammers (Fig. 59.1; p. 402); Here we see how Smith's chorographical drawings of cities originated in his obsessively detailed depictions of Plato's numerous references to real ancient cities – Troy (p. 531), Sparta (pp. 535 and 542), and Athens (p. 537) – but also to abstract expressions of the *polis* ("E POLIS" (Fig. 59.2; p. 539)). Money was part of the development of the *polis*, as Smith noted with a sketch of a port city: such a well-located city could trade and would therefore be flooded with money, which is, however, the one great evil (*meizon kakon*) that is fatal to the virtue of the populace

⁶⁴⁹ Op. cit. Sacks (2001), p. 94.

⁶⁵⁰ Ibid., p. 108.

⁶⁵¹ *Laws*, Book 3, 415 (p. 108).

(“nomismathos ouden meizon kakon anth enos en” (Fig. 59.3; *ibid.*)).⁶⁵² Smith does not, in fact, note the term *misthos* when it first appears in the *Republic*, but he draws a money bag with a pile of coins (we saw him use the same *nota* in his *Dionysius* to represent the census) to note that the guardians should not be paid with real gold and silver (i.e. coinage) as this will corrupt them (Fig. 59.4; p. 403).⁶⁵³ Neither does Smith explicitly note the term *misthos* when Plato is describing the correct names for the citizens, which include the “employers” or “paymasters” (*misthodotas*) of the guardians, instead noting the terms preferred by Plato for the guardians themselves: *tropheas* and *symphylakas*, i.e. “fathers” and “fellow-guardians” (p. 418).⁶⁵⁴ Smith does, however, insert the term “misthos” when it does not in fact appear in Plato’s text, in the description of the guardians during wars (Smith drawing two groups in battle, a symbol he also used in his books of history), in which the weakest will be killed or captured but the strongest rewarded (Plato describes this as being given the first share (*meros*) of the army’s food): “kai misthos tou aristeuzantos” (p. 420), i.e. the strongest will be paid. A similar financial gloss is given to two terms in a sentence about how other methods are subordinate to dialectic for understanding, meaning “fellow-labourer” (*synerithos*) or “assistant” (*sumperiagogos*), with Smith converting these into “mercenariis” and “comitatus” (p. 442).⁶⁵⁵ The latter term is familiar from the passage quoted at the beginning of this chapter, from the thirteenth-century common lawyer Henry de Bracton’s *De legibus et consuetudinibus Angliae* (which Smith possessed),⁶⁵⁶ in which Bracton was describing the relationship between the king and the nobles, his

⁶⁵² ... *ou meizon kakon ... polei anth enos en ouden* (Laws, Book 4, 705 (p. 144)).

⁶⁵³ Plato, *Republic*, trans. Tom Griffith, ed. G.R.F. Ferrari (Cambridge: Cambridge University Press, 2000), Book 3, 417 (p. 110).

⁶⁵⁴ *Republic*, Book 5, 463b (p. 162).

⁶⁵⁵ *Republic*, Book 7; Ficino has these as *adjutricibus ac ministris quibusdam*.

⁶⁵⁶ MS49, f. 98v. The first printing of Bracton was London, Tottel, 1569; assuming Smith owned a printed edition, therefore, it would be too late for *DRA*, though he may have encountered it in manuscript.

comitates or “partners”. Similarly, in a Latin gloss in the *Laws*, Smith notes the “archairesia”, or “magistrates”, as the “*comitia principu[m] electio*”, i.e the elected council of the prince (p. 556). These terms do not, however, appear in Marsilio Ficino’s Latin translation of Plato, to which Smith makes repeated reference in his reading of Plato.⁶⁵⁷ What is apparently significant for Smith in this financial reading of the *Republic* is the idea of a surplus or surfeit, or money and power beyond one’s station. In the first instance, Smith notes that the pay given to the guardians will be agreed exactly according to the needs of living, i.e. without a surplus or shortfall (*oson mete perieinai autois eis ton eniauton, me te eidein* (p. 402)).

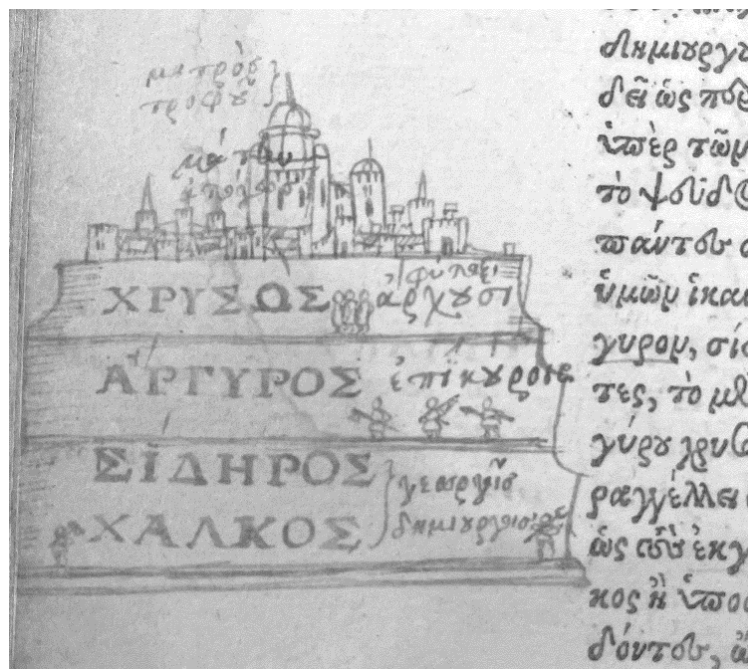
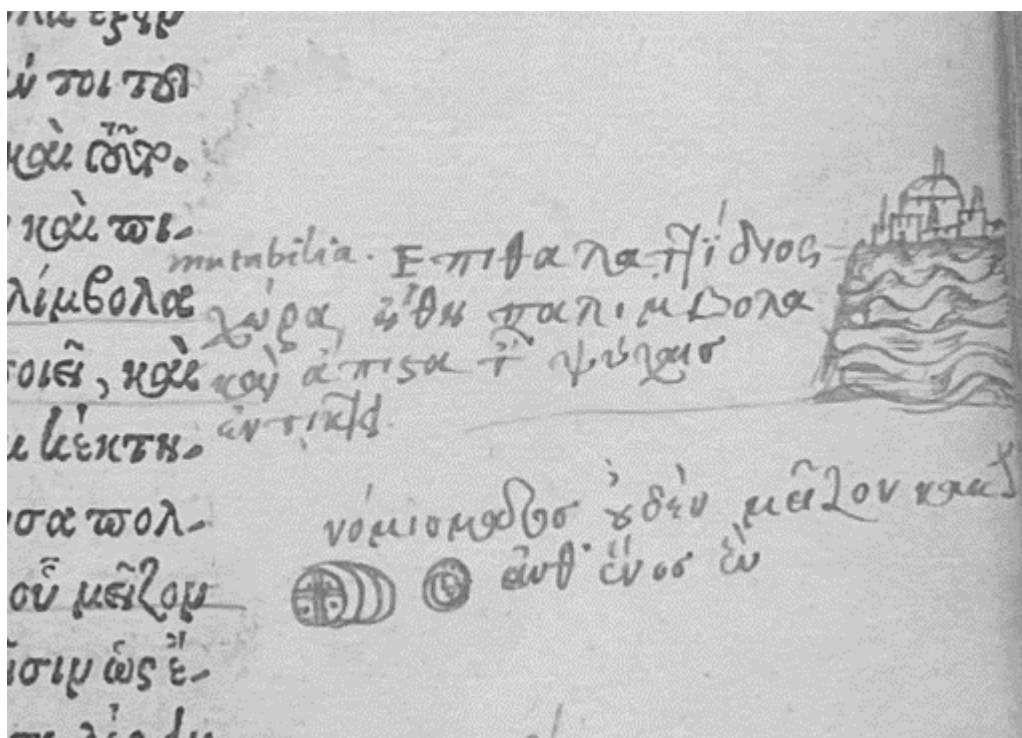
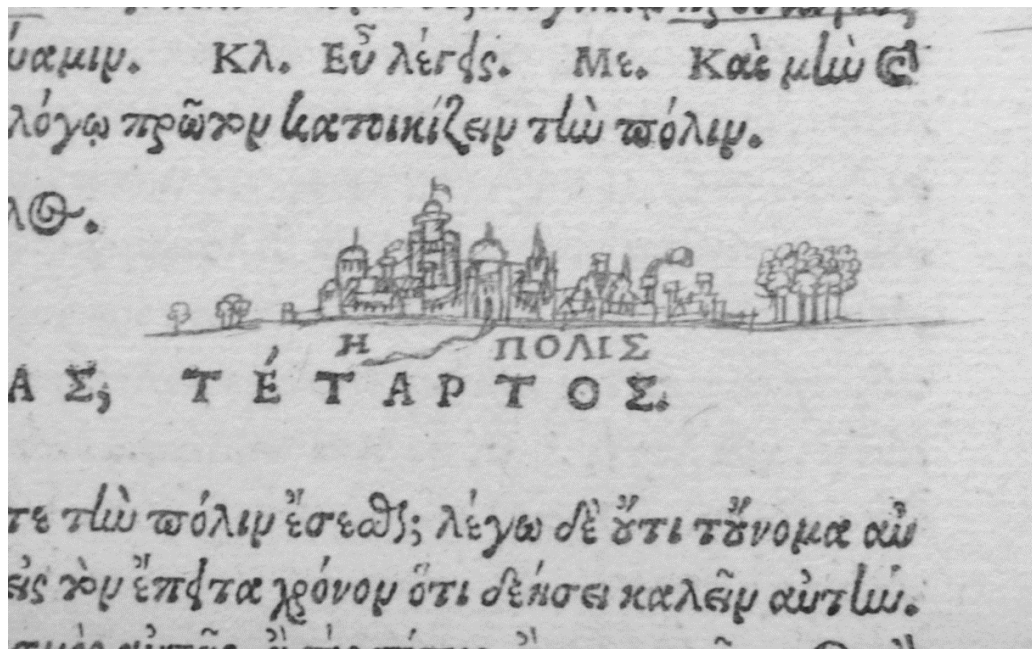


Fig. 59.1. Plato (1534).

⁶⁵⁷ References to Ficino’s edition in Smith’s Plato, all of them Latin glosses, are found at pp. 381, 398, 407 and 517 (MS49, f. 92v).



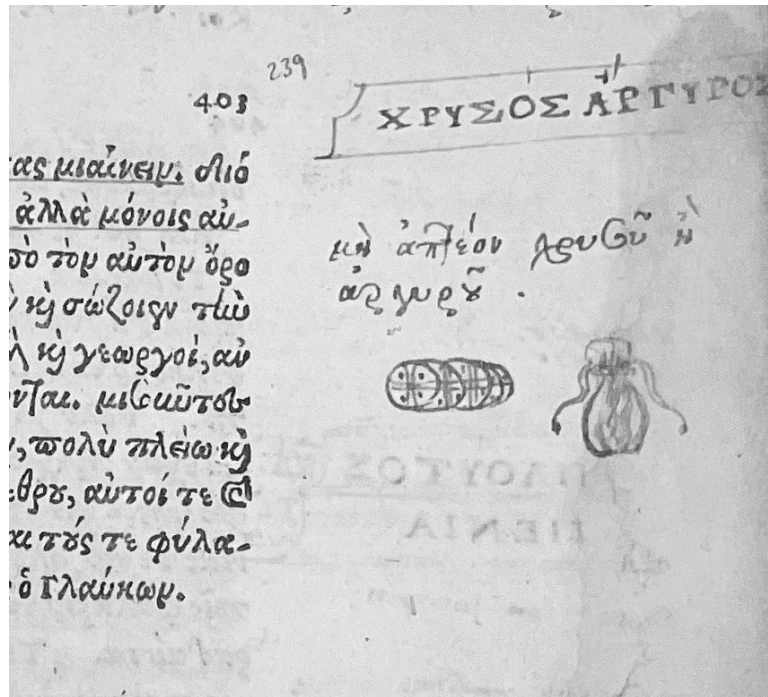


Fig. 59.4.

A similar idea is expressed in Plato's *Laws*, where the Cnossian magistrates in the imaginary colony will be responsible for taking the records of each man's property according to his class (i.e. a *census*); any property that is found to exceed what has been stated will be confiscated, and the malefactor punished.⁶⁵⁸ Smith gives this a legal gloss, rendering *diken ypoteko* as "*causam dicere*", i.e. to defend or prosecute a legal case, the sense being of bringing someone to trial (p. 556). The same legal angle is applied to the idea of a surfeit of power: when Smith noted the concept of too much power in one man, he also added the phrase "*Immunis a dicendu[m] causa*", i.e. immune from trial and therefore beyond the appeal of law, or even absolute (or perhaps tyrannical), to indicate the negative implications of this highest position of power (*ten megisten ... archen*); Smith chose also to illustrate this concept with a sketch of a papal diadem or tiara (p. 534). Smith's legal glosses – *causam dicere* for cheating the census and

⁶⁵⁸ *Laws*, Book 6, 754e (p. 203).

immunis a dicendum causa for tyranny – are (once again) not from Ficino, who puts the language of trial into canonistic terms of *damnatus* and *infamia* (though Smith does also add “da[m]natus” to signify a debtor (*ophletes*)), and so it is possible that they were Smith’s own choice. Smith was, after all, also reading his Plato via Cicero: in a section on tyranny in *Gorgias*, Smith notes the discussion of whether tyrants can truly be happy, referencing Cicero’s discussion in Book 5 of the *Tusculan Disputations* of Archelaus of Macedon (“Archelaos Perdikkou”, marked with a crown (p. 312)).⁶⁵⁹ There was, therefore, a Roman Republican element to Smith’s understanding, which appears to have found expression in the sense of legal process that he applied to Plato’s description of the civic structure, which was possibly derived from his incipient studies in civil law. The emphasis on legal process is crucial for my argument in the following section.

vii. Property, legal actions, and servitude in *DRA*.

Stipends also have a role in civil law in defining what a free citizen is; we should remember that in *DRA* the magistrates explicitly received stipends from the monarch, whereas the jury members received no payment at all. For his definition of the free citizen Smith seems once again to have turned to Roman civil law. In his *Codex* (the same volume in which he noted Henry VIII’s proclamation of the debased coinage), Smith notes the following wages for Roman slaves: “Servor[um] pretia ... Mi[nor]. 10. a[nni], x s.; sine arte, xx s.; artifices, xxx s.; notarii, l s.; medici – lx s” (fp. 306r). Later he clarifies the currencies with which he is dealing, apparently keeping all the values the same and therefore using the Roman *solidos legales* for English *angelos* or “angels”, which were gold coins (worth 8 shillings in 1544):⁶⁶⁰ “Serv[orum?] sine arte { minor x.

⁶⁵⁹ Smith’s references to Cicero are at pp. 168 (via Seneca), 371 (*De Senectute*) and 407 (*Tusculan Disputations*).

⁶⁶⁰ The angel was also the only coin that was not devalued during the Great Debasement of 1544.

a. – x s.; maior – xx s. { sed intellige solidos legales hoc est, angel[os?] ... Artifices. 30 angelos; notarius. 50 ang.; medicus. 60 ang. ... Eunuch[us]. minor. 30 s.; maior sine arte. 50 s.; Artifex. 70 s” (fp. 330r). That these were payments to servants (*servi*) or what Smith would call “bondsmen” is extremely significant for the relationship in *DRA* between the monarch and private subjects. In *DRA* Smith states that the *servi* are one of the chief elements of Roman civil law as set down in the *CJC*: ‘which kind of people & the disposition of them and about them doth occupy the most part of Justinian’s *Digest* and *Code*’ (p. 107). Smith sets out the three varieties of bondsmen, the chief being *servi*, who were bought or captured, and who could be inherited; there were also *vernae*, who were the offspring of female *servi* and were born into servitude; finally, the imperial civil law also set out the *adscriptii glebae*, who were ‘not bound to the person, but to the manor’ (ibid.). Smith claims that there are no “bondsmen” in England of any of these sorts (or so few as to not be worth mentioning), but he nonetheless gives their common law equivalents: “villaines in grosse” for the first two, and “villaines regardants” for the latter (pp. 107-108). Equally, Smith acknowledges that the legal mechanism for freeing servants still exists in English common law, which is manumission:

Manumission of all kind of villains or bondmen in England is used and done after diverse sorts, and by other and more light and easy means than is prescribed in the civil law, and being once manumitted, he is not *libertus manumittentis*, but simply *liber* (p. 108).⁶⁶¹

Smith was interested in the Roman civil legal equivalent, which was *emancipatio*, a term he also notes in his *Dionysius* (p. 71). Moreover, here he notes the number of free Romans, i.e. citizens (*cives*) (84,700), remembering to erase the *servi*, which he initially

⁶⁶¹ Smith’s point is illustrated by a case in 1561 of an apprentice who was ‘bondman to my Lord of Norfolk’s grace, and further ... was brought up in husbandry until he was xx years old’; this apprentice was therefore ‘discharged of his service’ (i.e. to the lord); A.E. Bland, P.A. Brown and R.H. Tawney, eds, *English Economic History: Select Documents* (London: G. Bell and Sons, 1937), p. 231.

seemed intent on setting down: “Liberti Ro.; ~~Servi~~ Ro. cives” (p. 165). Smith’s reasoning in *DRA* for the disappearance of bondmen is, in short, Christianity, which was a gentler religion than Roman paganism; Christians had reviled slavery and servitude and had instead shifted the bondage onto the land or property. Smith, however, used this as a chance to attack the Catholic Church in England (pp. 108-110), which he claimed had been extremely slow in doing so (which, as Diarmid MacCullough has pointed out, was a ‘myth’, rather like Smith’s claim that there were no bondsmen in England).⁶⁶²

Everyone in England, Smith writes, *except for the prince*, holds their land in trust; this means that if someone who is living on Crown lands dies, and it is unclear who their heirs are, their property will automatically revert to the Crown:

For no man holdeth land simply free in England, but he or she that holdeth the Crown of England: all others hold their land in fee, that is upon a faith or trust, and some service to be done to another Lord of a manor as his superior, and he again of an higher Lorde, till it come to the Prince & him that holdeth the Crowne. So that if a man die, and it be found that he hath land which he holdeth, but of whom no man can tell, this is understood to be holden of the Crowne ... (p. 111).⁶⁶³

Smith again describes the unique status of the prince in this relationship: ‘Thus all saving the Prince be not *virī domini*, but rather *fiduciary domini*, & *possessores*’ (p. 112). In this Smith criticised Thomas de Littleton, the fifteenth-century English common lawyer, for his failure to understand the Latin; as Alston pointed out, however,

⁶⁶² Diarmid MacCullough, “Bondsmen under the Tudors” in Claire Cross, David Loades and J.J. Scarisbrick, eds, *Law and Government under the Tudors: Essays Presented to Sir Geoffrey Elton* (Cambridge: Cambridge University Press, 1988), p. 93.

⁶⁶³ Cf. Sir John Fortescue (c.1394-1479), describing the “escheat” of land to the the king (i.e. by intestate wills), in terms of the king’s “tenants”: ‘And by escheats there may not so much land fall to any man as to the king, by cause that no man hath so many tenants as he’ (quoted in B.P. Wolffe, *The Crown Lands 146 to 1536* (London: George Allen and Unwin, 1970), p. 91).

Smith was in fact in error here, for which he was also upbraided by his 1583 editor; Smith suggested that *feodum* signified *possessores*, i.e. owners of land, rather than *haeredes*, i.e. inheritors.⁶⁶⁴ Smith's reading implied that the *feodum* or "fee" was to do with the temporary and contractual ownership of property, as opposed to the personal obligations that were implied by inheritance. Continuing in this erroneous vein, Smith compares the civil-legal relationship between *dominus* and *servus* to that of *patronus* and *libertus* or *cliens patrono* (p. 113). As has been mentioned previously, Smith notes these exact terms in his Dionysius and glosses them in his English secretary hand, apparently in the same programme of reading in which he noted the delineation of the Roman Republican classes: "Patroni; master ... Clientes; reteyners" (Fig. 60; p. 61). When these Latin terms appear in *DRA*, however, Smith has changed the English equivalents:

... which because [the obligation] doeth not consist in the persons, for the respect in them doeth not make them bond, but in the land and occupation thereof, it is more properly expressed in calling the one tenant, the other Lord of the fée, than either *libertus* or *cliens* can do the one, or *patronus* the other: for these words touch rather the persons, and the office and duty between them, than the possessions. But in our case leaving the possession and land, all the obligation of servitude and service is gone.⁶⁶⁵

Smith is, therefore, apparently uncertain in these matters of definition, but this is, nonetheless, the crux of *DRA*, which comes with a repudiation of the comparison between English common law and Roman Republican civil law (in this point at least): citizens were mutually obligated not because of any internal or personal obligation of the *cliens* to the *dominus*, but because of temporary and contractual relationships based

⁶⁶⁴ Op. cit. Alston, p. xlvi.

⁶⁶⁵ Ibid.

on legal contracts, which implied legal actions. The bond therefore ceased with the cessation of the contract or the legal action.

Smith was apparently attempting to ameliorate the harshness of Roman Republican law. In Alciato's *Ad rescripta principum commentarii* (Lyon, Gryphius, 1537), we see Smith noting another English equivalent for the *cliens*.⁶⁶⁶ This occurs to Alciato's commentary on Valentinian's edict, from the *CJC*, that publishing or introducing the action (*edita actio*) will induce a lawsuit (*Codex*, II, 2.1.3; *Edita actio speciem futurae litis demonstrat* (etc.)). In the commentary, Smith has noted that a *clientus fiduciarius* or *vassalus* cannot bring an action against their lord, or *dominus*; he has glossed the English term "vassal" directly from its Latin equivalent (Fig. 61; fp. A8r, column 82). This term does not appear in *DRA*, probably because Smith would argue that the vassal no longer existed in common law. In his Alciato, Smith was therefore adhering to the Roman civil legal conception of "fiduciary" relationships as the legal obligation of the *clientus* (or vassal) to the *dominus* (or lord). This is surprising given that, in *DRA*, Smith was trying to portray the "fiduciary" relationship in English common law as one based on property ownership (*possessio*) as opposed to inheritance (*hereditas*). However, Smith hammers home the absence even of property-based servitude in *DRA* with regard to "villains", who were bondsmen based on being tied to the manor or land of their lord, rather than being personally obligated to the lord in themselves. In his *Codex*, Smith noted that "Servus" was equivalent to "vyllayne en grosse" (fp. 19r), whereas a set of specifically land-based tenants – "Ascriptii; Coloni; Censiti", who, as Smith noted in the commentary, were *not* slaves (*ascriptitius non est servus* (ibid.)) – were equivalent to "vyllanes regarda[n]t" (ibid.). As has already been mentioned, Smith entered both

⁶⁶⁶ H.1.19(4); A68.

these comparisons into *DRA*, from which he formed the assertion that there was no servitude in England:

The Romans had two kinds of bondmen, the one which were called *servi* ... [which] be called in our law villens in grosse, as ye would say immediately bond to the person and his heirs ... Another they had as appeareth in Justinian's time, which they called *adscripticii glebae* or *agri censiti*. These were not bound to the person, but to the manor or place, and did follow him who had the manors, & in our law are called villaines regardants ... Neither of the one sort nor of the other have we any number in England (pp. 107-108).

In this Smith was directly (and perhaps unknowingly) following the comparison made by Bracton between the *adscriptii glebae* and those villains who were not personally unfree but were rather free men (*liberi homines*), because their servitude depended on temporary and land-based tenancy (*tenementum*).⁶⁶⁷ Smith rejected that such categories even existed in English common law. Despite this rejection, however, Smith was possibly participating in a phenomenon – identified by Ian Williams in relation to concepts like servitude – of English readers using Bracton to understand concepts that existed in Roman civil law but were insufficiently described in the literature of English common law; this had ‘the potential to introduce a romanisation of the common law.’⁶⁶⁸

⁶⁶⁷ Op. cit. Bracton, II, p. 37. Cf. Matej Mlkvý, “Status Controversy in Roman and Common Law” in *Krakowskie Studia z Historii Państwa i Prawa*, 9.1 (2016), p. 27, n. 10.

⁶⁶⁸ Op. cit. Williams (2011), p. 67.

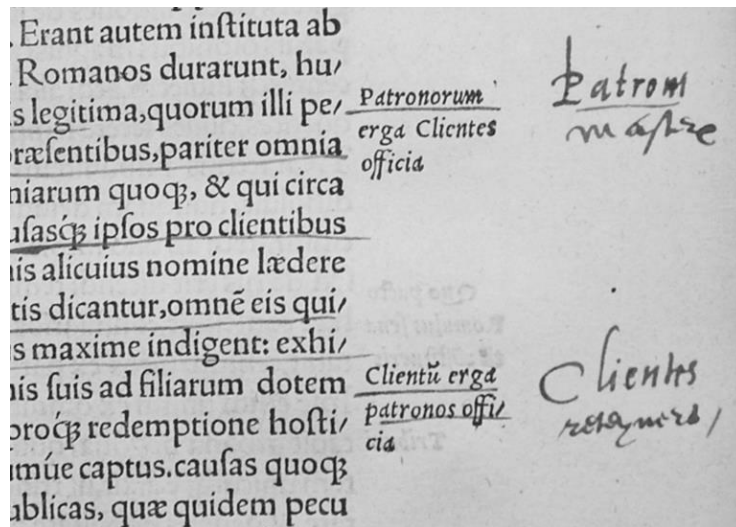


Fig. 60. Dionysius (1532).

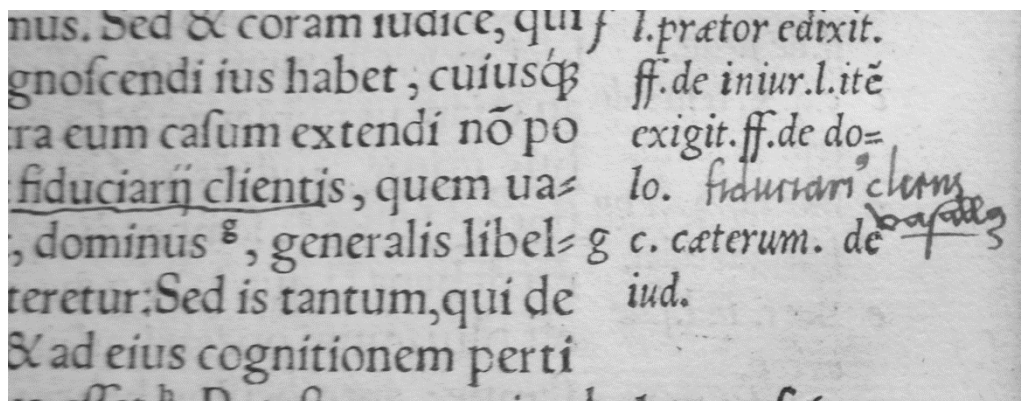


Fig. 61. Alciato, *Ad rescripta ... commentarii* (1537).

This all leaves a very significant question, however, which is how did the monarch fit into the question of servitude? Smith does not really answer this question in *DRA*. However, earlier I suggested that Smith's framing of *praemunire*, equivalent to the royal jurisdiction, included a reference to the transfer of *bonorum possessio* in cases where someone has died intestate, which was said to be a prerogative of the common

law (as opposed to the ecclesiastical) courts. Furthermore, as we have seen, Smith notes in *DRA* that when someone dies intestate (or by “escheat”), specifically when they are living on Crown lands, the monarch will take possession of their property. Smith’s gloss of “vassal” as the “fiduciary client” in Alciato possibly directs us to an unspoken *personal* definition in *DRA* of the monarch (as opposed to one of the monarch’s prerogatives). Alciato’s definition of *vassalus* as the *clientus fiducarius* appears in his commentary on the term *actio* (i.e. a legal action), which he defines in terms of the written documentation (*libellus*) used to bring a legal action or bring someone to trial: *Accipitur hic actio, ex communi interpretatione pro libello & scriptura, seu formula, quae reo porrigitur, sive solenni intentione, sive qualiquali petitione concepta sit* (p. 80).⁶⁶⁹ In *DRA*, Smith compares the civil law *actio* with the English common law “actions”: ‘For that which in the civil law is called *actio* or *formula*, we call writ in English’ (p. 51). Smith clearly distinguishes criminal pleas and actions (“pleas of the crown”) from civil pleas and actions,⁶⁷⁰ which are either “real” (concerning property) or “personal” (concerning injuries or broken contracts). He is apparently less concerned with the difference in English common law between oral “appeals”, or “pleas”, made orally (or as written “indictments”), which were not issued by Chancery,⁶⁷¹ and written actions or “writs”, which were; Smith compares the writs which come from Chancery with civil law actions *ex jure praetorio*, or *praetor dabat & formulas actionum*, whereas other actions are derived from the court of Common Pleas or the King’s Bench (“judicial writs”).⁶⁷² It is in terms of criminal law, therefore, rather than *civil* procedure

⁶⁶⁹ ‘The action here is taken to refer, from the common interpretation, to the *libellus* (or written accusation), which is brought against the defendant, whether received by formal intention or through any other kind of petition.’

⁶⁷⁰ John Baker, *Introduction to English Legal History* (Oxford: Oxford University Press, 2019), p. 541.

⁶⁷¹ *Ibid.*, p. 63: ‘the procedures and methods of trial available in an action commenced by one kind of writ were not necessarily available in another.’

⁶⁷² *Ibid.*, p. 71; these were used to bring people to trial.

in English common law (governed by institutions like Chancery and the Court of Common Pleas), into which Smith puts the personal relationship between monarch and people: ‘For taking this for a principle that the life and member of an Englishman is in the power only of the prince and his laws, when any of his subjects is spoiled either of life or member, the prince is endamaged thereby ... (p. 50). However, I argue that Smith’s real concern, in terms of the personal relationship between monarch and citizens in England, was with civil cases: possession of land and inheritance through wills, and governed by actions on written legal contracts, something which he understood through Roman civil law.

Smith addressed the relationship between “personal” and “real” obligations, i.e. between personal obligations and obligations based on property, in Ulrich Zasius’s commentary on *actio* as it is described in Justinian’s *Institutiones*, *De actionibus enarratio* (Basel, Isengrin, 1536).⁶⁷³ Actions are not the same as legal causes, Zasius says, because the action is the product of the cause (“*causa & actio*”; *quod est impossibile per naturam, quod produciens & productum sint eadem res* (pp. 5-6);⁶⁷⁴ Zasius divides causes into remote or proximate (*propinqua*) (“*causa { Remota; P[r]opinqua*” (p. 2)): *Remota est contractus vel conventio, quia tu & ego contraximus, unde debitum oritur. Et est causa proxima ipsa obligatio, quae ex contractu enascitur, sicut causa immediata nostrae productionis est mater* (ibid.) ... *Unde cum vulgo dicitur, obligationem esse matrem actionis* (p. 3).⁶⁷⁵ The emphasis in Zasius is therefore

⁶⁷³ H.2.10(2); A69.

⁶⁷⁴ ‘That which is naturally impossible: that the producing and what is produced should be the same thing.’

⁶⁷⁵ ‘A remote cause is a contract or agreement, because you and I are contracted, from which the debt arises. And the proximate cause is the obligation from which the contract arises, just as the cause is the mother of our product (i.e. action) ... From which comes the saying, obligation is the mother of the action.’

on proximate or *propinqua* causes. He states that the action only arises in *propinqua* causes and not *remota*, because it is the former that give rise to the obligation, and therefore to the contract, whereas the latter are subsidiary causes arising from the contract itself: *non autem verum est quo ad causam remotam, quia tunc ex contractu oriuntur* (ibid.). Zasius and Smith note the distinctions of “real” and “personal” actions that arise in each case: “Causa p[r]oxima in reali; Causa remota in personali” (p. 10). The proximate cause is therefore geared towards real actions, which govern a right in *rem*, i.e. concerning a property, whereas the remote cause is towards personal actions, i.e. governing a personal obligation. Zasius notes, however, that there are real servitudes, in which a thing is obliged to another thing (“Reales” (p. 15)); *Sunt preterea servitutes reales quae a re, rei debentur, id est, ab uno fundo alteri vicino fundo, ut est jus eundi* (ibid.)),⁶⁷⁶ just as there are sometimes personal obligations derived from *rem*, i.e. from property and ownership: (“Personales” (p. 14)); *sunt enim personales aliquae, ideo dictae personales, quia personae debentur, sed a re* (ibid.)).⁶⁷⁷ What is clear from Zasius, however, is that the operation of the law in terms of legal actions arising from contracts is *principally* based on “real” actions, i.e. those relating to property; personal actions take a back seat. Smith therefore found an analogy in Roman civil law to explain his contradictory claim in *DRA* that there were no bondsmen in England, which relied on the assertion that the contract did not touch the person, only the property, and that leaving the contract, all servitude was gone.

But what about the legal action that enabled this fiction, i.e. that enabled bondsmen to gain legal recourse when their obligations were asserted to be very much personal rather

⁶⁷⁶ ‘There are also real servitudes which are owed from one thing to another, that is, from one property to another neighbouring property, such as right of way.’

⁶⁷⁷ ‘These are sometimes called personal, because they refer to a personal debt, though derived from a thing.’

than real? Bondsmen (as they did exist in England) had little recourse in the common law courts. The sixteenth-century derivation of the villain, what A.W.B. Simpson calls the “copyholder”, was in a ‘curious and unsatisfactory position.’⁶⁷⁸ If he was evicted unfairly, he could not sue in the royal courts (they had long since decided they should not encroach on the ‘seignorial jurisdiction of the lords’),⁶⁷⁹ neither could he receive any other remedy in the common law courts against his lord, presumably because such a remedy did not exist. Instead, he could receive aid and protection against forfeiture by applying to Chancery.⁶⁸⁰ Chancery, whose purpose, as we saw earlier, was to mitigate the exactness of the written law, also offered the mechanism upholding the legal fiction that enabled Smith to claim there was no villeinage in England:

To build a foolproof road to freedom for England’s serfs, the common law created the most bizarre of its collusive legal fictions: certification of bastardy. The principle of the fictitious action involved was simple: serfdom could be passed only through the male line, and therefore no bastard could be a serf, since his father was unknown. Bastardy could bar villeinage.⁶⁸¹

MacCullough describes the mechanism for obtaining bastardy: ‘the result was the issue of a Chancery writ directing the bishop to investigate the bastardy’ (exactly the kind of jurisdictional mixing we observed in Chapter 5); MacCullough also notes that the actual certification of bastardy was ‘a speciality of [the Court of] Common Pleas.’⁶⁸² These were the “civil” courts of English common law described by Smith in *DRA*, as we have seen. Once again, therefore, Chancery and the written law provided the mechanism for diluting the concept of servitude in England.

⁶⁷⁸ A.W.B. Simpson, *A History of The Land Law* (Oxford: Oxford University Press, 1986), p. 162.

⁶⁷⁹ *Ibid.*, p. 158.

⁶⁸⁰ *Ibid.*, p. 163.

⁶⁸¹ *Op. cit.* MacCullough, p. 101.

⁶⁸² *Ibid.*, p. 102.

In *DRA* Smith only tells us what the king is not: he is *not* like every other man in the realm, i.e. who holds land in trust, and are therefore not *virī domini* but *fiduciary domini*. Did this therefore mean that the king was, in fact, *vir dominus* in possession of *fiduciary clientī*? All of this revolves around Smith's definition of *fee*, or *feodum*, as touching property rather than inheritance, since this also rejected the concept of villeinage in England, though *not* apparently in relation to the king. It is extremely striking that the absolutist John Cowell (1554-1611) – a civil lawyer (and Smith's successor as Regius Professor of Civil Law at Cambridge) who wrote a dictionary of English common law terms, the *Interpreter* (1607) – seemed to copy Smith's erroneous definition of fee in English common law. The King cannot be subject to such a fee, says Cowell, since his obligation is to no superior power other than God.⁶⁸³ Returning to Smith's own time, however, in 1561 there had been a case regarding the Duchy of Lancaster (i.e. Crown lands), which Edmund Plowden (1519/20-1585) reported in his *Commentaries* (1571).⁶⁸⁴ it was decided that a lease of land in the Duchy by Edward VI, granted when he was underage, was not voidable; this was because the king's natural body, though undeniably underage, was inseparable from his politic body, which could never be underage.⁶⁸⁵ The king's two bodies (another legal fiction) were therefore inseparable. Moreover, as Marie-France Fortin has noted, 'the king's body politic was described [by the judgment] as including the office of kingship ... Defined as such, it did not comprise the people.'⁶⁸⁶ This rather contradicts Smith's assertion that the king was damaged when the "life or member" of his subjects was damaged. A more

⁶⁸³ 'And no man may graunt, that our king or Crowne oweth fealty to any superior but God onely'; Cowell quoted a statute from Henry VIII's reign transferring the Duchy of Lancaster into his ownership, in which, Cowell argued, "fee" had been erroneously applied to the King, indicating a misunderstanding of the term (fp. Ee2v).

⁶⁸⁴ Published in Law French as *Les Commentaires* (London, Tottel, 1571); Smith did not own a copy.

⁶⁸⁵ Edmund Plowden, *Commentaries* (London: S. Brooke, 1819), p. 213.

⁶⁸⁶ Marie-France Fortin, "The King's Two Bodies and the Crown a Corporation Sole: Historical Dualities in English Legal Thinking" in *History of European Ideas* (2021) (ahead of print), p. 4.

useful illustration of this concept can be found in Smith's civil legal understanding of the transfer of intestate wills for those living on Crown lands: once again, he seems to have understood things in terms of property and legal actions. The law governing the inheritance of property belonging to an intestate deceased had a Roman civil law equivalent, *bona vacantia*, though the *CJC* states that money from intestate people will pass to the state (*res publica*) and not to the *imperator*; however, as we have seen, Smith saw the prince and the public treasury to be essentially one and the same thing, reflecting the inseparable nature of the king's two bodies. Smith notes the law of *bona vacantia* with sketch of a legal tablet in his copy of the *Infortiatum* (30.96.1; fp. 178r), on which he apparently notes (it has been trimmed) that it was part of the *Lex Julia et Papia Poppea*, most likely an Augustan law.⁶⁸⁷ Smith is therefore deriving a crucial prerogative of the monarch in English common law from the system of Roman written law, i.e. through imperial edicts as they appear in the *CJC*. Another example of this is the *Lex Regia*, which, as we have seen, Smith noted with precisely the same visual formula in his *CJC*.

However, there is a potential problem with this argument, i.e. that Smith directly derived his concept of absolute monarchy in *DRA* from the written code of Roman law: Smith declares the tyranny of the Roman emperors to rest on the 'pretence of that Rogation or *plebiscitum*, which Caius Caesar or Octavius obtained, by which all the people of Rome did conferre their power & authority into Caesar wholly' (pp. 6-7), which, as Rory Rapple pointed out, referred to the *Lex Regia*.⁶⁸⁸ We should not,

⁶⁸⁷ *Quotiens lege Julia bona vacantia ad fiscum pertinent: & legata & fideicommissa praestantur, quae praestare cogentur haeres a quo relictæ erant*; 'Whenever under the *lex Julia* goods without an owner fall to the imperial treasury, those legacies and *fideicommissa* (i.e. ownership in trust) shall be discharged which the heir to whom they were left would have been compelled to pay' (III, p. 28).

⁶⁸⁸ Op. cit. Rapple, p. 25.

however, take this “pretence” as an expression of cynicism about the foundations of English monarchical authority. Instead, through the idea of *actio* and its being a representation of written legal mechanisms (*libellus*), we should see Smith trying to establish a reasonable and equitable basis on which the English monarchy could claim its authority: if any obligation existed between the monarch or the people, it was one based on servitudes arising from property. Furthermore, if any personal obligation existed, common law could always offer an escape mechanism (manumission). The purely personal obligations that Smith rejected in English common law were therefore replaced by real actions, expressing obligations in definable causes. Smith’s blending of Roman civil law with English common law was an attempt to reconcile the irreconcilable: oral and written law; the obligation of servitude and freedom; tyranny and democracy. Smith’s understanding of absolute monarchy relied upon Chancery as the embodiment of civil legal concepts of equity, in which *conscientia* thus became “conscience”. This is what prevented the English monarchy from being tyrannical, but which, conversely, allowed Smith to maintain the discernible set of prerogatives that made the English monarch absolute.

viii. Coda: A Justice of the Peace.

Thomas Smith was a Henrician civil lawyer writing on Elizabethan common law. A careful reading of Smith’s known books and his marginalia indicates that in *DRA* Smith was presenting a kind of diluted absolutism derived partly from Roman Republican law and partly from imperial civil law, while arguing for the difference and independence of English common law. In doing so, Smith was continuing his

intellectual work of the 1540s – arguably the foundational experience of his intellectual life, and which, as I have suggested previously, led to the full development of his reading practices – in which his reading of the Roman civil code was interpolated with parliamentary statutes, royal proclamations, and writs of Chancery. I am sure, however, that while the “vassal” annotation was made in 1542, it is quite possible that the “masters” and “retainers” were added to Smith’s *Dionysius* in the 1550s or even the 1560s; none of these terms make it into *DRA*, all of them representing something apparently inapplicable to English common law. What had changed between the 1540s and the 1560s in terms of Smith’s legal experience? And how was this legal experience an example for Smith of the relationships between citizens that have so often been described in terms of the Aristotelian politics of friendship? We have one piece of documentary evidence of Smith at work as a civil lawyer, in a manuscript case book in Cambridge University Library.⁶⁸⁹ This shows Smith working in the Cambridge Vice Chancellor’s Court, and as chancellor (secretary or *cancellarius*) to the Bishop of Ely in the 1540s, in which he judged cases of non-payment of tithes. His job was simply to take the deposition of witnesses, upon which a judgment would be made by a superior judge or magistrate. No jury was involved: this was an ecclesiastical court following the procedures of Roman civil and canon law. One finds that the politics of friendship is rarely to be seen; villagers frequently reveal their dislikes of each other. One man admits to having been no great friend of the priest, but he declares that he nonetheless knows his duty of tithing, as he testifies against another villager who is behind on his payments. More than twenty years later, in 1568, a few years after writing *DRA*, Smith was a Justice of the Peace for Essex, i.e. an officer of English common law, where his duties and experience were apparently largely the same. Smith’s job was essentially to

⁶⁸⁹ CUL MS EDR D/2/3 ff. 130v-172v; op. cit. Burnett, Simpson and Thorpe, p. 10.

take depositions from witnesses and then decide whether to imprison someone until trial, i.e. the next assizes, or dismiss the case entirely; no judgment was made by the JP on cases. The accusations come in: of witchcraft, breaches of promise, theft; hardly a politics of friendship.⁶⁹⁰ The changes, therefore, in the supreme jurisdiction of the monarch between the early 1540s and 1568 did not appear to have affected Smith's experience of the law, whether he was in an ecclesiastical or a common law court. Smith, indeed, operating in both instances as the equivalent of the minor judges that he investigated in his *CJC* (the difference in the latter case being that as a JP he was voluntary and received no stipend), would probably have been satisfied if most of these cases never went to trial. For a legal conservative like Smith, this was the most equitable outcome of all.

⁶⁹⁰ MS83, ff. 63r-77r and 83r-96r.

CONCLUSION.

i. My methods.

I began this thesis with a simple intention, which was to continue a trend already prevalent in the history of the book and the history of reading, which is to see Renaissance reading as non-fragmentary. Usually this has, paradoxically, involved postmodern, Derridan concepts of “traces” and “collage”, in which the highly fragmentary nature of the evidence is harnessed to convey the sense of a collective set or “network” of practices that was shared by all readers (as well as printers and bookbinders) within the period. In this study, however, I have done the rather unfashionable thing and focussed on only one author, using his surviving library at Queens’ as the evidence for such a network of practices evident in one reader’s collecting and reading. I have tried to conceive of this in “literary” terms (since this is a thesis in English literature), which involved the close reading of both Smith’s annotations and the texts to which they are related. My aim, therefore, has been to argue that if Smith’s reading was by nature pragmatic, his approach to scholarship was not, but involved a coherent intellectual project (predominantly legal and linguistic) that influenced his reading in subjects as diverse as history, medicine and law; my intention was to demonstrate Smith’s intellectual breadth and depth rather than a shallow approach to each of these individual subjects. Smith’s visual reading was framed as a cohesive set of repeatedly used signs, which – in line his linguistic theories – did not refer to single ideas in each case but (in the case of each individual sign) referred to many potential meanings. In this sense Smith’s reading was able to elide numerous different concepts across numerous different books (with the necessary slippages that

allowed, for example, a legal tablet to contain modern treaties as well as ancient laws). This, if anything, was the expression of Smith's "pragmatic" reading, but this was only used to reinforce the depth and breadth of his reading, rather than to diminish it. Smith's reading was by no means unique, as we saw in the case of Richard Eden, though the scale and depth of Smith's reading methods, as well as the unusual survival of his large bequest in the context in which some of his reading was made, are both highly unusual. I hope that by engaging in the close reading that is required to understand the depths of Smith's reading, I have presented a new model of humanist reading, one that was certainly pragmatic but could never be called shallow or fragmentary. Another conception was that of the "moral" and the "operation", which I used in the introduction to address Smith's reading of Paracelsus. I have attempted to show that Smith's reading was frequently concerned with the operation of his texts, not only materially but also in terms of the mechanisms they describe, not least in Roman civil law; however, by attempting to describe a cohesive intellectual project behind Smith's reading, I have argued that Smith was engaging with the principles at the heart of the texts he was reading, often via the operation itself. Finally, my argument was predicated on the fact that it is only *through* Smith's reading that one can grasp the intellectual force of the reading itself, and therefore his project as a whole, which was expressed in his written works: Smith's reading is the evidence that enables such an understanding.

ii. Smith's methods.

Throughout this thesis I have tried to establish some sense of continuity in Smith's reading practices, principally as a means of establishing the continuity of his overall humanistic project: the establishment the English context in direct relation to a

classical, Greco-Roman tradition (legal or otherwise). Smith's reading of Roman civil law in the 1540s – including the enormous textual corpus of the *CJC* and its modern commentators – was presented as the crucible in which Smith's reading practices formed, as a necessary response to the demands of the text(s); his pictorial annotation practices had originated, however, in the late 1530s, when he read his Plato. Intellectually, this rapid shift from ancient Greek philosophy to Byzantine civil law – in which Latin and Greek were linguistically interchangeable – was definitive for Smith. I attempted to show that the interrelated concept of law and linguistics that he developed in this time, while simultaneously formalising his system of visual annotation, was continuous in his reading of historical books in the 1550s and 1560s and even in his “scientific” books, therefore taking his intellectual project into the 1570s. Moreover, I argued that Smith's published works of the 1560s – *DLG*, *DAS* and *DRA* – were the direct product of his system of reading. One thread I have attempted to weave throughout the entire thesis was the spatial relationship of Smith's annotation, which I called his “chorographical” reading, to the subject matter. This was applied to Smith's legal and historical reading in terms of jurisdiction, a proposition that was also expressed in his linguistic theories, including of English orthography, which I demonstrated to be an expression of locality: which fish swim in English waters?

iii. Success or failure?

One paradigm that I sought to avoid in this thesis was that of the failed politician, sometimes applied to Elizabethan scholars who, like Smith, had dabbled in political life; this was also partly a reaction against the idea of humanist reading as being only concerned with pragmatic concerns rather than scholarship. However, I want to end by

considering Smith's bequest to Queens' in terms of its success or failure. Smith's personal motives for the bequest were posterity, his own reputation, and the preservation of his books, but what if we were to assume that he had a nobler aim, which was *res publica*? Smith's books would have to have been *used* for this to be considered a successful outcome (when following the paradigm of pragmatic reading), and if the point of giving his library was to establish a great college of Roman civil law in Cambridge (as he had attempted earlier in his life with a project to amalgamate Clare College and Trinity Hall), then his bequest failed.⁶⁹¹ Indeed, as was mentioned earlier, the influx of Biblical exegesis into the college that occurred in the 1560s and 70s alongside Smith's bequest was more in keeping with the nineteenth-century imperial tradition of Queens' as a centre for Biblical translation and associated colonial missionary work. However, a future Smith would not, arguably, have found this development opposed to his frustrated aims of colonial expansion; his student Richard Eden, an exponent of his reading practices, and Humphrey Gilbert, who apparently read *DRA* before advancing the absolute monarchy in a speech to Parliament, would certainly have been in the same boat (figuratively speaking).

There is one practical iteration of Smith's legacy at Queens', with which I will end, expressed by two books in Smith's collection that I have not mentioned, partly because they are not really annotated and partly because they are somewhat esoteric to most modern readers, not least to myself: Sebastian Münster's (1488-1552) *Horologigraphia* (Basel, Petrus, 1533),⁶⁹² a treatise on making sundials, and a *sammelband* of works by Peter Apian (1495-1552), another German astrologer

⁶⁹¹ Op. cit. Burnett, Simpson and Thorpe, p. 16. Trinity Hall remained the great civil law centre at Cambridge and, perhaps unsurprisingly, some of Smith's civil legal books have even ended up there; see A98-99.

⁶⁹² D.20.39; A44.

(Ingolstadt, [N.p.] and Nuremberg, Petreius, 1533-1534),⁶⁹³ containing works on astrology, geography and geometry. In 1573 Smith established two lectureships at Queens', in arithmetic and geometry; one of the very first students to attend these lectures was one John St. George, who matriculated at Queens' in 1574. In 1634, aged over ninety years old, as specified in his Donors' Book entry ("supra nonagenarius"), St. George donated a group of seventeen mathematical books to the college, including modern astronomy and ancient hydraulics. Moreover, his entry made clear that his donation had arisen from his love of mathematics, which he had studied at Queens' ("singulari amore quo Matematica studia in hoc Collegio complexus est").⁶⁹⁴ I began this thesis with the suggestion that Smith's library and his reading therein could account for a middle period in Tudor humanism, a period linking the Greek studies of the late fifteenth and early sixteenth centuries with the cartographical, antiquarian researches of the late sixteenth and early seventeenth centuries. I suggested, furthermore, that Smith's chorographical reading was evidence for such a shift, exemplified by his 1530s reading of Plato, in which his infinitesimally detailed depictions of cities stand in for the imaginative conception of the ideal *polis*, *res publica*, or commonwealth; Smith's vision of England in 1565, laid out in *DRA*, was similarly conceived as a map of such an "ideal" commonwealth. The same commitment to *res publica* (or *imperium*, depending on your point of view) was continued by St. George's donation to Queens', combined with a commitment to the kind of mathematical studies that served, in the decades after Smith's death, to enable the cartographic description and even the expansion of English imperial dominions. St. George's loyalty to Cambridge University and to Queens' – based not only on his love of mathematics but also, I am

⁶⁹³ D.1.22(4); A42.

⁶⁹⁴ MS47, f. 15.

sure, on his belief in the benefit that his books would provide to students of the college and therefore, by extension, the commonwealth – was indicated by his gift to the college of an illustrated copy of Ptolemy’s *Geography* (Venice, Valgrisius, 1565), apparently once belonging to his father, which is bound in gilt calf with supralibros showing the university’s coat of arms (Fig. 62).⁶⁹⁵ In each case – in Smith’s Platonic cities and in St. George’s Ptolemy – the commitment to *res publica* is evidence not of a shallow or fragmentary educational project, but of the commitment (one that is apparent, in this case, across more than one lifetime) to a broader intellectual project, which looks something like humanism as cartography,⁶⁹⁶ but was, moreover, English humanism attaining its aims (ultimately) in the act of giving one’s books to one’s old college library.

⁶⁹⁵ F.20.1. Cf. David Pearson, *Cambridge Bookbinding 1450-1770* (Ann Arbor, MI: The Legacy Press, 2023), 57M (cartouche H119) and 57P (oval H48); 57V (cornerpieces) (pp. 243-244).

⁶⁹⁶ Cf. Katherine N. Piechocki, *Cartographic Humanism: The Making of Early Modern Europe* (Chicago: Chicago University Press, 2019).

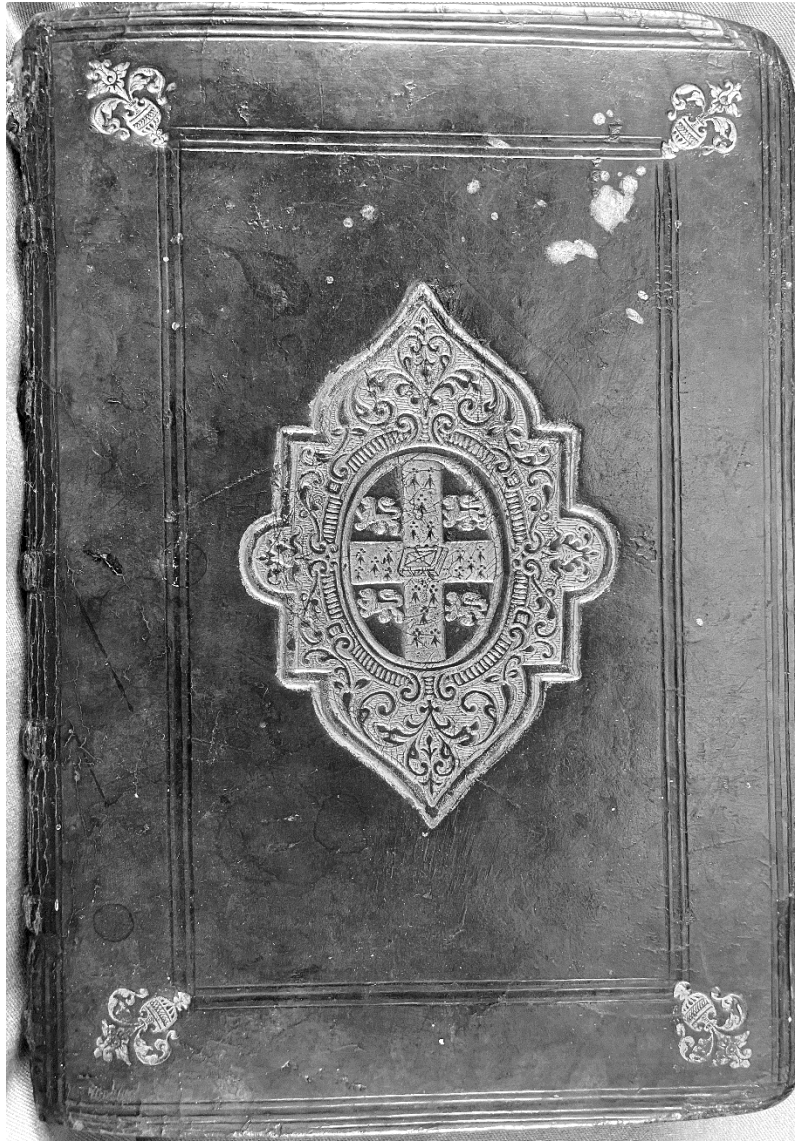


Fig. 62. Ptolemy (1559).

APPENDIX: A BIBLIOGRAPHICAL LIST OF SMITH'S BOOKS.

N.B. There are eighty books listed in Smith's bequest in Queens' College Library's Donors' Book (QC MS47), and sixty-five books currently in Queens' Old Library with clear evidence of Smith's ownership, many of these being annotated in his hand. The Donors' Book entry is roughly organised by subject (with some groupings also being reflected in the earlier shelfmarks), as follows: theology, history, astrology, medicine, and law. I have therefore chosen to arrange the books according to the order in the Donors' Book as opposed to alphabetically by author; a numbered index for this will be found at the end.

PAYMENTS MADE BY QUEENS' IN RELATION TO SMITH'S BEQUEST:

QC 4, *Magnum Journale*, 1560-1587

- 1577-8 [Sept. 1577] Imprimis good to (?) vaghan [sic] for his charges going to Hill Hall on the Colledg busines. viii^s v^d (f. 127v).
... It[em]. to M[agiste]r. Smythe & to D[ominu]s. Smythe for their charges going to Hill Hall fetching home of the colledg books ut pat[et] p[er] billa[m]. xi^s vi^d (?).⁶⁹⁷
... It[em]. for the carters driver which brought home the colledg books. xii^d.
[Dec.] It[em]. for Sr. Thomas Smythe his dinner. xx^s (?) (f. 128v).
[Feb. 1588] It[em]. to John Sheares for bynding and chaning ye bookes in the librarrye. xx^s viii^d (f. 129r).⁶⁹⁸
... It[em]. to the Smythe for ii lockes me[n]ding the chaynes & translating ii lockes. v^s ix^d.
[Mar.] It[em]. to Mr. Walter for ye expenses of thos that fetched the books fro[m] Hill Hall. xxx^s.

⁶⁹⁷ According to the general stipendiary accounts (f. 126r), these were the current incumbents of, respectively, the fellowships in arithmetic and geometry that had been founded by Smith. The first is probably one of two fellows called John Smith (no relation?) at the college at this time, who was responsible for the accounts for this year; the other is Clement Smith, Sir Thomas Smith's nephew (see {86*, Tunstall}), who as a bachelor (MA 1579) was referred to as *dominus*. He was already lecturer in arithmetic (possibly not a very onerous role) by 1576/7 (f. 117r), so there may well have been some nepotism at play. He took his D.D. in 1609. Clement did get a specific set of books in Smith's will, as well as first choice of up to ten books for his own use in his lifetime, though they were to go to the college if he ever ceased to be Fellow.

⁶⁹⁸ John Sheares or Sheres (d. 1581) was University Stationer.

SMITH'S DONORS' BOOK ENTRY:

THOMAS SMYTH Legum Doctor primus huius Collegii Socius, dein Episcopi Eliensis Cancellarius, postea Secretarius principalis Elizabethae Reginae, et equestrj dignitate Honoratus praeter foundationem duarum lectionum Geometriae & Arithmeticae, & Scholarium duorum;⁶⁹⁹ etiam Bibliothecae suae maximam partem legavit huic Collegio:⁷⁰⁰ cuius dona sunt.

1 Ambrosius

Ambrose, Saint (4th century), Opera D. Ambrosii Mediolanensis episcopi, quotquot reperire licuit, omnia, in quinque tomos digesta ... [edited by Erasmus] (Paris, Fezendat, 1549). Folio.

?M.10.22. Bound in 18th-century sprinkled calf with blind-tooled two-line fillets to boards. Shelfmarks: H.a.16; 11-9-4.⁷⁰¹

⁶⁹⁹ Smith was knighted in 1549 (*ODNB*), but the inscription here seems to connect the knighthood with Smith's foundation of two lectureships at Queens' in arithmetic and geometry, which he granted to the college in 1573. This possibly deliberate chicanery was no doubt in the interests of the college, especially in the context of a Donors' Book, which was intended to inspire more donations; the 1631 author of the Donors' Book may also have had Oxford's Savilian Professorship in mind, since the first incumbent had been installed a decade prior.

⁷⁰⁰ Some books were undoubtedly lost due to theft or the sale of duplicates, {2, Bede} being a possible example. However, it is likely that not many more than one hundred books were brought to Queens' from Smith's bequest because of constraints of space, with Queens' total capacity at this time probably being around two hundred books; for an indication of what occupied much of the remaining half of the library around the time of Smith's bequest, see Clare Sargent, "Two Sixteenth-Century Booklists from the Library of Queens' College, Cambridge" in *Transactions of the Cambridge Bibliographical Society*, 12.2 (2001), pp. 161-178. NB: items in the 1580 inventory that were unidentified by Sargent in her article, but are still in the library today, are no. 3, *Concordantiam bibliorum* (Paris, Estienne, 1555) (I.3.3), and nos 14-16, a set of biblical commentaries by Augustin Marlorat (Geneve, Estienne and Fugger, 1561-1562) (L.11.3-5).

⁷⁰¹ Queens' library has used three systems of shelfmarks since the time of Smith's donation; the first, apparently the earliest (since this always appears with the later numbers, while the latter are never found alone), runs A.a.1, etc.; the second, apparently later, runs as follows: 1-1-1, etc.; the current system is A.1.1, etc. All three systems refer first to the case or "press", meaning each standing book-case (with shelves in the adjoining window-bays added later), followed by the individual shelf number, and finally by the number of the book on the shelf. The layout of the ten cases within the original portion of Queens' Old Library (the room has been extended) has never changed, though the book-cases have been extended upwards twice. The first system was used in the medieval library (built 1448) of lectern desks, i.e. shelved cases for the books with sloping desks on which to read them (see Trinity Hall Old Library in Cambridge for a surviving example of such a library, albeit from the Tudor period). This system was probably in operation, for both chained and unchained books, until the early 17th century; the last chained donation was in 1589 (William Chaderton; see note to {34, Bembo})) though chaining of books purchased by the library may have stopped earlier; see

No evidence of Smith's ownership.⁷⁰² Manuscript title to fore-edge and some underlining to text, especially to index.

MS49, f. 94v.

Cambridge libraries: Emmanuel.⁷⁰³

Adams A938.

2 Beda

Bede (b. 7th century), *Ecclesiasticae historiae gentis Anglorum: libri quinque diligenti studio a mentis ...* (Antwerp, Gravius, 1550). Folio.

?X.17.1. Bound in late 19th-/early 20th-century blue morocco by Riviere; woodcuts from Gabriel Harvey's *Musarum Lachrymae* (London, Binneman, 1578), ffp. K1r and K4r, showing Smith's tomb and portrait, as well as a 19th-century portrait of William Burton, tipped onto sheets and bound in. No earlier shelfmarks or evidence of chaining.

Annotations: Smith's signature to title-page, crossed through and superseded by late

note to {34, Bembi}. That this system applied to the lecterns is evidenced by the second letter of the first shelfmark system never apparently exceeding "d" (on chained books), meaning four shelves, probably on each side of the desk. In 1613/14 the lectern desks were remodelled into modern cases, Queens' (unusually) retaining the original lectern bottoms as the lower part of the cases (the grooves for the sloping lids are still visible), and it is probably around this time that the second system was instituted. The cases were extended upwards to accommodate more shelving at some point in the 17th century, and the current system was certainly in use by 1674-1677, when a full catalogue was drawn up giving the "new" (current) shelfmarks and also the shelfmarks of the second system. NB: All books possess the bookplate engraved with Queens' arms and dated 1700, unless otherwise stated; occasionally these have been carefully covered with, curiously, an apparently identical bookplate. A similar bookplate can be found at Jesus College, Cambridge, also dated 1700, no doubt by the same engraver.

⁷⁰² See also Ambrosius, *Opera* (Basel, Froben, 1527) (G.2.8), an imperfect copy in a C16th binding with evidence of three chain staple scars; however, these are unlike Queens' chain staple scars and the book also has an inscription possibly in the hand of Richard Bryan (see note to {38, Boccaccio}) and evidence of having once been part of York Cathedral Library ("Liber ecclesiae Eboru[m]"), meaning this was almost certainly a later addition. See also Ambrosius, *In sancti Johannis apostoli & evangelistae apocalypsim libri ...* (Cologne, Cervicornus, 1536), which appeared in Queens' President Humphrey Tindall's (1549-1614) inventory of 1580 as F.35 (op. cit. Sargent, p. 176); it is possible, due to the sixteenth-century blindstamped binding, that the Donors' Book compiler might have assumed this was Smith's book, but they would almost certainly have noted the specific title if so. See also Ambrosius, *Opera* (Paris, Merlin, 1569) (M.11.18), most likely a 17th-century or later addition (see ownership inscription of Matthew Saunders, possibly the same who attended Gonville & Caius (m. 1593)).

⁷⁰³ Refers only to the present edition. Source: iDiscover online catalogue and H.M. Adams, *Catalogue of Books Printed on the Continent of Europe, 1501-1600 in Cambridge Libraries* (Cambridge: Cambridge University Press, 1967). Any notable bequests or donations nearly contemporaneous with Smith's collecting are noted, along with the date of bequest or donation, or the owner's death. NB: the information given in Adams may no longer reflect the current holdings of libraries and may in some cases be inaccurate; the idea is to give a general impression of the rarity of Smith's editions.

16th- or early 17th-century signature of George Chappel; 17th-century inscription of William Burton (d. 1645), English antiquarian, to head of title-page, “Liber Willmi [sic] Burton de Falde in Staff: 1610”, also crossed through; 20th-century letter from Bodley’s Librarian Sir H.H.E. Craster; late 20th-century bookseller’s ticket of William Salloch, NY.

Annotations: in Smith’s hand, with doodles, similar to Smith’s annotations to other history books of this period.⁷⁰⁴ No Queens’ number (trimmed and edges gilt).⁷⁰⁵ MS49, f. 89v.⁷⁰⁶

⁷⁰⁴ Smith’s hand and signatures are changeable, with an early style, often miniscule and quite fussy, associated with his 1530s books, giving way to a large and more stylized hand of the 1540s that appears in his medical and legal books, i.e. with more ligatures and embellishments (possibly for display in the case of Smith’s books of civil law), followed by a later period (1550s-70s) in which Smith’s italic becomes much simpler and more refined, even elegant. His signatures are harder to date, but generally they are very simple initially, being marked later by decorative capital letters and flourishing. He generally annotates in Latin and in an italic hand but uses secretary for English or (rarely) German. Smith’s books are also characterised by his use of “blind striations”, i.e. marks made without ink to the margin using the thumbnail or even a small knife (since they are very straight), especially in the later period. He was evidently employing his famous doodles from at least the late 1530s, and possibly earlier; see note to {93**, Plato}. For an indication of how Smith’s hand changed over an apparently short period of time, see Smith’s signatures to {47, Aetius} and {48, Ruellius}.

⁷⁰⁵ On around a third of Smith’s books at Queens’ there is a series of Roman numerals appearing on the fore-edges of the books, never apparently extending beyond 40 and constituting more than one series of numbers (since some numbers appear twice on different books). These were almost certainly shelf or inventory numbers, since they appear to run in sequences, and books of similar subjects can be found with sequential numbers; moreover, the number order appearing on books within works of multiple volumes has been muddled from their original configuration during shelving at Queens’ (see for example {58, Baldus}). It is important to remember that Smith’s books would have been shelved with the fore-edges facing outwards, both at his library at Hill Hall and (originally) at Queens’. In the latter case, in Queens’ lectern desks, the books would have been shelved horizontally, but in the former case it is harder to say; on Smith’s books there are examples of edge titles running in both directions, i.e. horizontally and vertically. None of Smith’s books outside of Queens’ have been found with this numbering, as far as I am aware, a fact usually explicable by later restoration or rebinding (losing or obscuring the fore-edge). However, {87**, Cardano}, now in the Bodleian Library – without numbering, but apparently in its original 16th-century binding and without evidence of trimming (one or two of Smith’s annotations are “incomplete”, but these seem to be a case of the pen running off the page) – raises the question of whether this is the case. On the other hand, Smith’s copy of {51, Paracelsus} at Queens’ is in its original binding and bears no such number; the book at Queens’ with the latest date of publication to bear one is {29, Bonfinius} (1568). It is possible, therefore, either that Smith employed this practice only for a limited amount of time or on certain books, or that these numbers were added (with some exceptions) during the accession of Smith’s bequest. Regardless, because they only occur on Queens’ books, I have elected to call them Queens’ numbers.

⁷⁰⁶ Smith notes a copy of “Beda[e] oper[a]. vo. I” in his library list of 1566 (f. 145r) (see note to {1, Ambrosius}), and “Beda et Saxo gra[m]maticus” (f. 146v), possibly the book listed in the Queens’ bequest bound with a copy of Saxo Grammaticus, as the entry suggests (I could find no feasible combined edition); a copy of “Beda[e] ecclesiasticae historiae gent. Anglor[um]” appears in Smith’s inventory of 1576 (f. 89v) along with the *Opera* (f. 94v), so he quite

Cambridge libraries: Jesus, St. Catherine's, St. John's (John Marshe, 1579), Trinity, Trinity Hall.
Adams B452.

3 Oecumenius gra[eca]:

Oecumenius (b. 10th century), [Greek title:] *Exegeseis Palalai kai lianophelimoï brachylogiante kai saphendan tou Logou echousai Thaumazen ... Expositiones antiquae ac valde utiles brevitatem una cum perspicuitate habentes mirabilem ...* (Verona, Stephanus et fratres Sabios, 1532). Folio.

?M.11.3. Bound in 18th-century sprinkled calf; offsetting from earlier Queens' shelfmark visible.

No clear evidence of Smith's ownership. Manuscript edge titles in Greek and Latin, as with {33 Diogenes}. Nineteenth-century pencil notes to the Apocalypse.

MS49, f. 94v.

Cambridge libraries: Caius (William Branthwaite, 1619), Corpus (Matthew Parker, 1574), Divinity Department Library, Emmanuel, Jesus, Pembroke (Lancelot Andrewes, 1589), Peterhouse (Andrew Perne, 1589), St. John's, Trinity, UL.
Adams O111.

4 Chyrosostomus lat[ine]: 5 vol:

Not in Queens'.⁷⁰⁷ Possibly John Chrysostom (b. 4th century), ed. Desiderius Erasmus (c.1467-1536), *Opera ...* (Basel, Froben, 1530; also pub. 1539; 1547; 1558). Folio, 5 vols.

Cambridge libraries: Caius (Nicholas Shaxton, 1556), Pembroke, UL (incomplete).

MS49, f. 94v.

Adams C1514.

5 Erasmus

Erasmus, Desiderius (1466-1536), *Omnia opera Des. Erasmi Roterodami: quaecunque ipse autor pro suis agnovit, novem tomis distincta ... Cum praefatione Beati Rhenani Selstadiensis ...* (Basel, Froben and Episcopius, 1540). Folio, 9 vols.

?L.10.6-14. Queens' copy imperfect (wanting title-page to vol. 9). Bound in 17th-century sprinkled calf, blind-tooled two-line fillets to boards and edges. All vols with spineguards using a variety of printed and MS waste, from four different manuscripts, including a liturgical MS with musical notation and a Bible. Offsetting from medieval

possibly purchased this work after 1566; however, the "Beda et Saxo" no longer appears in the 1576 list.

⁷⁰⁷ It is possible that Smith's editions of these titles (where they correspond to books in Smith's 1576 inventory) were never actually accessioned to Queens'; the librarian who began the Donors' Book in 1631 did so retrospectively and might well have added books on the incorrect assumption they were Smith's.

MS (especially illuminated initials, but also some text) visible to the boards of most vols, implying that these were once wrapped in parchment waste (see also {54, Infortiatum}). Shelfmarks: B.b.14–22; 9-9-6/9-9-14; the earlier shelfmark (B.b.16) to vol. 3 has been written out twice and in one instance apparently dated 1658, which is some decades later than this system was supposedly instituted.

No signs of Smith's ownership. Annotations: Vol. 1 contains a number of rough annotations; vols 2 (*Adagia*) and 3 (*Epistolae*) contain notes in a later hand to the pastedown citing page references, including from other works; there are further pencil notes, striations in blind (i.e. marks to the pages made using a thumbnail or knife) and ink marks throughout; in vol. 9, the *Antibarbari*, a strand from a quill feather was found tucked between two pages.

MS49, f. 94v.

Cambridge libraries: Clare, Emmanuel (incomplete), King's (incomplete), Pembroke (incomplete), Peterhouse (Andrew Perne, 1589), Sidney (incomplete), St. John's (Henry Wriothesley, 3rd Earl of Southampton, 1624),⁷⁰⁸ Trinity (incomplete), UL (incomplete).

Adams E309.

6 Biblia Castalionis

Bible, comm. Châteillon, Sebastian (1515-1563), Biblia interprete Sebastiano Castalione: Una cum eiusdem annotationibus ... (Basel, Oporinus, 1551). Folio. H.9.22. Woodcuts illustrations. Queens' copy imperfect (printer's device removed from title-page). Bound in 16th-century English blindstamped calf, panelled with concentric frames made of roll tools, the inner frame using a narrow tool and sunburst cornerpieces, the outer frame a broader roll, fillets; remains of clasps and staple holes from chained library, unusually to both boards; edge title. Rebacked, endpapers renewed. No earlier shelfmarks.

Annotations: Smith's signature to title-page, "Thomas Smithus", with flourishing, some loss: publisher's device excised from title-page; another inscription, later, also partially excised. No annotations. No Queens' number visible.

MS49, f. 94v.

Cambridge libraries: Emmanuel, Pepys Library, St. Catherine's, St. John's (Thomas Fowle, 1597), Trinity, UL.

Adams B1045.

7 Catalogus testium veritatis

Not in Queens'. Flacius, Matthias Illyricus (1520-1575), Catalogus testium veritatis, qui ante nostram aetatem reclamarunt papae ... (Basel, Oporinus, 1556; also pub. 1562). Folio.

⁷⁰⁸ With inscription of William Crashaw (d. 1626).

MS49, f. 94v.
Not in Adams'.⁷⁰⁹

8 Georgii Veneti Promptuarium

Giorgi, Francisco (1466-1540), *Promptuarium rerum et theologicarum, et philosophicarum* ... (Paris, Macé, 1564). Folio.

F.9.14. Bound in 16th-century Parisian calf, central medallion, gilt, showing the "Triumph of Amphitrite" (sometimes called the "Triumph of Galatea"), after Giovanni Bernardi (1496-1553),⁷¹⁰ two-line fillet in blind around single fillet in gilt, spine with single fillets in blind and rose tools, gilt, to spine panels, cross-hatching to head and foot of spine in blind. Printed waste: uncut sheets from a 16th-century Bible in English, possibly a pocket edition of the Geneva Bible, used as pastedowns. Shelfmarks: B.c.[?]; 6-10-14; 11-5-20.

Annotations: Inscription, "T. Smith", in the later style, with flourishing, to title-page, with price note ("xxxs(?)"); later price codes(?) to front free flyleaf. Marginal marks in ink throughout (most likely later), with note in pencil in a later hand; striations in blind; edge title, now much faded, with signs of Queens' number, now illegible (X/XI?).

MS49, f. 93r.

Cambridge libraries: Emmanuel.
Adams G471.

9 Postellus de concordia Orbis

Postel, Guillaume (1510-1581), *De orbis terrae concordia libri quatuor* ... ([Basel, Oporinus, 1544]). Folio.

Cambridge libraries: Emmanuel, Pembroke (Lancelot Andrewes, 1589), Trinity, UL.
Adams P2020.

Bound with:

Blanasco, Joannes (1230-1281), *Commentaria super titulum de actionibus in institutis* ... (Mainz, Schoeffer, 1539).

L.10.23(2). Bound in 16th-century calf, the roll of "strapwork" and foliage (Oldham SW.b(3)),⁷¹¹ for which see also {65, *Institutiones*}, {67, *Mainerius*} and {92**, *Geoponika*}); vellum waste used as spine-guards. Chain staple scar: boards have been

⁷⁰⁹ Adams notes 1562 ed. only (F553).

⁷¹⁰ See Anthony Hobson, *Humanists and Bookbinders* (Cambridge: Cambridge University Press, 1989), pp. 133 and 245 (census no. 117). Smith almost certainly purchased this book while in France, most likely in Paris. This is indicated by the "plaquette" binding showing the Triumph of Amphitrite, which was associated with bindings produced by a single workshop (or pair of workshops), the first group appearing in Lyon in the 1530s and the second in Paris, c.1545-1565, to which this binding belongs.

⁷¹¹ J. Basil Oldham, *English Blind-stamped Bindings* (Cambridge: Cambridge University Press, 1952).

replaced and the leather laid down, but there is a visible hole, with offsetting to the final leaf.

No clear evidence of Smith's ownership. The edge title (capitals with thicker or shaded ascenders) matches that of {67, Mainerius}, which does bear Smith's signature. Annotations: one or two annotations in two later hands to the Postel, which has also been striated in blind throughout; striations in blind to the *epigrammata* in the second work. No Queens' number.

MS49, f. 94v.

Cambridge libraries: No other copies.

Adams B2096.

10 Alcoran

Muhammad (b. 6th century), ed. Bibliander, Theodorus (Theodor Buchmann) (1509-1564), [et al] ... Machumetis Saracenorum principis eius'que successorum vitae, ac doctrina, ipse que Alcoran ... ([Basel, Brylinger and Oporinus, 1543]). Folio.

L.9.21. Bound in 18th-century morocco goatskin, front board detached; possibly retaining the original endpapers (watermark: initials "FH"), with impression of cords from sewing of previous binding visible to stubs at front; pastedowns are of a different, possibly later paper stock (watermark: jug with crescent visible to rear pastedown). No evidence of chain staple scar. Shelfmarks: 9-10-21.

Annotations: Thomas Smith's signature to title-page, "Thomae Smithi liber", in the early style. Smith's annotations in two hands, both to the text of the Qur'an: one in the hand which appears in Smith's law books of the 1540s, and a later hand to Paulo Giovio's description of the Siege of Rhodes in 1522 (see {94**}), probably dating from the 1550s, with a few doodles in both hands; one occurrence of an apparently later hand among Smith's annotations and appended to one of his doodles; a few marks in ink to margins, likely by a later annotator. No Queens' number.

MS49, f. 94v ("Mahomet").

Cambridge libraries: Caius (William Branthwaite, 1619), King's, Jesus, Pembroke, Peterhouse (d. 1589), Trinity (incomplete), UL.

Adams M1889.

11 Osiandri harmonia [sic] Evang[elicae]:

Osiander, Andreas (1498-1552), Harmoniae evangelicae libri IIII Graece et Latine ... (Basel, Froben and Episcopus, 1537). Folio.

M.24.13. Bound in 16th-century blindstamped calf, portcullis roll, matching {35, Meier}; the edge title appears to be in Smith's hand. Chain staple scar. MS waste used as spineguards from 15th-century missal, rubricated, initials in red and blue, with red flourishing, matching the MS waste found in Meier; these books were therefore undoubtedly purchased by Smith from the same bookseller and presumably at the same time. Shelfmarks: H.b.18; 7-10-16.

Annotations: striations in blind to preface, occasionally to text.

MS49, f. 94v.

Cambridge libraries: Emmanuel, Trinity, UL.

Adams O359 [recte 356].

12 Eusebius grae[ce]:

Eusebius Pamphilius (b. 3rd century) (et al), [Greek title:] Ekklesiastikes istorias ... Ecclesiasticae historiae ... (Paris, Estienne, 1544). Folio.

?M.12.12. Bound in 16th-century Cambridge (?) calf, centrepiece, fillets, remains of ties, identical with M.12.11(2), which contains Eusebius's *Evangelicae preparationis* and *Evangelicae demonstrationis* (Estienne, 1544-1545), both in Greek and evidently issued together; edge titles identical to {5, Erasmus}. Shelfmarks: G.a.3; 11-7-16.

No firm evidence of Smith's ownership; given the partnership with M.2.11(2), which Smith did not list in his library, this is unlikely to be his.⁷¹²

MS49, f. 90v.

Cambridge libraries: Caius (William Branthwaite, 1619), Christ's, Corpus (Matthew Parker, 1575), Emmanuel, Jesus, King's, Pembroke (two copies), Peterhouse (Andrew Perne, 1589), Sidney, St. Catherine's, St. John's (two copies), Trinity, UL.

Adams E1093.

13 Phrygionis Chronica

Phrygio, Paulus Constantinus (Paul Seidensticker or Costenzer) (1483-1543), *Chronicum regum regnorumque omnium catalogum, et perpetuum ab exordio mundi temporum, seculorumq[ue] seriem complectens ...* (Basel, Hervagius, 1534). Folio.

C.13.15. Rebound in late 16th- or early 17th-century calf, three-line fillets. Edge title visible but no Queens' number visible, possibly due to edges being sprinkled. No chain staple scar. Shelfmarks: V.b.19; 1-4-15.

Smith's signature: "Thomas Smithus", in the early style. Price note, illegible. No annotations, though there are occasional striations in blind, for example marking the foundation of Oxford.

MS49, f. 90v.

Cambridge libraries: Christ's, Corpus (Matthew Parker, 1575), Peterhouse (Andrew Perne, 1589), St. John's (John Marsh, 1579), UL.

Adams C2553.

⁷¹² For another copy at Queens' see D.9.30, formerly in the possession of John Bois (1560-1643), translator of the King James Bible and fellow of St. John's, Cambridge, annotated throughout in Greek, Latin and occasionally Hebrew and English in his exquisite, miniscule hand; Bois' copy has no evidence of chaining or earlier shelfmarks, meaning this most likely entered the library during the seventeenth century.

14 Platina

Platina, Bartolomeo (Sacchi) (1421-1481), *Opus de vitis ac gestis summorum Pontificum, ad sua usque tempora deductum ...* (Cologne, Cholinus, 1562). Folio. I.13.26. Bound in 17th-century calf, two-line fillets, spine with raised bands, fillets and cross-hatching to foot; edges stained red. Edge title, no Queens' number visible (trimmed). MS waste from two manuscripts, charter waste to front, MS waste to rear with later secretary pen trials, possibly a gloss on canon law. Shelfmarks: V.a.21; 7-7-26.

Annotations: Smith's signature, "T. Smith", possibly an earlier example of the later style, i.e. with flourishes. Later note to rear in ink, erased with pencil. Smith's notes in two different hands and isolated to a section in the middle, including notes on astrological phenomena and blank "geniture diagrams", or horoscope charts (see {18, Suetonius}).

MS49, f. 91r.

Cambridge libraries: Trinity Hall.

Adams 1420.

15 Lazius de Rep[ublica]: [sic] Romanae

Laz, Wolfgang (1514-1565), *Commentariorum Reipub[licae]. Romanae illius ...* (Basel, Oporinus, [1551]). Folio.

F.3.9. Rebound in 17th-century plain calf, three-line fillets. No chain staple scar. Printed waste: uncut waste sheets from James Maxwell, *The Golden Art, or the Right Way of Enriching* (London, Kingston for Leake, 1611; two copies ESTC) (see also {20, Blondus}) and a single sheet from a 16th-century Greek-English lexicon. Shelfmarks: B.c.5; 6-3-9.

Annotations: Smith's signature, "Thomas Smith", very much in the later style, with flourishing and in a less deliberate hand. A very small number of annotations in Smith's hand, concerning the Roman terms for the limits and boundaries of properties and territory, the Carolingian Lex Saliqua (Salic Law), and Roman baldness; striations in blind to margins; underlining throughout, but apparently in the hand of a later annotator, most likely seventeenth-century, who also annotates occasionally; evidence of other later readers. Queens' number: VI (in sequence with *De gentium aliquot migrationibus* ({25, Lazius}) and ({29, Bonfinius})).

MS49, f. 90v.

Cambridge libraries: Peterhouse (Andrew Perne, 1589), UL (two copies).

Adams 345.

16 Jovii Historia

Not in Queens'. Possibly Giovio, Paolo (1483-1552), *Historiarum sui temporis tomus primus* ... (Florence, Torrentino, 1550).⁷¹³ Folio.

MS49, f. 91r.

Cambridge libraries: Emmanuel, Peterhouse, St. Catherine's, UL.

Adams G649.

17 Jovii Elogia

Not in Queens'. Possibly Giovio, Paolo, *Elogia virorum bellica virtute illustrium veris imaginibus supposita* ... (Florence, Torrentino, 1551).⁷¹⁴ Folio.

MS49, f. 91r.

Cambridge libraries: St. John's, Peterhouse (Andrew Perne, 1589), UL.

Adams G639.

18 Suetonius

Suetonius, Gaius Tranquillus (1st century) (et al), ed. Erasmus, *Ex recognitione D.*

Erasmi Roterodami, C. Suetonius Tranquillus, Dion Cassius Nicaeus [et al] ...

(Cologne, Cervicornus, 1527).⁷¹⁵ Folio.

F.2.15. Queens' copy imperfect, wanting title-page with epistle to the reader to verso (fp. a1); Smith's signature possibly removed. Bound in 16th-century blindstamped calf by the workshop of Garrett Godfrey, the roll of griffin, wyvern, lion and "GG" initials beneath lion (Gray, Roll I),⁷¹⁶ surrounding an inner panel, made of this roll separated by a roll of diapered diamond quatrefoils (GRIV); inscription to binding: "John Spinge [or Spyngel]".⁷¹⁷ Shelfmarks: R.b.10; 6-2-17.

⁷¹³ First published by Vascosan in Paris in 1533-1534; this edition is extremely rare (one copy known); after this, no editions appeared until the 1550s when the work's popularity clearly took off (and when Smith's interest in works of modern history was more fully developed). Vascosan published a second edition in 1553, but never published the *Elogia* (see {17}); Smith almost certainly purchased these works together, so the Florence editions of Torrentino – published only one year apart – are perhaps more likely. Torrentino's *Historiarum* is also by far the most common edition of this work, though interestingly this is not reflected in Cambridge libraries, where the Vascosan editions are far better represented (Smith also owned far more books printed in Paris, including several by Vascosan); the same applies in the case of the Basel editions of the *Elogia* (see below), which are common both in Cambridge libraries and elsewhere.

⁷¹⁴ An edition appeared in Basel in 1569; see Adams G640.

⁷¹⁵ First published by Froben in 1518.

⁷¹⁶ Hereafter GRI, etc. See George J. Gray, *The Earlier Cambridge Stationers and Bookbinders and the First Cambridge Printer* (Oxford: The Bibliographical Society, 1904), pp. 28-36; for a list of Godfrey's bindings, see pp. 38-43; this is no. 42. For other

⁷¹⁷ Smith may well have purchased this book second-hand, something that can be observed with other of his books likely purchased in the 1530s (see {63, Zabarella}).

Annotations: copiously annotated in Smith's hand in the later "historical" style,⁷¹⁸ with numbers and figures noted, doodles and sketches of cities, "geniture diagrams" (see {14, Platina}), etc. Edge title in the same hand as {68, Alciatus} and {69, Zasius}. Queens' number: XXIII.
MS49, f. 91r.
Cambridge libraries: St. John's.
Adams G2924.

19 Cornelius Tacitus

Tacitus, Cornelius Publius (b. 1st century), *Historia Augusta actionum diurnaliū* ... (Basel, Froben, 1519).⁷¹⁹ Folio.

F.1.4. Bound in 16th-century blindstamped calf possibly by the workshop of John Reynes (d. 1544), central panel with "pineapple" half-stamps (not in Oldham) around saltire formed of three-line fillet roll, outer borders with floral roll (Oldham 436),⁷²⁰ rose tool at intersections of rolls (Oldham 1039), very worn; rebacked, leather laid down on new boards. Severe worming to binding and throughout. Chain staple scars, remains of clasps. Edge title largely faded and partially rewritten. MS waste from a 13th-century copy of the *Codex* of the *CJC*, glossed, flourishes in red and blue ink. Shelfmarks: R.a.11; 6-1-4.

Annotations: Signature of John Ponet, "Joannes Ponetus" with price code, "5s4d". The recto of the front blank flyleaf has a note apparently in Smith's hand ("Cornelius Tacitus"), as well as a four-line Latin inscription in Ponet's hand,⁷²¹ which is

⁷¹⁸ This is interesting given that Smith almost certainly purchased the book in the 1530s, as evidenced by the binding, which was produced by the workshop of Garrett Godfrey, who died in 1539 and whose last dated binding is 1535 (see Gray, pp. 35-36). There are twelve of Smith's books with surviving bindings by Godfrey's workshop: {18, 32, 33, 38, 50, 58-61, 77, 81* and 91**}.

⁷¹⁹ The first edition appeared in Rome in 1515, comprising only the first five books of the *Historiae*, edited by Beatus Rhenanus (1485-1547).

⁷²⁰ Oldham associated 436 (see also FL.a(4)) 'indirectly' with Reynes, noting that it frequently appeared alongside panels belonging to Reynes, but possibly before they came into his possession (Plate 28; pp. 31-32); he noted the conjunction of this roll with the same rose tool (1039) on a binding that he dated to 1523-1525 (p. 48).

⁷²¹ "Tacitus imperator Cor. Taciti viri consularis historiam de Romanis imperatoribus, non modo in o[mn]ibus bibliothecis jussit collocari, sed etiam edicto cavit, ut decies quotannis ad usum publicum transcriberetur. Textor lit[erarum]. ama[n]t[issimi]. 327"; i.e., 'the Emperor Tacitus not only ordered that the history of the Roman emperors by the consul Tacitus should be placed in all the public libraries, but also instituted by edict that it should be copied out every ten years for the public benefit.' This quotation appears in the *Officina* (Paris, Chauldière, 1520) of Johannes Ravisius Textor [Jean Tixier] (c.1470-1542), in the section *Literarum et Literatorum ... Amantissimi* (i.e. the most beloved books and writers); Ponet's reference is to the edition printed in Basel by Bartholomaeus Westhemerus in 1538. The quotation comes from the life of the emperor Tacitus, attributed to Flavius Vopiscus, one of the bogus authors appearing in the *Historia Augusta* (see {18, Suetonius}). I am very grateful to Michael Reeve for pointing out to me the origin of Textor's quotation and the edition used by Ponet.

identified by a later reader as Ponet's and is clearly not Smith's, the letter-forms matching Ponet's signature (see {92**, Geoponika} for another book shared between Ponet and Smith).⁷²² Occasional annotations to text in Smith's hand, apparently in two different programmes, one earlier, from the 1530s or early 1540s, and one later, including a sketch of the British Isles. Queens' number: XVIII.

MS49, f. 90v.

Cambridge libraries: UL.

Adams T23.

20 Blondus

Biondo, Flavio (1392-1463), *De Roma triumphante libri decem; Romae instauratae libri III; Historiarum ... Decades III ...* (Basel, Froben, 1531). Folio.

F.2.10. Rebound in 17th-century plain calf, fillets. Printed waste: at front, from late-16th-century edition of Aquinas; to rear, uncut waste sheets from James Maxwell, *The Golden Art, or the Right Way of Enriching* (London, Kingston for Leake, 1611) (see {15, Lazius}) with 17th-century note in secretary: "For Mr. Peeter Scarlett in Cambridge" (see also {28, Emilio} and {45, Nebrija}).⁷²³ Shelfmarks: B.a.20; 6-2-12. Annotations: occasional marginal notes (trimmed) in Smith's hand to the first part, in an early miniscule hand; a similar but larger, more exuberant version of this hand appears in the second part, being more characteristic of Smith's medical books of this

⁷²² Smith's and Ponet's hands are distinguishable but very similar, especially within this book; William Sherman identified the Latin inscription on the flyleaf as Smith's and not Ponet's (op. cit. Sherman (1995), p. 77). It seems possible that Ponet, who was Smith's pupil, deliberately emulated his tutor's handwriting. Ponet's hand is somewhat more exuberant, with more elaborate letter-forms than those used by Smith (see "b" and "e") and with occasional flourishes that Smith would not normally use.

⁷²³ Peter Scarlett was likely a Cambridge stationer employed by Queens'. George Gray mentions a family of Scarletts (or Skarletts) in the Cambridge book trade beginning with John Scarlett (d. 1551). A Cambridge imprint of Ramus's *Dialectics* appeared under the name of Peter Scarlett in 1640 (Queens' copy, D.18.40); Gray and William Mortlock Palmer, *Abstracts from the Wills and Testamentary Documents of Printers, Binders, and Stationers of Cambridge, from 1504 to 1699* (London: The Bibliographical Society, 1915), pp. 33 and 63. Similar manuscript notes on printed waste appear in other books in Cambridge libraries: in his *Sandars Lectures* (Cambridge University Library, 2023) David Pearson gave an example of Cambridge-printed waste (1593) on which Hugh Burwell was named as a bookseller in Cambridge. Pearson suggested this was evidence for the book being bound in Cambridge, but admitted that the reasons behind these notes remain mysterious. What is most likely is that Cambridge stationers (acting for the colleges) used independent binderies for simple jobs – which would indeed account for the simplicity of this binding and the other matching bindings in the job – and that these binders wrote down their clients' (i.e. the stationers') names on the waste. For other appearances of Scarlett's name in books at Queens' see {28, Emilio} – where his name does appear on Cambridge waste – and {45, Nebrija}, the latter also containing waste from the Greek-English lexicon found in {15, Lazius}. His initials also appear in a note in a similar hand to Queens' copy of Fabricius's *Catechismus Romanus* (Antwerp, Platin, 1583) (K.19.30), which is in what appears to be a Cambridge calf binding (initials "IM"), but without waste; instead, to the rear, there is an inscription: "PS... I will allow for this book 0.1s.8d".

period, including glosses in Greek and doodles (e.g. a fish with a person's face, as described in the text).⁷²⁴ Pencil marks in margins throughout second part, presumably later. No Queens' number visible (trimmed).

MS49, f. 91r.

Cambridge libraries: Caius (Thomas Martin, 1593), Pembroke (Lancelot Andrewes, 1589), UL.

Adams B2067.

21 Suidas graece

Not in Queens'. Probably Suda (?b. 10th-century), [Greek title:] To men paron biblion ... (Basel, Froben, 1544). Folio.

MS49, f. 93r.

Cambridge libraries: Caius, Christ's (two copies), Emmanuel, Trinity (three copies), UL.

Adams S2062.

22 Onuphrius de Imperatorib[us]

Panvinio, Onofrio (1529-1568), Romanorum principum et eorum quorum maxima in Italia imperia fuerunt libri IIII: eiusdem De comitiis imperatoriis liber ... (Basel, Petrus, 1558). Folio.

?D.9.10. Bound in late 16th-century calf, border of two-line fillets, rebacked. Printed waste: 16th-century edition of Pope Innocent, *Annotationes ... Decretaliis*. No chain staple scar. Shelfmarks: S.a.21; 4-10-10.⁷²⁵ It is possible this book was rebound and trimmed after the 1580s, which would account for the absence of a chain staple scar. No clear evidence of Smith's ownership.

MS49, f. 91r.

Cambridge libraries: Corpus (Matthew Parker, 1575), Emmanuel, Pembroke, Peterhouse (Andrew Perne, 1589), St. John's (Henry Wriothesley, 3rd Earl of Southampton, 1624),⁷²⁶ Trinity, UL.

Adams O204.

23 Cromerus de rebus Poloniae

Kromer, Marcin (1512-1589), De origine et rebus gestis Polonorum libri XXX ... (Basel, Per Joannem Oporinum ... [1555]). Folio.

G.3.17. Title-page wanting; ink offsetting from Smith's signature visible to front fly-

⁷²⁴ Compare the miniscule hand (notably for Greek glosses), clearly made in the late 1530s, in {93**, Plato}.

⁷²⁵ This book does not appear in Horne's 1827 catalogue of Queens' Library (T.H. Horne, *Catalogue of the Library of St. Margaret and St. Bernard, commonly called the Queen's [sic] College, Cambridge* (London: Queens' College, 1827).

⁷²⁶ With inscription of William Crashaw (d. 1626).

leaf. Bound in 16th-century calf with gilt arabesque centrepiece and frame of blind fillets with floriated cornerpieces, gilt. MS charter waste on vellum used as spineguards. Edge title. Chain staple scar. Shelfmarks: R.a.12; 4-8-15.

Annotations: a few instances of underlining in ink and occasional striations in blind, the latter especially to the index; one annotation in later hand to index, possibly the same hand as appears in {15, Lazius}).

MS49, f. 90v.

Cambridge libraries: Peterhouse (incomplete; Andrew Perne, 1589), UL (incomplete). Adams C2976.

24 Eusebius lat[ine]:

Not in Queens'. Possibly Eusebius, *Opera ...* (Basel, Froben, 1542).⁷²⁷ Folio.

Not in MS49.

Cambridge libraries: Caius (Nicholas Shaxton, 1556), Trinity.

Adams E1070.

25 Lazius de migrationibus

Laz, Wolfgang, *De gentium aliquot migrationibus, sedibus fixis, reliquiis, linguarumq[ue] initiis & immutationibus ac dialectis libri XII ...* (Basel, Oporinus, 1557). Folio.

G.3.3. Woodcut illustrations of ancient kings, etc. Bound in 16th-century plain calf, fillets. Chain staple scar, some restoration to boards. MS waste used as spineguards from liturgical manuscript with musical notation.⁷²⁸ Shelfmarks: 4-8-3.

Annotations: some ink annotations, largely faded; numerous striations in blind to prefatory material. Queens' number: VII (in sequence with {29, Bonfinius} and {15, Lazius}).

MS49, f. 90v.

Cambridge libraries: Peterhouse (Andrew Perne, 1589), Trinity, UL.

Adams L347.

⁷²⁷ Queens' possesses a copy of Eusebius (with the *Autores historiae ecclesiasticae*) (Basel, Froben, 1535) (I.13.25), donated in 1562 by Thomas Yale (1525/6-1577), who is the only donor listed before Smith in the Queens' Donors Book. The five books he gave to Queens' had all been inherited from Simon Heynes (d. 1552), formerly master of Queens', when Yale married his widow Joanna in the year prior to making this donation; presumably the books came to him via her, possibly with Heynes's wish that they should be given to Queens'. They are marked with a manuscript donation label, in most cases preserved behind a horn window nailed to the boards; most also bear Simon Heynes's initials and his motto ("Salus mea dominus") in gilt; the two-volume Origen (Paris, Petit, Badius and Resch, 1522) (M.12.17-18) was not listed by the compiler of the Donors' Book, presumably because it had been rebound, though Yale's donation label is preserved inside.

⁷²⁸ Any specific dating for medieval manuscript fragments is taken from Rodney M. Thomson, catalogue of manuscript fragments in Queens' books (forthcoming).

26 Albertus Crantzius

Krantz, Albert (c.1450-1517), *Chronica regnorum Aquilonarium, Daniae, Suetiae, Norvagiae* ([S.l., s.n.], 1561).⁷²⁹ Folio.

D.10.22. Bound in 16th-century plain calf over pasteboards, single fillet, holes for ties; rebaked and endpapers renewed. Chain staple scar. No earlier shelfmarks, presumably removed with original endpapers; Queens' bookplate 1700 to fp. a4v, overlaying earlier (identical?) bookplate and partially obscuring a small doodle (but not Smith's?) of a bearded man.

Annotations: numerous ink annotations in Smith's hand, in the later style characteristic of Smith's historical reading. One or two doodles are of a lower quality and may be by a later imitator (see also the doodle concealed by the bookplate).

Queens' number: XXVII.

MS49, f. 89r.

Cambridge libraries: Christ's.

Adams C2873.

27 Aventinus de rebus Boiorum

Aventinus, Johannes (Turmair, Johann Georg) (1477-1534), ed. Hieronymus Ziegler (c.1514-1562), *Annalium Boiorum libri septem ...* (Ingolstadt, Weissenhorn Brothers, 1554). Folio.

D.10.7. Queens' copy imperfect, wanting fp. t4 (woodcut portrait). Rebound in 17th- or 18th-century calf over wooden boards, edges trimmed. No chain staple scar.

Shelfmarks: R.a.9.

Annotations: Smith's signature, "Thomas Smith", very much in the later style (with flourishing). No annotations; a note in a later hand to the title-page mistakenly identifies Nicholas Cisner (1529-1583) as the editor (Cisner edited the more complete 1580 edition, published in Basel).

MS49, f. 91r.

Cambridge libraries: Caius (William Branthwaite, 1619), Christ's, Corpus (Matthew Parker, 1575), Peterhouse (wanting portrait; Andrew Perne, 1589), Sidney, UL.

Adams A2308.

28 Aemilius de gestis Francorum

Emilio, Paolo Veronensis (1455-1529), *De rebus gestis Francorum: ad Christianissimum Galliarum Regem Franciscum Valesium, eius nominis primum, libri decem ...* (Paris, Vascosan, 1550).⁷³⁰ Folio.

Cambridge libraries: Fitzwilliam Museum, Trinity, UL.

⁷²⁹ First published in Strasbourg in 1548.

⁷³⁰ First published by Vascosan in 1539, and partially by Badius Ascensius, c.1520, both in Paris.

Adams A238.

[Issued with:]

Ferron, Arnoul le Ferron (1515-1563), *De rebus gestis Gallorum libri IX. Ad historiam Pauli AemylII additi, perducta historia usque ad tempora Henrici II. Francorum Regis. Tertia editio nunc recens aucta & recognita* (Paris, Vascosan, 1554).⁷³¹

G.3.19(2). Bound in plain 17th-century calf, fillets. Printed waste: to front, two identical waste sheets, uncut, from William Perkins, *A Cloud of Faithfull Witnesses* (London, Humfrey Lownes for Leo. Greene, 1607); to rear, uncut sheets from the preliminaries of William Whitaker, *Praelectiones doctissimi viri Gulielmi Whitakeri* (Cambridge, John Legate, 1599), with note in secretary to waste at rear: “ffor mr Peeter Scarlett {N^o8⁰?}” (see {20, Blondus} and {45, Nebrija}). No chain staple scars. Shelfmarks: R.a.3; 4-8-14.

Annotations: Smith’s signature to first work: “Thomas Smith”, the later style with the characteristic flourishing running from the final “h” to form the ascender of the first “T”. Copiously annotated throughout in the later historical style, with numerous doodles and portraits, especially Ferron’s history of fifteenth- and sixteenth-century French kings. Occasional annotations in later hands, in ink and pencil. Two edge titles; Queens’ number: X.

MS49, f. 90v.

Cambridge libraries: Corpus (Matthew Parker, 1575), UL.

Adams A321.

29 Bonfinius de rebus Hungaricae

Bonfini, Antonio (1427-1502), ed. Johannes Sambucus (Janos Zsamboky) (1531-1584), *Rerum Ungaricarum decades quatuor, cum dimidia ...* (Basel, Oporinus, 1568).⁷³² Folio.

G.3.4. Bound in 16th-century blindstamped calf, double roll of classical portrait medallions, “capstans” and foliage (Oldham HM.a(6)), around blank central panel; remains of clasps. Chain staple scar to foot of rear board, with remains of staple. Shelfmarks: R.a.1; 4-8-2.

Annotations: Smith’s signature to title-page, partially excised with printer’s device, in the late style (compare {52, Rondeletius}), occasional annotations in Smith’s hand in ink, in a very late style, corresponding to the date of the book; striations in blind. The index is also marked up with striations in blind. Edge title; Queens’ number: VIII (this is the latest book at Queens’ to bear a Queens’ number; see {51 Paracelsus}).

MS49, f. 89r (“Historia Hungarica”).

⁷³¹ First published by Vascosan in 1550; first published by Jean Petit in 1549, both in Paris. It seems that this copy must have been made up from the sheets of different editions by the printer or bookseller, then ruled in red before sale.

⁷³² First published in 1543 by Robert Winter.

Cambridge libraries: Caius (William Branthwaite, 1619), UL.
Adams B2416.

30 Diodorus Siculus grae[ce]:

Not in Queens'. Possibly Diodorus Siculus (b. 1st century BC), [Greek title:] *Istorion biblia tina ta euriskomena ... Diodori Siculi Historiarum libri aliquot ...* (Basel, Oporinus and Winter, 1539).⁷³³ Quarto.

MS49, f. 90r.

Cambridge libraries: King's, Peterhouse (Andrew Perne, 1589), UL.
Adams D468.

31 Dionysius Halicarn[assus]: grae[ce]:

Not in Queens'. Possibly Dionysius Halicarnassus (b. 1st century BC), [Greek title:] *Romaikes archaiologias biblia deka; Tou autou tes retorikes technes ... Dionysii Halicarnassei antiquitatum Romanorum lib[ri]. X; De compositione (etc.)* (Paris, Stephanus, 1546).⁷³⁴ Folio.

MS49, f. 89r.

Cambridge libraries: Christ's, Emmanuel (incomplete), Jesus, Pembroke (two copies), Selwyn, St. John's College, Trinity, UL.
Adams D626.

32 Dionysius Halicarn[assus]: lat[ine]:

Dionysius Halicarnassus, *Antiquitatum sive originum Romanarum, libri X ...* (Basel, Froben [and Episcopus], 1532).⁷³⁵ Folio.

F.1.7. Queens' copy imperfect, wanting the *Chronologia*. Bound in 16th-century blindstamped calf by the workshop of Garrett Godfrey, the roll of wyverns griffins and lions with "GG" initials beneath lion (GRI), the outer border forming an inner panel of two rolls;⁷³⁶ remains of clasps. Chain staple scar to foot of rear board. MS waste used as pastedowns from a copy of the *Novellae* of the *CJC* with marginal glosses, blue and red illuminated initials. No earlier shelfmarks (rebacked).

Annotations: Smith's signature, apparently very early and possibly from the time of purchase, likely in the 1530s: "Thomas Smyth"; no decorative flourishing. Occasional annotations in Smith's hand, two programmes of annotation, one early and the other dating from the middle period. Queens' number: XXV(?).

⁷³³ A second Greek edition, published in Geneva by Henri Estienne, appeared in 1559.

⁷³⁴ This is almost certainly the edition in which Smith read the *De compositione* of Dionysius of Halicarnassus, which he quoted in his work on Greek pronunciation (*DLG*) as proof of how the ancient Greeks spoke their language.

⁷³⁵ First published in Latin in Treviso in 1480.

⁷³⁶ Gray, no. 45.

MS49, f. 91r.⁷³⁷

Cambridge libraries: Pembroke (also wanting the *Chronologia*), UL.
Adams D629.

33 Diogenes Laertius grae[ce]:

Diogenes Laertius (b. 3rd century?), [Greek title:] *Peri bion, dogmaton kai apopthegmaton ton en philosophia eudokimesanton, biblia deka, nun proton entypothenta* ... De utis, decretis, & responsis celebrium philosophorum libri decem, nunc primum excusi ... (Basel, [Froben and Episcopius], 1533). Quarto.

C.20.4. Bound in 16th-century blindstamped calf by the workshop of Garrett Godfrey, the roll of “strapwork” or “knots” between semi-circular “wheels” (GRV) and three-line fillets, forming a blank panel;⁷³⁸ rebaked, portion of spine preserved, showing impressions from cords, and with unusual hatching of short lines forming a zig-zag pattern. MS waste: two leaves used as flyleaves from the same manuscript, 13th-century English; possibly two different, unidentified texts, one discussing behaviour and the other how to address letters. Chain staple scar to rear board, which is unusual in Queens’ Library for a quarto book (see {44, Münster}). Shelfmarks: 3-14-4; Queens’ college steel-engraved bookplate, undated (18th-century?).

Annotations: No signature, but Smith’s annotations, apparently very early, i.e. contemporaneous with the book, are visible to the *proeemium*, including his elegant “manicules”, or pointing hands, and some Greek glosses in a miniscule hand (see note to {93**, Plato}). Later ownership inscription of Thomas Brodnax to front flyleaf.⁷³⁹ Bibliographical note (“editio princeps”) to title-page, inscription of Queens’ College Library to verso of title-page. Pencil notes to the Life of Diogenes (the Cynic), which has been intensively read (but likely not by Smith). Queens’ number: XXXI.

MS49, f. 92r.

Cambridge libraries: Corpus (Matthew Parker, 1575), Fitzwilliam Museum, Peterhouse (Andrew Perne, 1589), Trinity (three copies), UL.
Adams D481.

⁷³⁷ Smith also listed a copy of this work in Greek (f. 89r).

⁷³⁸ This copy not in Gray. However, Gray identified the roll as being Godfrey’s and dated it from the later period (1527-1535); he identified it on the binding of a book also at Queens’, a sammelband of Philippus Presbyter and Philonis Alexandrini (Basel, Petrus, 1527), and Irenaeus (Basel, Froben, 1534) (M.9.10(3)), which has no chain staple scar and bears notes possibly in the hand of Richard Bryan (see note to {38, Boccaccio}): Gray, no. 47.

⁷³⁹ This book presents a bit of a puzzle, given that it was chained and appears in the Donors’ Book, but also bears a later ownership inscription (most likely that of Thomas Brodnax, m. Magdalene 1615 (ADAD)), and has been treated differently from many other of Smith’s books: the presence of an 18th-century bookplate and Queens’ College inscription, and the lack of the earlier of the two systems of shelfmarks. It is therefore possible that this book came to Queens’ in Smith’s bequest, was removed from the library soon after, and eventually returned at a later date, apparently without being acknowledged as one of Smith’s books.

Bembo, Pietro (1470-1547), *Historiae Venetae libri XII* (Venice, Apud Aldi filios, 1551). Folio.

?D.10.19. Queens' copy imperfect, title-page missing, possibly with marks of ownership. Rebound in late 16th-century Cambridge blindstamped calf (Pearson 56G),⁷⁴⁰ cornerpiece fleurons around three-line fillets framing central oval arabesque stamp; edges gilt, manuscript edge title visible beneath gilding. Chain staple scar.⁷⁴¹ Shelfmarks: R.b.9; 4-9-20.

No clear evidence of Smith's ownership. Signs of reading in the form of blind striations.

MS49, f. 89v.

Cambridge libraries: Christ's, Fitzwilliam Museum, St. Catherine's, Trinity, UL. Adams B597.

⁷⁴⁰ Op. cit. Pearson (2023). The binding of this book, which was almost certainly done in Cambridge, bears the same oval centrepiece as a number of books of Continental Reformed theology almost exclusively printed in Zürich by Froschauer, which appear to have entered the Old Library in the 1580s. For the bindings of these books, see Pearson, p. 232 (56G-J). Pearson attributes 56G, which also appears on L.10.15(2) (gilt) and L.10.16 (in blind), to the workshop of the Cambridge binder John Sheres, who is recorded as operating in Cambridge between 1571-1581 (Peter Isaac, *British Book Trade Index* (Oxford: Bodleian Library, 2015)); L.9.5, a Bullinger printed in Zürich, has printed waste from Thomas Sampson's *Briefe Collection of the Churche* (London, Middleton for Bishop, 1581), which further supports the supposition that these books were all bound in the first few years of the 1580s. If this is Smith's copy of Bembo, therefore, this suggests that the book was rebound relatively shortly after it arrived in Smith's bequest (and much earlier than the group of Smith's books that were rebound in the early seventeenth century (see {15, Lazius}, {20, Blondus}, {28, Aemilius} and {45, Nebrissensis}), and may consequently have been well-used in its early days in the Library; it may also have arrived with its binding in poor condition. Another puzzle is the gilt edging to the pages, which is unusual for this period and is, moreover, incommensurate in cost with the relatively simple decoration to the boards, though it may have been more in keeping with the binding previously on the book.

⁷⁴¹ None of the books of Continental theology mentioned above bear chain staple marks, unlike the Bembo, which is puzzling, as this book was evidently re-chained after its rebinding; it is possible that the theological books avoided chaining by being almost continuously on loan after arriving at Queens'. The practice of chaining at Queens' likely stopped in the early 1580s, though books arriving through donations and bequests apparently continued to be chained until 1589, when a Plantin Polyglot Bible (1568-1573) was given by William Chaderton, Bishop of Chester (c.1540-1608), with horn windows on the bindings resembling those of Thomas Yale's donation in 1562 (see note to {24, Eusebius}). However, the book with the latest publication date in Tindall's inventory of 1580, the *Musculus In Genesim* of 1578 (L.11.16), has a Cambridge binding more in keeping with the 1580s bindings described above, and also bears no evidence of chaining (op. cit. Sargent, p. 173). The book with the latest publication date that I have found at Queens' with evidence of chaining (which did not apparently arrive by donation or bequest) is an Augustine printed in Lyon in 1580 (K.11.38), bound in a Cambridge calf binding with the royal arms of Queen Elizabeth (Pearson 57Q), the stamp very worn, edges stained blue; this possibly indicates a book bought by the college for the library with money from a royal gift or fund (see note to {41, Euclid}).

35 Meieri Analess [sic] Flandriae

Meyer, Jacques de (1491-1552), *Commentarii sive annales rerum Flandricarum libri septendecim* ... (Antwerp, Steelsius, 1561). Folio.

D.10.27. Title-page with woodcut border. Bound in 16th-century blindstamped calf, portcullis roll, matching {11, Osiander}. MS waste used as spineguards from 15th-century missal, small portion of text visible with red flourishing, clearly matching the MS waste found in Osiander; these books were therefore undoubtedly purchased by Smith from the same bookseller and presumably at the same time. Chain staple scar. Shelfmarks: S.c.21; 4-9-4.

Annotations: Smith's signature in English and Greek to title-page, in the late style, with flourishing: "Thomas Smith" and "Thomas Smitthos".⁷⁴² Two manuscript edge titles in Smith's hand. Queens' number: XXIX.

MS49, f. 89v ("Co[m]mentaria rer[um] flandriae Jacobi Beieri [sic]").

Cambridge libraries: Christ's, St. John's, UL (two copies).

Adams M1390.

36 Plutarchi vitae lat[ine]:

Not in Queens'. Possibly Plutarch (b. 1st century), *Plutarchi Cheronei Graecorum Romanorumque illustrium vitae* ... (Basel, Bebel, 1531; 1535).⁷⁴³ Folio.

MS49, f. 91r.⁷⁴⁴

Cambridge libraries: UL.

Adams 1614-1615.

Or,

(Basel, Isingrin, 1542; 1548; 1550). Folio.

Not in Adams.

Or,

(Paris, Vascosan, 1558). Folio.

Cambridge libraries: King's.

Adams P1616.

37 Volateranus [sic]

Not in Queens'. Possibly Volaterranus, Raphaelus (Raffaello Maffei) (1451-1522), *Commentariorum Urbanorum ... octa et triginta libri* ... (Basel, Froben, Herwagen

⁷⁴² Two further examples of Smith's signature in Greek can be found in his Greek copies of {93**, Plato} and {101**, Josephus}; this is the only instance of his using it in a Latin text.

⁷⁴³ First published in Latin in Leipzig in 1517.

⁷⁴⁴ Appearing as "Plutarchus vitis [sic] illustr[is]".

and Episcopus, 1530).⁷⁴⁵ Folio.⁷⁴⁶
MS49, f. 91r.
Cambridge libraries: Caius, Corpus, Trinity, UL.
Adams M102.

Or,

(Lyon, Gryphius, 1552). Folio.
Not in Adams.

38 Bocacii [sic] genealogia

Boccaccio, Giovanni (1313-1375), *Genealogie ... cum micantissimis arborum effigiationibus cuiusq[ue] gentilis dei progeniem ...* (Paris, Hornken & sociorum eius, 1511). Folio.

E.9.2. Queens' copy imperfect: woodcut showing the genealogy of the gods (fp. X) partially torn; wanting the first five leaves (title-page and ffp. vi-viii, IX).⁷⁴⁷ Bound in English blindstamped calf over pasteboards, "striped" rolls of the diapered diamond quatrefoil tool used on bindings from the workshop of Garrett Godfrey (GRIV): two rolls within outer border, with blank spaces in between (see also {50, Dioscorides}).⁷⁴⁸ Chain staple scar to foot of rear board. Some doodling and pen trials to boards, mostly hatched squares; later ownership inscription of Queens' College to front board. Originally three different kinds of waste: MS pastedowns removed (possibly with earlier shelfmark) but offsetting visible to leather turn-ins; printed waste from pasteboards visible: at front, from Erasmus, *Supputationis errorum in censuris natalis Bedae* (Basel, Froben, 1527); to rear, from 16th-century ed. of Saint Ambrose. Shelfmarks: 1-2-27.

Annotations: No clear evidence of Smith's ownership. There is a page of early notes in Latin to the verso of the last leaf of text in a crabbed secretary hand, some of it apparently in verse, with a later misogynistic inscription erased ("Mulieri non credas", etc.). This leaf has been trimmed, so it is quite possible that Smith bought this book second-hand, with these notes by an earlier owner already present, and then had it bound at Godfrey's workshop, or that the book was sold in this state by Godfrey. Some underlining and manuscript additions to text. Bibliographical notes including note of date to colophon, possibly by Richard Bryan; notes in this hand appear in other of Smith's books.⁷⁴⁹ The chain staple scar and similarities with Smith's

⁷⁴⁵ They also published editions in 1544 and 1559, the latter without Herwagen.

⁷⁴⁶ First published in 1506 in Rome by Besicken. Paris editions appeared in 1511, 1515, 1518 and 1526 (Jean Petit and Badius Ascensius); Smith did own at least one book from Paris printed around this time (see {79, Sextus}).

⁷⁴⁷ Complete foliation: title-page, ff. vi-viii, ff. IX-CLXII.

⁷⁴⁸ This copy not in Gray; he identified the similar use of this role "alone" on {50, Dioscorides}.

⁷⁴⁹ Richard Bryan, d. 1680, of Leicester (see inscription to F.18.23) was Vice-President of Queens'. He does not have an entry in the Donors' Book but there are dozens of books in the Library with his inscription, dated 1671, so he may have donated them in this year. Many are 16th-century books with extensive use by earlier Tudor owners, which may once have been

Dioscorides would seem to confirm this as Smith's copy. No Queens' number.
MS49, f. 90v.
Cambridge libraries: Trinity Hall, UL.
Adams B2172.

39 Zieglerus de terra sancta

Ziegler, Jacob (1470/71-1549) and Wissenberg, Wolfgang (1496-1575), *Terrae sanctae, quam Palaestinam nominant, Syriae, Arabiae, Aegypti & Schondiae doctissima descriptio, una cum singulis tabulis earundem regionum topographicis ...* (Strasbourg, Rihelius, 1536). Folio.

?D.1.27. Queens' copy imperfect, wanting quires t-v and A-C of the second part, which includes the engraved maps. Bound in 16th-century English blindstamped calf over wooden boards with floral and arabesque roll, distinctive spirals like rams' horns (not in Oldham), three different patterns of hatching within small panels to head and foot of spine; remains of clasps; rebacked. MS waste preserved as spine-guards, fragment of manuscript with rubrication. Chain staple scar. Shelfmarks: R.c.18; 4-1-27; 4-3-23 (added with paste label).

No clear signs of Smith's ownership, besides a heavily faded edge title (quires shaken) and what appears to be a Queens' number, though now completely illegible; one instance of ink underlining and an annotation in a later hand, to fp. i3r.

MS49, f. 92r.

Cambridge libraries: Corpus (Matthew Parker, 1575), Peterhouse (Andrew Perne, 1589), Trinity, UL.
Adams Z154.

40 Whitechindi Historia

Widukind of Corvey (b. 10th century), *Rerum ab Henrico et Ottone I Imp[eratorum]. gestarum libri III ...* (Basel, Hervagius, 1532). Folio.

D.10.13. Bound in 16th-century English blindstamped calf over wooden boards, roll with Tudor, possibly Henrician heraldry of crowns, portcullises, roses, pomegranates(?), greyhounds and wyverns (HE.h(1)) around a central panel of diapered sunburst "cruciform" tools, four sprays of foliage with quatrefoil at centre (Oldham C.(4)), remains of clasps; rebacked, endpapers renewed. Chain staple scar. No earlier shelfmarks, possibly removed with original endpapers.

Annotations: see ffp. B3v-B5r for Smith's hand annotating on customs in the Byzantine court; numerous striations in blind throughout, covering the theology of Christ's death and the Eucharist, heresies (including the Hussites), anti-Popes, etc. Two different edge titles. Queens' number: XXII.

Bryan's own second-hand student textbooks. He also seems to have been responsible for a number of inscriptions in earlier books in the Library's collections, usually noting the date of the author's death.

MS49, f. 91r (“Witichindi, Luitprandi, Aeneae silvii et alior[um]”).
 Cambridge libraries: Emmanuel, Peterhouse (Andrew Perne, 1589), Trinity, UL (two copies).
 Adams W215.

41 Euclides et Varro

Euclid (b. c. 4th century BC) and Campanus of Novara (b. 13th century), comm.,
 Elementorum geometricorum libri XV ... (Basel, Hervagius, 1546).⁷⁵⁰ Folio.

MS49, f. 92r (“Euclides Elementa geometrica”).⁷⁵¹

Cambridge libraries: King’s, St. John’s, UL.

Adams E975.

Bound with:

Cato, Marcus Portius (b. 3rd century BC), Varro, Marcus Terentius (b. 2nd century BC), Columella, Lucius Junius Moderatus (b. 1st century) and Palladius, Rutilius Taurus Aemilianus (b. c. 5th century), Libri de re rustica ... (Paris, Petit, [colophon: Augereau and Galiot du Pré, 1533]).⁷⁵²

D.1.10(2). Bound in 16th-century English blindstamped calf (possibly Cambridge, by the workshop of Thomas Thomas),⁷⁵³ identical in the rolls and in decoration with {52, Rondelet} (see especially the elaborate filleting to panels and along hinges), central panel and outer border formed of double rolls with classical portrait medallions between panels of foliage (Oldham HM.g(2)); remains of clasps; rebaked, endpapers renewed. Chain staple scar. It appears these books were bound together after 1576:

⁷⁵⁰ First printed in Latin in Venice by Erhard Ratdolt in 1482. An earlier edition by Hervagius had appeared in 1537; he also printed the first edition in Greek in 1533.

⁷⁵¹ Not in Smith’s 1566 inventory, where he lists several books by Euclid: “Euclides, et Archimedes” (f. 75r), “Euclides {2 vol} [added in paler ink]” (f. 75v), and “Liber X[us] Euclidis”, which is duplicated in the scribal additions. Smith also lists a Greek Euclid in his 1566 list in MS83 (f. 151r).

⁷⁵² This collection was first printed in Venice by Nicolaus Jenson in 1472.

⁷⁵³ J.C.T. Oates attributed this roll to Thomas Thomas (according to Oldham); Oldham recorded it on a binding of 1577 (op. cit., pp. 53 and 57), which would at least suit Thomas’s dates, who was University Printer from 1583-1588, having inherited a printing business through his wife. Evidence of Thomas’s activities in the 1580s can be found in Queens’ a copy of the *Historiae ecclesiasticae scriptores Graeci* (Cologne, Birckmann, 1581) (I.12.5), which is bound with the arms of William Cecil: this binding contains two identical waste sheets of a single quire (ffp. A1-4), uncut, possibly a trial or proof sheet, from an apparently unpublished Pliny printed by Thomas Thomas in Cambridge in 1583 (title-page with imprint visible), so his workshop may also have been responsible for the binding. If Smith’s Euclid is, therefore, in a 1580s Thomas binding, this would show that Queens’ was rebinding Smith’s books almost immediately after his bequest (see also {34, Bembo}). There are several books at Queens’ bound with Cecil’s arms, as there are around Cambridge colleges, including one of Smith’s books now at Trinity Hall ({98**, Augustín}; see also note to {72, Tiraquellus}). It is most likely that these bindings were paid for out of a common fund given by Cecil to the colleges for the purchase of books; cf. Pamela Selwyn, “An Armorial Binding of William Cecil, 1st Baron Burghley” in William Marx, ed., *The Founders’ Library, University of Wales, Lampeter: Bibliographical and Contextual Studies* (Lampeter: Trivium, 1997), pp. 65-77. Many thanks to David Pearson for this reference.

Smith's library inventory for that year notes separate copies of the *De re rustica* and Euclid's *Elements*, so it is most likely that these two volumes were bound after arriving at Queens', possibly in the 1580s, and as part of the same binding job as {52, Rondelet}. Edge titles, not in Smith's hand and certainly added after the binding and trimming. Shelfmarks: A.b.13; 4-1-10.

Annotations: Signature to first work: "Syr Thomas Smith" (note the orthographical spelling with accented "y"; see also {52, Rondelet}), with extremely elaborate flourishing; signature to second work, also in the exuberant later style, with large flourishes. Smith has clearly annotated a small portion of his Euclid, just one or two pages, in two different inks and slightly different hands, but very much in his later hand; the second ink is lighter and has bled and faded badly; there are also compass scars (i.e. marks left by mathematical compasses) to the text and other signs of use, which may be later. The second work, *De re rustica* by Columella, et al, is copiously annotated by Smith (trimmed during rebinding), apparently in two different programmes, one apparently somewhat earlier (matching the style and content of Smith's annotations to {87**, Cardano}, which are dated 1555), the other very much in Smith's later hand: there is a dated astrological annotation giving the equinox for 1567, with astrological symbols for planets (see also {92**, Geoponika}). Richard Bryan has added the date of publication to the title-page of the second work (see {38, Boccaccio}). No Queens' number (see trimming).

MS49, f. 93r.

Cambridge libraries: King's, UL (Adams S811).

Adams S810.

42 Gebri Astronomia⁷⁵⁴

Apian, Peter (1495-1552), Folium populi. Instrumentum ... (Ingolstadt, [s.n.], 1533). Folio.

Cambridge libraries: Fitzwilliam Museum, Trinity, Whipple Library.

Adams A1289.

Bound with:

Horoscopion ... generale diagnoscendis horis cuiuscumque generis aptissimum ...

Cambridge libraries: UL.

Adams A1290.

And:

Introductio geographica ...

Cambridge libraries: Peterhouse (Andrew Perne, 1589), UL.

Adams A1294.

And:

Apian and Geber [Jabir ibn Aflah] (b. 12th century), trans. Gherardo da Cremona (b.

⁷⁵⁴ It is striking that the compiler of the Donors' Book chose Geber as the author for this entry, as opposed to Apian, especially given that this work comes last in the volume; possibly the more ancient author was preferable.

12th century), *Instrumentum primi mobilis ... [et] Libri IX. de astronomia ...* (Nuremberg, Petreius, 1534).

D.1.22(4). Woodcut title-pages to first, second and fourth works; Queens' copy of third work imperfect, wanting title-page (fp. A1r); woodcut diagrams and tables throughout, coats of arms. Bound in 16th-century English calf, portrait medallion roll with "capstans" bearing three faces and by winged cherub heads (Oldham HM.a(17)), forming two inner panels; rebaked, endpapers renewed; remains of clasps. Chain staple scar. No earlier shelfmarks.

Annotations: Smith's annotations to fp. B1r of second work, on how the "unequal" planetary calendar of the Babylonians was succeeded by the Jewish division of days and nights into lunar hours of twelve equal parts: "Horae planetarum, horae Judaeorum". There is also a sketch of a dial to fp. D2r, but this may not be Smith's. Bibliographical note to title-page of first work in a later hand. Queens' number: XXXX (?).

MS49, f. 93v.⁷⁵⁵

Cambridge libraries: Peterhouse (Andrew Perne, 1589), UL. Adams A1292.

43 Aesopus grae & lat:

Aesop (b. c. 7th century BC), *Habentur hoc volumine haec, videlicet. Vita, & Fabellae ... cum interpretatione latina: ita tamen ut separari a graeco possit pro uniuscuiusq[ue] arbitrio ...* (Venice, Aldus, 1505).⁷⁵⁶ Small folio.

C.4.23. Bound in 16th-century calf, very worn, central diapered panel of "pineapple" diamond stamps and half-stamps with fillets, within a border formed of a "half-wheel" roll, to which alternating small stamps of fleurs-de-lys and sunbursts have been added at regular intervals; rose stamps to corner of panel at intersection of rolls (none of these tools appear in Oldham). No apparent chain staple scar, possible signs of chaining to head of rear board (obscured by new endpapers), but unlikely.⁷⁵⁷ No earlier shelfmarks.

Annotations: Smith's signature to title-page in the restrained, early humanist hand, "Thomas Smythi liber"; to rear free flyleaf (early watermark with hand and quatrefoil visible), in a different hand, also apparently very early. "Thomas Smyth"; price note

⁷⁵⁵ In the 1566 inventory this appears as "Appianus. et Astronomia Gebri" (f. 75r); the other works do not appear individually, so Smith must have had these works bound as a *sammelband* prior to 1566.

⁷⁵⁶ The first appearance of any printed text in Greek was the c.1480 edition of Aesop's *Vita et Fabulae*, published in Milan by Bonus Accursius; the first Latin edition had appeared c.1465-1470. This was one of the only texts printed by Aldus with the text in parallel Latin and Greek, indicating its popularity as a schoolbook.

⁷⁵⁷ It is possible that this book was so useful as a text for students of Greek that it was loaned out upon arrival in the *electione* and remained so almost continuously, which would explain the apparent lack of a chain staple scar. However, Smith's Aesop is not listed in his inventory of 1576, and so it is possible that it reached Queens' sometime after his bequest (see {33, Diogenes}).

to title-page, “praeciu[m] 2s2d”. Marginal glosses in Greek and extraordinarily miniscule interlinear Latin glosses, in a very early hand of Smith’s (see {93**, Plato}). Bibliographical note, possibly by Richard Bryan (see note to {38, Boccaccio}) to title-page (date and place of publication; see also {41, Euclid}), who has also presumably underlined the date in the colophon; this later annotator has also underlined *Ori Apollinis Niliaci hieroglyphica*, and on p. 143 he has transcribed the title of the *Proverbs of Tarrhai and Didymus* from Greek into Latin. One of either Smith or the later annotator has provided paginations on the title-page for the sections in pure Greek (Curnutus, *De natura deorum*: “On the muses”; “On heaven”; “On Athena”), which are also the sections Smith has annotated. Edge title. Queens’ number: IX (?).

MS49, f. 76v (1566 inventory).⁷⁵⁸

Cambridge libraries: Emmanuel, St. John’s, Trinity, UL (two copies, one with Greek only).

Adams A278.

44 Münsterus de horologiis.

Münster, Sebastian (1488-1552), *Horologiographia, post priorem aeditionem ...* (Basel, Petrus, [1533]). Quarto.

D.20.39. Woodcut diagrams and depictions of the constellations. Bound in 16th-century calf over paste-paper boards, central arabesque, panel of fillets with floriated cornerpieces. Boards with compass scars. MS waste from a pocket manuscript in two columns, possibly of canon law. Chain staple scar; this is the smallest book that I have found with evidence of chaining at Queens’. Shelfmarks: A.d.6; 2-8-42; 4-1-34.

Annotations: Smith’s signature to title-page, “Thomas Smithus”, apparently in the later style, though unadorned, and to fp. A1r, in the same hand and with flourishing; price note to title-page, smudged: “iiis4d(?)”. Final “O” of first line of title with face added; the woodcut showing a dial to the title-page has been embellished with a flag; this also occurs at p. 58; occasional annotations in ink. Pen trials and scarring to inner boards, astrological symbols added in ink to rear inner board. No edge title or Queens’ number visible.

MS49, f. 93v.

Cambridge libraries: Corpus, Fitzwilliam Museum, UL.⁷⁵⁹

Adams M1918.

45 Nebrissensis historia Hisp[ania]:

Nebrija, Antonio de (1444-1522), trans., *Habes in hoc volumine amice lector ... Luis Correa* (b. 15th century?) and *Hernando de Pulgar* (1436-c.1492), *Rerum a Fernando et Elisabe Hispaniaru[m] foelicissimis Regibus gestar[um]* *Decades duas ... Alonso*

⁷⁵⁸ Not listed in Smith’s 1576 inventory; MS83, f. 150r.

⁷⁵⁹ All listed in Adams under another issue (A1919).

de Cartagena (1384-1456) and Jiménez de Rada, *Necno[n] belli Navariensis libros duos ...* Joan Margarit i Pau (b. c.1424), *Chronica, aliisq[ue] historiis antehac non excussis ...* (Granada, [s.n.], 1545). Folio.

?G.4.2. Bound in 17th-century calf, fillets. Printed waste: pastedowns from 16th-century Greek lexicon, flyleaves from uncut preliminary sheets of James Maxwell, *The Golden Art, or the Right Way of Enriching* (London, Kingston for Leake, 1611) (see {15, Lazius} and {20, Blondus}), with inscription, “For Mr. Peeter Scarlett in Cambridge” (see {20, Blondus} and {28, Emilio}). Shelfmarks: R.a.2.

No clear evidence of Smith’s ownership, but the note to Scarlett does place this book in a group of four books (the other three clearly having belonged to Smith, for which see Lazius, Blondus and Emilio) that were bound as part of the same job in the first few decades of the 17th century, possibly due to excessive use and consequent damage to their bindings; however, its inclusion in this binding job might, of course, be pure chance. No Queens’ number.

MS49, f. 90v.

Cambridge libraries: Peterhouse (Andrew Perne, 1589),⁷⁶⁰ UL (two copies).

Adams N134.

46 Agricola de re metallica

Agricola, Georgius (1494-1555), *De re metallica libri XII ...* (Basel, Froben and Episcopus, 1561). Folio.

?D.1.3. Woodcut illustrations throughout of mining and metallurgical processes. Bound in late 16th or early 17th-century calf, fillets; printed waste used as flyleaves from a 16th-century edition of Ambrogio Calepino’s *Dictionarium*. No chain staple scar. Shelfmarks: A.a.18; 4-1-3.

Annotations: No annotations in Smith’s hand; annotations in the hand of John St. George (c.1544-1642), especially to pp. 184-194, who donated a number of mathematical books in 1637 when he was already over ninety years old, and who had been beloved of mathematics as a student (according to his Donors’ Book entry (f. 9r)). Pen trials to verso of final leaf and to waste at rear, including an eccentric drawing of a sheep(?), very redolent of those found in other of St. George’s books.⁷⁶¹ MS49, f. 93r.

Cambridge libraries: Corpus (Matthew Parker, 1575), Fitzwilliam Museum, Pembroke (Lancelot Andrewes, 1589), Peterhouse, Trinity (Thomas Whalley, 1637),

⁷⁶⁰ Listed in Adams as a variant issue (N135); Adams was unaware of the Queens’ copy.

⁷⁶¹ There are two issues with simply declaring this book part of St. George’s donation. Firstly, most of St. George’s books bear an “ex dono” inscription (not in his hand), whereas this does not; on the other hand, the Agricola comes in an appended section of three books which were added later to St. George’s donation, another of which bears several ink ownership inscriptions, but no donation inscription. Secondly, and more mysteriously, in St. George’s entry the Agricola appears to be designated as “2 vol.” (I cannot find any such two-volume edition).

UL.

Adams A350.

47 Aetius de re medica

Aetius of Amida (b. 5th century), Libri XVI, in tres tomos divisi ... (Basel, Froben, 1533-1535). Folio.

F.9.28. Three parts issued and bound as one, with divisional title-pages. Rebound in 18th-century yellow mottled paper over paste-boards, over half calf, spine with red morocco label, gilt. Edges stained green. No earlier shelfmarks.

Annotations: Smith's signature to title-page of first work, "Thomas Smithus"; and to rear of third work, "Thomas Smythus" (to printer's device) and "Tomas [sic] Smyth" (to colophon). The signatures differ slightly, the first "T" of the signature to the front having an unusual lateral mark halfway up the ascender, and no small descenders on the crossbar; the "S" is also entirely unembellished; these would therefore appear to be early signatures, probably contemporary with the date of the book, though with an accentuated use of ligatures not seen in some other early signatures. Price note, "pretium vii^s vi^d", crossed through. Smith's annotations throughout (trimmed) in two different hands, one apparently quite early and characteristic of his earlier style of annotation, and the other quite late, similar to the annotations in {41, Columella}, {87**, Cardano} and {92**, Geoponika}, which can be dated to the mid-1550s. MS49, f. 91v.⁷⁶²

Cambridge libraries: Caius (Thomas Wendy, 1560).

Adams A304.

48 Ruellius de stirpibus

Ruel, Jean (1474-1537), De natura stirpium libri tres ... (Basel, Froben, 1537).⁷⁶³ Folio.

C.5.15. Bound in early 17th-century pale panelled calf, acorn cornerpieces, deep three-line fillets; edges sprinkled red. No chain staple scar. Shelfmarks: C.a.19; 6-9-16.

Annotations: Smith's signature, "Thomas Smithus", in the earlier style, without flourishing and very much in the hand associated with Smith's medical books of this period; however, for the changeability of Smith's signature, compare {47, Aetius}, which is very similar in style but with more angular letter-forms and more accentuated ligatures.⁷⁶⁴ Smith's annotations throughout, apparently in two separate programmes: one in a hand very like the signature in this volume, and another in a hand more like the signature in his Aetius; there are also some annotations in a rough

⁷⁶² Smith seems to have initially missed both this book and {48, Ruellius}), appending them to his inventory in a smaller hand in the middle of the running order.

⁷⁶³ First published in Paris in 1536.

⁷⁶⁴ See also Smith's numeral pen trials to the cover of his commonplace book, MS49, which has pen trials for signatures in secretary, Latin italic (in a variety of Smith's hands) and Greek; as well as his titles of "Knyght" and "Ambassadeur".

secretary that may not be Smith's.

MS49, f. 91v.

Cambridge libraries: St. Catherine's (John Hatcher(?), 1586), Trinity, UL.

Adams R873.

49 Dioscorides grae: & lat:

Dioscorides, Pedanius (b. 1st century), trans. Marcellus Vergilius (Marcello Adriani) (1498-1521), [Greek title:] *Peri hyles iatrikes*. Biblia 5 ... De medica materia libri V ... Barbaro, Ermolao (1454-1493), In Dioscoridem libri quinque ... (Cologne, Soterus, 1529-1530).⁷⁶⁵ Folio.

F.9.29. Bound in 16th-century calf with panel of large rose tools and two separate triangular floriated half-stamps (not in Oldham) arranged in diapered pattern, fillets, within floral roll (Oldham FL.a(1)). Chain staple scar. Shelfmarks: 6-10-28 (binding waste removed, possibly with earlier shelfmarks).

Annotations: No signature, though the doodle of a plant to the fore-edge below the title is very like the drawing found on the edge title of {78, Durandus}; price note, possibly in Smith's hand, "pr[etium]. 6s8d". There are a few annotations in a miniscule and refined iteration of Smith's early hand; for a direct comparator see Smith's annotations to the first part of {20, Blondus}. Queens' number: III.

MS49, f. 91v.

Cambridge libraries: Emmanuel, UL.

Adams D655.

50 Dioscorides & Nicander grae[ce]:

Dioscorides, Pedanius, Pseudo-Dioscorides (dates unknown) and Nicander (b. 2nd century BC?), [Greek title:] *Peri hyles iatrikes* ... *Eti peri iobolon* ... *Theriaka meta scholion*. Tou autou *Alexipharmaka* ... (Venice, Aldus, 1499).⁷⁶⁶ Folio.

F.10.15. Bound in early 16th-century English blindstamped calf by the workshop of Garrett Godfrey,⁷⁶⁷ bearing the same roll as {38, Boccaccio}, on which it is also used alone, of small diapered quatrefoil diamonds (GRIV); impressions of cords to spine; remains of ties. MS waste: two complete leaves used as pastedowns from a 13th-century English copy of a work on logic; there is a note in an apparently early hand (not Smith's) noting a connection with St. Bernard's Hostel in Cambridge: "... datu[m] die dedicatio[n]is ~~die~~ pro scribendo pro Collegio statuta bernardi Hospitii ... [illegible, perhaps a name?]"⁷⁶⁸ This book is likely evidence, therefore, of the system

⁷⁶⁵ First printed in Latin in Colle di Val d'Elsa by Johannes de Medemblick in 1478; the first Greek printing was that of Aldus in 1499 (see {50, Dioscorides}).

⁷⁶⁶ The scholia to the *Alexipharmaca* are missing, though not called for; they are not mentioned in the title so were likely printed afterwards and inserted in some copies.

⁷⁶⁷ Gray, no. 3.

⁷⁶⁸ 'Given on the day of dedication according to the statutes [lit. 'for that which must be written for the statutes'] of [St.] Bernard's Hospital, etc.' St. Bernard's Hostel was

of *electione* by which fellows were able to take books annually from college libraries in return for a small deposit; the Greek Dioscorides is exactly the kind of text that would have been popular. Chain staple scar. Shelfmarks: C.b.17 (with “14” crossed through and replaced); 6-9-17.

Annotations: Smith’s signature, in the very early style, “Thomae Smythi”. Interlinear Latin and Greek glosses to the first book of *Peri Hyles Iatrikes*, clearly in Smith’s miniscule and refined early hand (see also {43, Aesop} and {93**, Plato}). Doodles to binding (as in the case of {38, Boccaccio}) of an old bearded man and a young scholar in a hat, with these bearing a closer resemblance to Smith’s characteristic portraits; Greek inscription to binding, “elelisphakos”, i.e. sage, which a previous owner (Smith?) has presumably glossed from Dioscorides’ text. Some underlining to the *Theriaka* and *Pharmaca*, the folios of which have also been numbered (by Smith?; see {43, Aesop}). Queens’ number: IIII.

MS49, f. 73v (1566 inventory).⁷⁶⁹

Cambridge libraries: Caius (Thomas Wendy, 1560), Emmanuel.

Plaistowe 21.⁷⁷⁰

51 Paracelsi Chirurgia

Paracelsus [Theophrastus von Hoffenheim] (c.1493-1541), trans. Josquin Dalhemius (dates unknown), *Chirurgia Magna, in duos tomos digesta ...* (Strasbourg [fake imprint, really Basel], [s.n., but Pietro Perna], 1573). Folio.

MS49, f. 91v.

Cambridge libraries: Peterhouse (Andrew Perne, 1589), Sidney.

Adams P267.

Bound with:

Paracelsus, trans. Gerhard Dorn (c.1530-1584), *Chirurgia minor, quam alias Bertheoneam intitulavit ...*

F.10.20(2). Queens’ copy wanting final blank quire. Bound in 16th-century (Cambridge?) blindstamped calf, central oval cartouche with six-pointed star within frame of fillets and floriated cornerpieces. MS waste visible as spineguard to rear, apparently from a pocket manuscript of Albertus Magnus, *Priorum Analyticorum* (text of 2.1.6), with minute interlinear gloss. Chain staple scar to foot of front board (unusually for Queens’). Edge title. Shelfmarks: C.a.21; 6-9-22.

Annotations: Smith’s signature to first work, “Thomas Smithus”, below which is added in rough secretary, possibly not Smith’s, “Prometheus”; naturally in the later style (i.e. embellished with flourishes), given the date of publication, this being the

amalgamated into Queens’ at its foundation in 1448, and was bequeathed to the college by Andrew Dockett in 1484; it remained under Queens’ ownership as a kind of private hall or lodgings for students until 1534, when it was sold to Corpus Christi College.

⁷⁶⁹ Not in Smith’s 1576 inventory; MS83, f. 147v. Note that Smith included this book with Philosophy rather than Medicine.

⁷⁷⁰ F.G. Plaistowe, *Early Printed Books to the Year 1500 in the Library of Queen’s [sic] College, Cambridge* (Cambridge: Cambridge University Press, 1910).

latest of Smith's books at Queens'. Occasional annotations in Smith's hand to the first work, including astrological symbols noted in the margins. Blind striations and some underlining to the *Chirurgia minor*. No Queens' number; the latest book with a Queens' number is {29, Bonfinius} (1568).

MS49, f. 91v.

Cambridge libraries: Peterhouse (Andrew Perne, 1589), Sidney.

Adams P267.⁷⁷¹

52 Rondeletius de piscibus

Rondelet, Guillaume (1507-1566), Libri de piscibus marinis, in quibus verae piscium effigies expressae sunt ... [Issued with:] Universae aquatilis historiae pars altera, cum veris ipsorum imaginibus ... (Lyon, Bonhomme, 1554[-55]). Folio.

F.9.27. Woodcut illustrations of fish and insects throughout. Bound in 16th-century blindstamped calf (possibly Cambridge, by the workshop of Thomas Thomas), identical in the rolls and in decoration with {45, Euclides} (see especially the elaborate filleting to panels and along hinges), central panel and outer border formed of double rolls with classical portrait medallions between panels of foliage (Oldham HM.g(2)); remains of clasps. Printed waste from an early 16th-century copy of Ambrose's commentary on St. Paul's Epistles, Book 10. Chain staple scar.

Shelfmarks: C.c.9; 6-20-26).

Annotations: Smith's signature, "Thomas Smith", in the later style, i.e. with highly exuberant flourishing and elegant, angular letter forms (see also {14, Platina}); similar signature to second work, this time with the typical descenders on the crossbar of the "T"; price note, very faded and illegible. Smith's annotations throughout, in a somewhat unusual hand but apparently from the later period, primarily philological, i.e. concerning the names of fish, but also augmenting the woodcut illustrations when he felt they insufficiently conveyed what was described in the text; a few annotations in a later hand. No Queens' number. The fact that the annotations are trimmed might suggest that the binding was done almost immediately after the book arrived at Queens', a supposition supported by the binding, which possibly dates from the late 1570s or early 1580s; see note on Thomas Thomas to {45, Euclides}).

MS49, f. 93r.

Cambridge libraries: Caius, Clare, Emmanuel, Peterhouse (Andrew Perne, 1589),

School of Anatomy, UL.⁷⁷²

Adams R7476.

⁷⁷¹ These works were evidently, in most cases, issued together, since Adams treated them as a single book; it is therefore puzzling that Smith listed them separately.

⁷⁷² Queens' copy unknown to Adams.

53 Digestum vetus⁷⁷³

Justinian I (b. 5th century), commissioner, Digest[um]. vetus digestorum seu pandectarum juris civilis tomus primus ... (Lyon, Hugues de la Porte, 1539). Large folio.

M.2.11. Rebound in 18th-century calf, endpapers renewed. No earlier shelfmarks; undated steel-engraved Queens' bookplate (18th-century?) (occurs in all vols). Annotations: Smith's signature, "Thomas Smithus", in the earlier style. Corrections to the page numbers recorded in the index in Smith's hand. Copiously annotated throughout, slightly trimmed. Blank verso of final leaf with notes of references to the text and to specific laws, in a much scrappier hand (but still Smith's). Edge title, number visible but most likely a volume number.

MS49, f. 99r.⁷⁷⁴

Cambridge libraries: No other copies.

Adams J556.

54 Infortiatum

Justinian I, Infortiatum. quinquaginta librorum digestorum seu pandectarum juris civilis tomus secundus ... (Lyon, Hugues de la Porte, [1539]).

M.2.12. Bound in 16th-century blindstamped calf, inner frame of portrait medallion roll (Oldham HM.g(2)) within outer frame made up of broad floriated roll (Oldham IN.(9)) between narrow roll with trefoils, fillets, bust cornerpieces showing indigenous Americans(?) (Pearson 57EE), possibly by the workshop of Thomas Thomas, Cambridge stationer (see also {41, Euclid} and {52, Rondeletius}); rebaked, endpapers renewed. Offsetting of text from manuscript waste is visible to the outer boards, so the binding would appear to have been wrapped in vellum waste for protection at some point (see also {5, Erasmus}). Chain staple scar.

Annotations: Copiously annotated throughout in Smith's hand, very much in the same fashion as the first volume of the *Digest* ({54}). In the *Infortiatum* Smith is really getting into the business of property law, wills and inheritance. Two notes or legal references to blank verso of final leaf. Edge title, number visible but most likely a volume number.

MS49, f. 99r.

Cambridge libraries: No other copies.

Adams J557.

⁷⁷³ The following five entries {53-57} form a single edition of the *CJC*, most likely printed and issued separately due to the time involved in producing them; the compiler of the 1631 list treated them as separate works.

⁷⁷⁴ The following nine entries {53-61}, along with {63, Zabarella} ("Car[dina]lis"), also appear in sequence (though not in this exact order) in Smith's 1576 inventory,

55 Digestum novum

Justinian I, Digest[um]. novum: tomus tertius juris civilis, quod vulgo [sic] digestum novum appellant ... (Lyon, Hugues de la Porte, [1539]).

M.2.13. Rebound in 18th-century calf, endpapers renewed.

Annotations: Smith's signature to title-page, "Thomas Smithus", with flourishing embellished with dots, and to fp. 1r, "T. Smithus", with flourishing, which could mean that Smith was using this style from at least the 1540s, though he may have signed the books later. Copiously annotated throughout in Smith's hand, once again in the same fashion as the earlier parts of the *Digest*, above. This volume is predominantly concerned with contracts and changes to land and properties, occurring both through building works and through natural disasters such as flooding, in which Smith is very interested. Smith also resumes his interest in language, notably with regard to the forms in which contracts are conveyed (through letters, etc.). Smith is also wrestling here with the interrelation and opposition of natural law (*jus natura* or *jus gentium*) and civil law (*jus civilis*). Page of notes to blank verso of final leaf, mostly legal citations on inheritance. What appears to be a Queens' number is, in this case, the volume number ("III" above Arabic "3").

MS49, f. 99r.

Cambridge libraries: No other copies.

Adams J558.

56 Codex

Justinian I, Codex: codicis domini Justiniani sacratissimi principis. Libri novem cum vetustis exemplaribus, tum scriptis, tum impressis diligenter collati, & in antiquam elegantiam sermonis[ue] munditiem, propulsatis errorum nebulis, renovati ... (Lyon, Hugues de la Porte, [1540]).

M.2.14. Rebound in 18th-century calf, endpapers renewed.

Annotations: No signature. Annotated throughout in Smith's hand, following the fashion of the three volumes of the *Digest* ({53-55}). Edge title, volume number visible.

MS49, f. 99r.

Cambridge libraries: No other copies.

Adams J506.

57 Volumen

Justinian I, Volumen: imperatoris Justiniani volumen, ut peculiari vocabulo nuncupant, totius juris civilis velut colophon ac complementum, ad doctorum virorum annotationes, antiquorumque codicum collationem diligenter castigatum ... (Lyon, Hugues de la Porte, [1540]).

M.2.15. Rebound in 18th-century calf, endpapers renewed.

Annotations: No signature. Annotated throughout in Smith's hand, following the

fashion of the four volumes above. Edge title with volume number.

MS49, f. 99r.

Cambridge libraries: No other copies.

Adams J672.

58 Baldus Perusinus 4 vol:

Baldus de Ubaldis (1327-1400), *De summa trinitate et fide catholico ... De rebus credi; De servis fugitivus; De justicia et jure; Si certum petatur ... Solutio matrimonio ...* ([Lyon, Jean Siber, 1497-1498]). Large folio, 4 vols.

G.11.7-10. Bound in 16th-century blindstamped calf over wooden boards by the workshop of John Reynes (d. 1544), central panel with diapered pattern of floriated diamond stamps (Oldham 438), within border of the roll of eagles, bees, dogs, flowers and thistles, a smaller version of the roll used on {70, Oldendorp}, and without initials (Oldham 433), fillets; impressions of cords to spines, as on bindings by the workshop of Garrett Godfrey; remains of clasps; vol. 1 rebacked, endpapers renewed; vols 2 and 3 with front boards detached; vols 2-4 with original plain paper pastedowns, large watermark (hand and star). Chain staple scars. Shelfmarks: D.c.7-10; 8-3-17-20.⁷⁷⁵

Annotations: Smith's annotations in the second, third and fourth volumes, very much in Smith's refined "legal" hand of the 1540s. Edge titles. Queens' numbers: VII-X (though not following the current arrangement of volumes).⁷⁷⁶

MS49, f. 99r.

Cambridge libraries: No other copies.

Plaistowe 26-27.

59 Cinus

Cino da Pistoia (1270-1336/37), *Lectura domini ... super aureo volumine Codicis ...* ([Lyon] ... Impensis Vince[n]tii de Portonaris ... 1517).⁷⁷⁷ Large folio.

G.11.3. Title-page and divisional title with woodcuts, titles printed in red. Bound in 16th-century English blindstamped calf by the workshop of Garrett Godfrey, central panel of alternating rolls, the roll of wyverns, griffins and lions, with initials "GG" beneath lion (GRI) and the roll of diapered quatrefoils within diamonds (GRIV), within border formed of first roll.⁷⁷⁸ MS waste: two bifolia used as pastedowns from an Italian canon law manuscript, the *Liber Sextus*, written in a gothic hand. Chain

⁷⁷⁵ As is the case with Smith's sets at Queens' (see {62, Bertachinus}, {69, Zasius} and {78, Durand}), the earlier shelfmarks do not correspond to the current arrangement of volumes; in this case, the third and fourth volumes were switched in both earlier arrangements.

⁷⁷⁶ As with the earlier shelfmarks, the sequence does not reflect the current shelving, but is even more confused here, running (by volume number) III, IV, II, I.

⁷⁷⁷ For many of the earlier legal books I have transcribed the imprints directly from the colophons.

⁷⁷⁸ This copy not in Gray.

staple scar. Shelfmarks: D.c.1; 8-3-11.

Annotations: Occasional annotations by Smith in the refined “legal” hand of the 1540s, as in {58, Baldus} and his copies of the *CJC* ({53-57}). Queens’ number: VI. MS49, f. 99r.

Cambridge libraries: Caius (Thomas Legge, 1607).

Adams C2031.

60 Tabulae Praepositi

Sangiorgio, Gianantonio da (1439/42-1509), *Tabula prepositi super quarto decretalium ... Commentaria utilissima prepositi super quarto decret[alium] ...* (Trino, Impensis domini Joannis de Ferrariis al[iu]s de Jolitis ... 1515). Large folio. G.11.6. Queens’ copy wants final blank leaf. Bound in 16th-century English blindstamped calf by the workshop of Garrett Godfrey,⁷⁷⁹ with a central penal made up of two alternating rolls, the quatrefoil diamond roll (GRIV) and the roll with fleur-de-lys, pomegranates, castles and roses, all crowned (GRII) (see also {77, Decisiones}), within a frame formed from the roll of wyverns, griffins and lions, initials “GG” beneath lion (GRI), fillets; impressions of cords to spine; one clasp preserved. MS waste: single leaves used as pastedowns from a 15th-century copy of a theological *summa*, red paraphs, marginal gloss. Chain staple scar. Shelfmarks: D.c.2; 8-3-12.

Annotations: Smith’s signature, “Tho. Smithus”. No annotations in Smith’s hand; there are one or two earlier marginal nota, which are comparable with other books in Cambridge bindings that Smith most likely purchased on the second-hand market. Decorative edge title: distinctive pattern of large capitals and smaller, abbreviated capitals within, continuous with {61, Archidiaconus}, {63, Zabarella} and {77, Decisiones}; Smith seems to have misattributed the *Tabula* to Baldus Ubaldus (“Perusinus”). Queens’ number: XII (in sequence with Archidiaconus). MS49, f. 99r.

Cambridge libraries: No other copies.

Adams Z14.⁷⁸⁰

61 Archidiaconus

Bayso, Guido de (d. 1313), *Super decreto[rum]. volumine cu[m] additionibus noviter additis ...* (Milan, Op[er]a industria [et] impe[n]dio Jo[hanni]. Jacobi [et] fratri[m] de Lignano ... 1508). Large folio.

G.11.5. Bound in 16th-century English blindstamped calf by the workshop of Garrett Godfrey, the roll of small diapered quatrefoil diamonds (GRIV) around a central panel of large, diamond-shaped “pineapple” stamps in a diapered pattern (Gray Stamp

⁷⁷⁹ Ditto.

⁷⁸⁰ Adams attributes this work to Francesco Zabarella (see {63}).

I);⁷⁸¹ remains of clasps. MS waste bifolia used as pastedowns, from a 13th-century copy of the Gregory IX's *Decretals*, I.43; large blue initials with red flourishing, smaller initials to text; marginal gloss in a later hand. Chain staple scar. Shelfmarks: D.c.3; 8-3-12.

Annotations: Signature, "Thomas Smithus", very much in the early style. Early marginal *notae* (i.e. marks or symbols) and dry striations throughout, though no annotations in Smith's hand; large crayon marks to ffp. 380-381. It is quite likely that these are in the hand of an earlier owner of the volume, and indeed bear some similarity to *notae* found in {62, Bertachinus}. Bibliographical notes in the hand of Richard Bryan(?) to title-page, probably his underlining to colophon on the authorship of the commentary (by Nicolaus Superantius). Decorative edge title: distinctive pattern of large capitals and smaller, abbreviated capitals within, continuous with {60, Tabulae}, {63, Zabarella} and {77, Decisiones}. Queens' number XI.

MS49, f. 99r.

Cambridge libraries: Trinity Hall (William Mouse, 1588).⁷⁸²

Adams B403.⁷⁸³

62 Repertorium Bertachini

Bertachini, Giovanni (1448-1497), Repertorii ... prima pars: cum multis additio[n]ibus atq[ue] de[n]nario versiculor[um] numero ad castigata[rum] remissio[n]u[m] faciliore[m] in vento[n]e[m] noviter impressa; Secunda pars; Tertia pars ... (Venice, Per Georgiu[m] ex clara Arrivabeno[rum] familia ... 1500[-01]).

Large folio, 3 vols.

H.3.11-13. Queens' copy imperfect, wanting blank leaf in first vol. and fp. NN6 in second vol. Titles printed in red. Bound in 16th-century calf by the workshop of the so-called "Half-Stamp Binder", central panel of diamond "pineapple" stamps (formed of triangular half-stamps) forming diapered pattern with fillets, within borders made up of "rolls" of the same half-stamps, around which the stamps are arranged at regular intervals (Oldham nos 306-7); all vols rebaked, leather re-laid over wooden boards (remains of clasps visible), endpapers renewed. Chain staple scars; on the first volume the boards seem to have been put back on the wrong way round, with the chain staple scar at the head of the front board. No earlier shelfmarks.

Annotations: Signature to colophon of first vol., "T. Smithus", in the early style (i.e. completely unembellished, bar the distinctive added ascenders on the crossbar of the "T"). No annotations in Smith's hand; numerous ink *notae* and marginal striations in blind throughout, with occasional notes in a rough secretary hand; Smith almost certainly bought this book second-hand, as was apparently the case with his copies of

⁷⁸¹ Gray, no. 9.

⁷⁸² For two of Smith's books later owned by Mouse and now in Trinity Hall, see {98**, Agustín} and {99**, Faber}.

⁷⁸³ Queens' copy unknown to Adams.

the {60, Tabulae}, {63, Zabarella} {81*, Avicenna}. Queens' numbers: IIII-VI.⁷⁸⁴
 MS49, f. 96r.
 Cambridge libraries: No other copies.
 Adams B795.

63 Zabarella super clementin:

Zabarella, Francesco (1360-1417), *Super Clementinis ...* ([Lyon], Impressa per Nicolaum de Benedictis & Jacobinu[m] Suigum de Sanctogermano ... 1498). Folio.
 Cambridge libraries: Peterhouse (William Burgoyne, 1529).
 Plaistowe 6.⁷⁸⁵

Bound with:

Andrea, Giovanni d' (c.1275-1348), *Quaestiones mercuriales super regulis juris ...* (Venice, Bernardinum Stagnin de Tridino de Montefferrato [Trino], 1499).
 G.11.4(2). Bound in 16th-century blindstamped calf by the workshop of the so-called "Heavy Binder", who Oldham dated to 1485-1505.⁷⁸⁶ pattern of single stamps ("IHSMARIA") and fleur-de-lys (Oldham 93-94)), both very worn, at intervals within fillet borders, around central panel of double-headed eagle stamps (Oldham 92) in diapered pattern; fillets. Chain staple scar. Shelfmark: D.c.12; 8-3-21.
 Annotations: Smith's signature to title-page of first work, "Tho. Smithus", in the early style. Apparently no annotations in Smith's hand. Early inscription of "William[us] Rede" in secretary to colophon of second work, and inserted letter-by-letter into blank spaces of printer's device at end of first work.⁷⁸⁷ Notes in secretary, manicules with distinctive trefoil sleeves, *notae* and flourishes to margins; Rede is interested in a wide array of legal concepts including homicide, parity of contracts, tithes, etc. Early Latin inscription in ink to boards, mostly illegible. Decorative edge title in the distinctive pattern of large capitals enclosing smaller capitals (see also {60, Tabulae}, {61, Archidiaconus} and {77, Decisiones}), apparently written over an earlier title (Rede's?). Queens' number: XIII.
 MS49, f. 99r ("Car[dina]lis sup[er] Clementinas").

⁷⁸⁴ As is the case with {58, Baldus}, {69, Zasius} and {78, Durand}, the numbering to the fore-edge does not correspond to the current arrangement of the volumes (there are no earlier shelfmarks to compare with).

⁷⁸⁵ Plaistowe gives the place of printing as Venice.

⁷⁸⁶ Op. cit. Oldham, p. 18.

⁷⁸⁷ William Rede (or Reed) (b. 1479) was a student of law, taking his BCL and being licensed to practice canon law; from 1505 he was a priest (*ACAD*). It would appear that Smith purchased an extremely closely-linked group of law books in the 1530s, either directly from Garrett Godfrey's shop, or second-hand, subsequently having them bound by Godfrey's workshop: {59, Cinus}, {60, Tabulae}, {61, Archidiaconus}, and {63, Zabarella}; to these might be added {81*, Avicenna}, not a legal work, which also bears the name of an earlier owner. All the legal works have similar edge titles and earlier annotations, and all are rare in Cambridge collections. Smith appears to have annotated only {59, Cinus} and {81*, Avicenna} out of these books.

Cambridge libraries: No other copies.
Plaistowe 10.⁷⁸⁸

64 Codex Theodosii

Not in Queens'. Possibly Theodosius II and Valentinian III (b. 5th century), *Codicis Theodosiani libri XVI. quibus sunt ipsorum principum auctoritate adjectae novellae* (Basel, Petrus, 1528). Folio.⁷⁸⁹

MS49, f. 96r.

Cambridge libraries: Pembroke (Lancelot Andrewes, 1589), Sidney (William Say, 1615), Trinity, Trinity Hall, UL.

Adams T541.

65 Institutiones graece

Justinian I, commissioner, and Theophilus Antecessor (b. 6th century), ed. Viglius Zuichemus (Wigle Ayta van Zwichem) (1507-1577), [Greek title:] *Institouta Theophilou Antikensoros ... Institutiones juris civilis in Graecam linguam ... Viglius, Commentaria ... in decem titulos Institutionum juris civilis ...* (Basel, Froben, 1534).⁷⁹⁰ Folio.

Cambridge libraries: King's, Trinity, UL.

Adams J621.

Bound with:

Galen, Claudius (b. 1st century), *De anatomicis administrationibus libri novem ...* (Basel, Cratander, 1531).⁷⁹¹

H.2.20(2). Bound in 16th-century blindstamped calf, the roll of "strapwork" and foliage (Oldham SW.b(3)), border forming central panel of two rolls; see also {9, Postellus}, {67, Mainerius} and {92**, Geoponika}. MS waste pastedowns removed (offsetting visible to pasteboards). Chain staple scar. Shelfmarks: E.c.14; 8-2-23. Annotations: No signature. The first work copiously annotated in Smith's hand throughout in his "legal" hand of the 1540s. The second is annotated in Greek and Latin in a very refined and early hand, comparable with {20, Blondus} and {49, Dioscorides}; there are several doodles of body parts. Edge title in Greek for the first work, no mention of Galen. Queens' number: XXXI.

MS49, f. 96r ("Institouta").⁷⁹²

⁷⁸⁸ Plaistowe gives the place of printing as Venice.

⁷⁸⁹ French editions appeared in 1550 (Paris, Guillard) and 1566 (Lyon, Rouillius).

⁷⁹⁰ A Paris edition printed by Wechel appeared in the same year.

⁷⁹¹ The first edition of Galen's works in Latin appeared in 1490, published in Venice by Filippo Pinzi; the first Greek edition of the works was printed (also in Venice) by Aldus Manutius in 1525.

⁷⁹² The second work is not listed in Smith's inventories, which suggests these works were bound together when they arrived at Queens'. The 1566 inventory contains five works by Galen, with two works listed simply as "Galenus" (ff. 73v and 76r), while the 1576 list contains only four works by Galen (including one "Opera galeni" (f. 91v)). It is therefore

Cambridge libraries: No other copies.
Not in Adams.⁷⁹³

66 Connamus [sic, i.e. Connanus] 2 vol:

Connan, François de (1508-1551), *Ac supplicum libellorum ... commentariorum juris civilis*, tomus prior, V libros complectens; Tomus posterior ... (Paris, Vascosan, 1553). Folio, 2 vols.

H.1.12-13. Bound in 16th-century blindstamped panelled dark calf (Cambridge?) over pasteboards, centrepieces and the double use of cornerpieces, each formed from a single tool, reversed, at the corners.⁷⁹⁴ Medieval MS waste used as spine-guards to first volume from a 14th-century Psalter, red and blue initials with flourishing. Chain staple scar. Shelfmarks: D.c.13-14; 8-1-11-12.

Annotations: Smith's signature, "T: Smith", in the later style (with flourishing). Delicately annotated throughout in an attractive hand, unlike the display hand of the law books of the 1540s, probably contemporary with the date of publication. Edge title. Queens' number: XV (or XX?).

MS49, f. 96r ("Compend[ium]. Juris Civilis vo. 2").

Cambridge libraries: No other copies.
Adams C2513.

67 Mainerii Regulae

Maynerius, Gulielmus (b. c.1500?), *Commentaria in titulum pandectarum de regulis juris ...* (Lyon, Vincentius, 1545). Folio.

H.2.14. Queens' copy wanting fp. ee6 (presumably final blank). Bound in 16th-century blindstamped calf, rebacked, the roll of "strapwork" and foliage (Oldham SW.b(3)), border around blind panel; see {9, Postellus}, {65, Institutiones} and {92**, Geoponika}. Intriguingly, there is a faint impression to the central blind panel of the boards, misaligned, of two adjacent rolls of the "serpent and bud" pattern (Oldham FP.b(2)), with a portion of the fillet border visible, apparently matching the configuration found on either {69, Zasius} or {78, Durand}; it would seem that one of these volumes was therefore pressed onto the Maynerius at some point during their use by Smith. Medieval MS waste: front fly-leaf, a complete leaf from a 13th-century canon law commentary, red and blue initials with penwork decoration; a leaf from the same manuscript has apparently been removed from the rear, since offsetting from the initials is visible to the printed waste on the pasteboards; printed waste from a 16th-century edition of a civil law commentary. Chain staple scar. No earlier shelfmarks (blank flyleaves may have been removed during rebinding).

possible that one of these works by Galen listed in 1566 is the work in question, which was later bound with the Theophilus and subsequently omitted.

⁷⁹³ Adams notes only the 1551 Lyon ed. (G78).

⁷⁹⁴ For the centrepiece see David Pearson, *English Bookbinding Styles* (New Castle, DE: Oak Knoll Press, 2014), p. 127 (Fig. 5.9).

No signature or annotations. The distinctive edge title (massive capitals with thick or “shaded” ascenders) is in the same style as {9, Postellus}. Queens’ number: XXV.
MS49, f. 96r.
Cambridge libraries: Caius (Thomas Legge, 1607).
Adams M944.

68 Alciatus 2 vol:⁷⁹⁵

Alciato, Andrea (1492-1550), *Paradoxorum ad pratum, libri sex* (Lyon, Gryphius, 1537).⁷⁹⁶ Folio.

Cambridge libraries: No other copies.

Adams A624.

Bound with:

De verborum significatione, libri quatuor (1537).⁷⁹⁷

Cambridge libraries: No other copies.

Adams A592.

And:

In digestorum, sive pandectarum lib[ri]. XII (1538).

Cambridge libraries: No other copies.

Adams A617.⁷⁹⁸

And:

Ad rescripta Principum commentarii ... De summa trinitate. sacrosanct[um]. eccl[esi]am. edendo (etc.) ... De quinque pedum praescript[ione]. (1537).

Cambridge libraries: Peterhouse (Andrew Perne, 1589).

Adams A584.

And:

[Greek title:] *Parergon ... juris libri tres ...* (1538).⁷⁹⁹

H.1.19(5). Bound in 16th-century blindstamped dark calf over wooden boards, the “snake and bud” roll with a panel depicting a serpent within a tree, alternating with panels of horseshoes and floriated designs (Oldham FP.b(2); see also {69, Zasius}, {75, Ars Notariatus} and {78, Durandus}), forming a central diapered panel within outer border; remains of clasps. Chain staple scar with remains of staple. Shelfmarks: D.c.20; 8-2-19.

Annotations: Smith’s signature, dated, “Thomas Smithus 1542” (see {69, Zasius}).

Smith’s annotations in ink throughout. Edge title (for the same style see {18,

Suetonius} and {69, Zasius}). Queens’ number: XXXII.

⁷⁹⁵ The Donors’ Book entry is most likely referring to this volume of Alciatus, though this is confused by the reference to “2 vol.”. It is possible that the library possessed a second volume of Alciatus, which is now lost, since Smith noted several in his inventory.

⁷⁹⁶ First published in Milan in 1518; a Basel edition printed by Cratander appeared in 1523.

⁷⁹⁷ First published by Gryphius in 1530.

⁷⁹⁸ Adams incorrectly gives the date as 1527.

⁷⁹⁹ A Basel edition published by Froben and Hervagius appeared in the same year.

MS49, f. 96r.⁸⁰⁰

Cambridge libraries: No other copies.

Adams A626.

69 Zasii consilia 4 vol: [sic]⁸⁰¹

Zasius, Ulrich (1461-1536), In tit[ulo]. [Digestum] si certum petatur, lectura (Basel, Isingrin, 1539). Folio, 5 vols.

Cambridge libraries: Trinity Hall.⁸⁰²

Adams Z92.

Bound with:

In sequentes digestorum titulos lecturae: Nempe De iurejurando (etc.) (1540).

Cambridge libraries: Jesus, Trinity Hall (William Mouse, 1588).⁸⁰³

Adams Z95.

And:

Singularia responsa, sive, Intellectus juris singularis, insigni accessione locupletati (1541).

Cambridge libraries: Trinity Hall, UL.

Adams Z101.

And:

In usus feudorum epitome, ordine et utilitate commendabilis (1538).

Cambridge libraries: No other copies.

Not in Adams.⁸⁰⁴

And:

In tit[ulo]. de verb[is]. obligationib[us]. lectura (1540).

Cambridge libraries: Trinity Hall.

Adams Z91.

And:

Habet hic tomus ... sequentium e[x] digestis titulorum lecturas. De exceptionib[us] (etc.) (1541).

Cambridge libraries: Jesus, Trinity Hall.

Adams Z96.

And:

In tit[ulo]. Institutionum de actionibus enarratio (Bebel and Isingrin, 1536).

⁸⁰⁰ These works were almost certainly bound together by Smith. In the 1576 inventory this entry is simply "Alciatus", likely to be the "Alciati opera" that also appears in the 1566 inventory (f. 71r). However, there are also appearances of: "Silva nup[tiae]. et Parerga Alciati" (f. 96v) and "Alciat[i] de verb[um] sig[nificatione]" (f. 99r); these were most likely other editions.

⁸⁰¹ The work is clearly in five volumes in matching 16th-century bindings, so the description of this work in "4 vol:" is a rather surprising error; possibly one volume was in use, on loan, or misplaced.

⁸⁰² In all cases the Queens' copy was unknown to Adams.

⁸⁰³ See {98**, Agustín} and {99**, Faber}.

⁸⁰⁴ Adams notes the 1535 Bebel edition (Z97).

Cambridge libraries: Trinity Hall.

Not in Adams.⁸⁰⁵

And:

Responsorum juris sive Consiliorum ... liber primus[-secundus] ... (Isingrin, 1538-[1539]).

H.2.7-11. Bound in 16th-century blindstamped dark calf over wooden boards, the “snake and bud” roll (Oldham FP.b(2); see {66, Alciatus}, {75, Ars Notariatus} and {78, Durandus}), central panel of three rolls within outer border (see {67, Mainerii}), fillets; remains of clasps. All vols rebaked, mostly preserving original spines.

Medieval MS waste in vols 1-4 (pastedowns removed from vol. 5 during rebinding): vol. 1 from a Bible commentary, rubricated; vols 2 and 3 with pastedowns from a 13th-century copy of Gratian, blue and red initials; vol. 4 from a glossed copy of the *Institutiones* of the *CJC*. Chain staple scars. Shelfmarks: vols 1-4: D.c.16-19; 8-2-18 [recte 8]-11 (vol. 5 with endpapers renewed, presumably also removing any MS waste).

Annotations: Smith’s signature, dated, to vol. 4, “Thomas Smithus, 1542” (see {68, Alciatus}). It is curious that Smith chose to sign and date only this volume given that he does not appear to have annotated it, though perhaps he intended to; Smith’s annotations appear throughout vols 1-2 only. Edge titles in the same hand as {18, Suetonius} and {66, Alciatus}; error to title of first vol., erased. Queens’ numbers: XIX-XXIII.⁸⁰⁶

MS49, f. 99r.

Cambridge libraries: Trinity Hall.

Adams Z103.⁸⁰⁷

70 *Variae lectiones*

Oldendorp, Johann (c.1486-1567), *Variarum lectionum libri ad juris civilis interpretationem* (etc.) ... (Cologne, Gymnicus, 1540). Folio.

H.2.15. Bound in 16th-century blindstamped calf by the workshop of John Reynes (d. 1544), the roll of eagles, bees, dogs, flowers and thistles, and initials “JR” (Oldham 432; see {58, Baldus}), central panel made of single roll within outer border, fillets; rebaked, endpapers and MS waste removed. Chain staple scar. No earlier shelfmarks, possibly removed during rebaking.

Annotations: Smith’s signature to title-page, large and decorative with black outline letters filled in with red crayon, “Thomas Smithus”. Occasional annotations throughout, including notes and manicules in red crayon. Edge title. Queens’ number: XXVI.

MS49, f. 99v.

⁸⁰⁵ Adams notes another issue, c.1542 (Z87).

⁸⁰⁶ As with other of Smith’s sets (see {58, Baldus}, {62, Bertachinus} and {78, Durand}), the arrangement of the volumes has changed since these numbers were applied.

⁸⁰⁷ The second part is not listed in Adams.

Cambridge libraries: No other copies.
Adams O142.

71 Omphalius

Omphal, Jakob (1500-1567), *De officio et potestate principis in republica bene ac sancte gerenda, libri duo ...* (Basel, Oporinus, 1550). Folio.

Cambridge libraries: UL.

Adams O177.

Bound with:

De usurpatione legum, & eorum studiis, qui jurisprudentiae professionem sibi sumunt, libri octo ...

H.2.12(2). Printer's device excised from title-page of first work. Bound in 16th-century blindstamped calf over wooden boards, rebaked, two different rolls of different sizes joined around blank panel, the smaller roll made up of panels of foliage (Oldham FP.a(3)), the larger roll of "vases" and foliage with initials "NE" (Oldham RC.b(4)). Fragment of medieval MS waste used as spineguard to rear. Chain staple scar, remains of chain staple present. Shelfmarks: E.c.{?}; 8-2-13.

Annotations: Apparently no annotations in Smith's hand; one or two marginal marks in ink and one or two striations in blind. "An excellent booke" scratched into leather of front board. Secretary inscription to final leaf, erased. Two edge titles; Queens' number: XXVII.

MS49, f. 99r ("Omphalius de usurp[artione]. legu[m].").

Cambridge libraries: Peterhouse (Andrew Perne, 1589), UL (two copies).

Adams O178.

72 Tiraquellus

Tiraqueau, André (1488-1558), *Commentarii, de utroque retractu & municipali & conventionali, ex integris in Pictonum consuetudines commentariis ...* (Paris, Petit, 1543). Folio.

H.1.14. Bound in 16th-century blindstamped calf over wooden boards, very worn, roll of portrait medallions between acorns and floral decoration (Oldham HM.h(28)), contiguous with outer floral roll (Oldham FL.a(1)), forming central panel with arabesque tools to centre and corners; corners of outer fillet border bisected by fillets; rebaked, endpapers renewed. Medieval MS waste used as pastedowns from a manuscript of civil law commentary in Anglo-French gothic hand, red and blue paraphs. No earlier shelfmarks, possibly lost during rebacking.

Annotations: Smith's signature, "Thomas Smithus", in the earlier style, without flourishing or embellishment besides the exaggerated flourish on the capital "S"; almost certainly contemporary with the book's price note, partially erased:

"p[re]ciu[m] vi^s x^d(?)". Note in Smith's hand (apparently in a later hand, i.e. 1550s?) to title-page: "Smith. in bordes". This note refers to the binding of the book and was most likely a note to the bookseller or binder to put it into "boards", i.e. the binding of

leather over wooden boards in which it appears now (as opposed to parchment wrappers, for instance; see {94, Augustín}, which contains a similar note in Smith's hand requesting such a binding). Apparently no annotations in Smith's hand. Edge title in French: "Retraicte linagier". Queens' number: XVIII.

MS49, f.99r ("Retraict linaiger" [sic]).⁸⁰⁸

Cambridge libraries: No other copies.

Adams T741.

73 De maleficiis

Not in Queens'. Possibly Gambiglioni, Angelo de (c.1400-1461),⁸⁰⁹ *De maleficiis: repertorium primi voluminis Maleficiorum in quo continentur Tractatus clarissimi (etc.) ...* (Lyon, Giunta, 1526).⁸¹⁰ Folio.

MS49, f. 96r.

Cambridge libraries: UL (Giunta eds: 1542 and 1555).⁸¹¹

Adams G196.

74 Bellonus

Belloni, Niccolo (d. 1552), *Repetitiones et tractatus ... jura civilia primo loco interpretantis in celeberrima Dolana Academia in Burgundia: nunc primum in lucem edita ...* (Basel, Oporinus, 1544). Folio.

Cambridge libraries: No other copies.

Adams B536.

Bound with:

Cantiuncula, Claudius (Claude Chansonet or Chansonnette (i.e. "little song")) (c.1490-1549), *Paraphrasis in lib[ro]. I. Institutionum Justiniani imperatoris* (Haguenau, Secerianus, 1533). Folio.

Cambridge libraries: No other copies.

Adams B556.

And:

Cantiuncula, *Paraphrasis in secundum librum institutionum imperialum Justiniani imperatoris* (Haguenau, Brubachius, [1534]).

⁸⁰⁸ Clearly copied directly (and incorrectly) from the fore-edge title; this term might inaccurately refer to a collection of works on lineage and kinship, since Tiraqueau also wrote on this subject.

⁸⁰⁹ Sometimes given as 1400-1485.

⁸¹⁰ Numerous incunable editions were published, the first being Rome, Schenbecher(?) (Printer of the "Mercuriales Quaestiones"), 1472; Giunta evidently cornered the market, publishing further editions in 1530, 1532, 1542, 1544 and 1550, after which other editions appeared in Lyon and elsewhere, including Venice. It is possible that the *De maleficiis* refers to a work of the same name by Alberto Gandino (1250-1310), though this was nowhere nearly as popular as Gambiglioni's work.

⁸¹¹ Cambridge UL also possesses an edition published in Venice by Dominicus Lilius, 1558-1560.

Cambridge libraries: No other copies.

Adams B557.

And:

Cantiuncula, Paraphrasis in tertium librum institutionum Justiniani imperatoris ... (Nuremberg, Petreius, 1538).

H.2.19(4). Bound in 16th-century blindstamped dark calf, rebaked, small roll of “capstans” (Oldham RP.a(2)) around blank panel; see also {83*, Gobler}. Chain staple scar. Shelfmarks: E.c.19; 8-2-24.⁸¹²

Annotations: Smith’s signature to second and fourth works, “Thomas Smithus”, in the earlier style and markedly similar to {72, Tiraquellus}. Smith’s annotations appear throughout, but chiefly in the second, third and fourth works, i.e. Cantiuncula’s paraphrase on the three books of the *Institutiones* of the CJC, of which Queens’ possesses Smith’s copy in Greek ({65, Institutiones}). Note to rear in the later 17th-century “law annotator’s” hand, a later hand that appears in several of Smith’s books; see also {61, Archidiaconus} and {76, Processus Juris}). Queens’ number: XXXIII. MS49, f. 96r.

Cambridge libraries: No other copies.

Adams B559.

75 Ars notoriatus [sic]

Anon., Artis notariatus, hoc est, De officio exercitioque tabellionum tomi duo ... (Frankfurt, Egenolphus, 1539). Folio.

Cambridge libraries: Trinity Hall, UL.

Adams A2027.

Bound with:

Cantiuncula, Topica ... (Basel, [Cratander, 1520]).

H.2.25(2). Title-page with wood-engraved border depicting the Gallic Hercules, chains of eloquence linking his mouth to those of the people. Bound in 16th-century blindstamped calf, the “snake and bud” roll (Oldham FP.b(2)); see also {68, Alcibus}, {69, Zasius} and {78, Durandus}), border with double roll at head and foot around central blind panel formed of fillets; repairs to rear board, rebaked, endpapers renewed, but vellum spineguards preserved. Chain staple scar. Shelfmarks: E.c.20; 8-5-2.

Annotations: Occasional annotations in ink in Smith’s “legal” hand of the 1540s, mostly to second work. Later bibliographical notes to title-page, which appear in other of Smith’s legal books (e.g. {61, Archidiaconus}), possibly in the hand of Richard Bryan.⁸¹³ Queens’ number: XXXVIII. MS49, f. 96r.

⁸¹² On most Queens’ books there is a small diamond paper label pasted to the fore-edge of one board of the binding, bearing the final number of the later shelfmark system (therefore dating from the later seventeenth century); in this case it has fallen off and been pasted to one of the inner pages (fp. G2r).

⁸¹³ See note to {38, Boccaccio}.

Cambridge libraries: No other copies.
Adams B563.

76 Processus Juris

Auerbach (or Aurbach), Johannes (b. 14th century) and Johann von Eberhausen (b. 15th century), *Processus juris ... una cum lectura expositionibusq[ue] peritissimi ...* (Leipzig, Wolfgang [Stöckel] Monacensem, [1512]). Folio.

H.1.16. Bound in 16th-century blindstamped calf over wooden boards, diapered pattern of triangular half-stamps and full diamond stamps of floral design with four acorns and fleurs-de-lys at tips (Oldham D.1) within frame of quatrefoil roll (Oldham DI.a(6));⁸¹⁴ rebacked. Chain staple scar, remains of staple present. Shelfmarks: earlier shelfmarks missing due to rebacking, though offsetting from one earlier shelfmark partially visible.

Annotations: Smith's signature (apparently the later style, with flourishing visible) obscured by Queens' Library bookplate (1700). Occasional annotations in Smith's hand, some of which are in secretary. Inscription to title-page in a later hand, apparently matching the occasional notes in the text, possibly that of Richard Bryan (see also {75, *Ars Notariatus*}).⁸¹⁵ Queens' number: XXVIII.

MS49, f. 96r.

Cambridge libraries: No other copies.
Adams A2246.

77 Decisiones Rotae⁸¹⁶

Anon., *Decisiones rote nove & antique: cum additionibus casibus dubiis & regulis cancellarie apostolice. Diligentissime emendate* (Lyon, Gueynard, 1515). Quarto.
H.5.13. Title-page with woodcut border, central woodcut and woodcut initial, printed in red and black. Bound in 16th-century pale blindstamped calf by the workshop of Garrett Godfrey, the roll of wyverns, griffins and lions, with initials "GG" beneath lions (GRI), surrounding a central panel formed of triple use of the roll of crowned pomegranates, castles and fleurs-de-lys, with "GG" appearing above the castle (GRIII); single small octagonal lion stamps, four to the blank spaces formed by the outer roll, with two at each clasp (remains of clasp present) and two at the spine (GS2).⁸¹⁷ Medieval MS waste used as pastedowns from a Biblical concordance, capitals in red and blue. Chain staple scar. This binding is in exceptional condition and clearly the book has rarely been used. Shelfmarks: E.c.24; 8-5-6.

Annotations: Smith's signature, "Tho. Smith[us]", apparently very early. No

⁸¹⁴ Oldham dated a binding with this conjunction of ornaments to 1502-1516 (p. 44).

⁸¹⁵ For Richard Bryan see note to {38, Boccaccio}.

⁸¹⁶ A pencil note in late nineteenth- or early twentieth-century hand in the Donors' Book has added the shelfmark to this entry, with the note "with [Smith's] signature"; there are also pencil ticks applied to many entries, but it is unclear what these signify.

⁸¹⁷ Gray, no. 20.

annotations in Smith's hand; some underlining and one marginal mark. One user has erased the word "Papa" (i.e. Pope) from *Papa mandavit* (etc.) and supplied another word (illegible). Edge title using the large capitals interspersed with smaller abbreviated capitals (see {60, Tabulae Praepositi}, {61, Archidiaconus} and {63, Zabarella}). Queens' number: XXXV.

Not in MS49.⁸¹⁸

Cambridge libraries: No other copies.

Adams R730.

78 Speculum Durandi 3 vol:

Durand, Guillaume (c.1230-1296), Repertorium singulare ad totum Aureum opus Speculi ... Prima[-quarta pars] ... (Paris ... Regnault, 1522-1523). Quarto, 3 vols. H.6.3-5. Queens' copy imperfect, title-pages of all 3 vols torn away. Bound in 16th-century blindstamped calf, the "snake and bud" roll (Oldham, FP.b(2), which is found on other of Smith's legal books; see {68, Alciatus, {69, Zasius} and {75, Ars Notariatus}), central panel of double roll, outer border, fillets. All vols with medieval MS waste from glossed copy of the *Digest* from the *CJC*; 16th-century list of accounts visible to front pasteboard of vol. 2. Chain staple scars. Shelfmarks: E.c.26-28 (replacing original shelfmarks: E.d.1-3); 8-5-11-[13] (no later shelfmark to vol. 3). Annotations: Occasional annotations in ink in Smith's hand to all 3 vols; some notes in secretary may not be in Smith's hand. Smith's doodle of a mirror to fore-edges (see {49, Dioscorides}), with volume numbers. Secretary notes to binding of vol. 2.

Queens' number: XXXIX-XLI.⁸¹⁹

MS49, f. 96v.

Cambridge libraries: No other copies.

Adams D1168.

79 Sextus cum Clementinis

Pope Boniface VIII (b. 13th century), Sexti libri materia cum capitulorum numero ... [Issued with:] Pope Clement V (b. 13th century), Materia cum capituloru[m] & titulorum numero; Pope John XXII (b. 13th century), Extravagantes XX ... ([Paris], Kerver, Cabiller and Petit, [1519]; with very slightly varying imprints, but all dated June).⁸²⁰ Quarto.

I.6.12. Bound in 16th-century blindstamped calf, narrow roll with portcullis, fleur-de-lys, pomegranate and castle intertwined with foliage (Oldham HE.d(1)), "pineapple" stamps (Oldham A(2)) in diapered pattern with fillets to central panel. Chain staple scar. Shelfmarks: E.d.4.

⁸¹⁸ It is possible that Smith might have been designated this as part of the *Decretals* of canon law; see note to {80, Decretales}.

⁸¹⁹ As with other multi-volume sets of Smith's (see {58, Baldus}, {62, Bertachinus} and {69, Zasius}) the shelf order of the volumes has changed since the edge numbers were applied.

⁸²⁰ An earlier Petit edition appeared in 1513 (Adams C2129).

Annotations: Notes in a crude secretary hand (probably Smith's, since it occurs occasionally elsewhere in this book) to a woodcut showing a consanguinity tree diagram. Smith's annotations throughout in the "legal" hand of the 1540s. Pen trials in secretary to boards of binding, as well as "6.6.Clem.". Edge title. Queens' number: XXXVIII.

MS49, f. 96v.

Cambridge libraries: No other copies.

Adams C2130.

80 Decretales 2 vol:

Not in Queens'; **unidentified**. This entry almost certainly refers in some way to the *Decretals* of Pope Gregory IX (b. 12th century), perhaps also including a commentary thereon, given the coverage of the other significant parts of the *Corpus Juris Canonici* in {79, Sextus} and {84*, Gratian}.⁸²¹ Editions printed by Kerver, Cabiller and Petit in Paris (matching {79, Sextus}) appeared in 1505 (Adams G1207; Trinity Hall), 1512 (G1211; Sidney) and 1518 (G1213; Caius).

ADDITIONAL BOOKS BELONGING TO THOMAS SMITH AT QUEENS', LISTED ALPHABETICALLY

These books are those which clearly belonged to Smith but have no corresponding entry in Smith's Donors' Book list. In some cases (e.g. {82*, Foxe} and {86*, Tunstall}) this is most likely because the books arrived after the Donors' Book entry was compiled; there are, however, cases in which the omission of a book is inexplicable (especially {81*, Avicenna}); these were most likely errors on the part of the compiler of the Donors' Book.

- 81* Avicenna [Ibn Sina] (b. 10th century), Praesens maximus codex est totius scie[n]tie medicine ... cu[m] expos[itio]nibus omniu[m] principaliu[m] & illustriu[m] interpretum eius ... (Venice, Pincius for Giunta, 1523). Large folio, 5 vols. M.2.17-21. Title-pages printed in red and black; Queens' copy imperfect, wanting title-page of vol. 3 and final leaves of vols 1, 4 and 5. Bound in 16th-century calf by

⁸²¹ The reference to "2 vol:" in the Donors' Book entry confuses matters. I could identify no obvious two-volume edition of Gregory's *Decretals* from around the time that Smith was purchasing canon law books, i.e. the first quarter of the sixteenth century. Smith's inventory of 1576 notes three volumes of *Decretals*, the third item listed being in octavo (f. 96v); one of these volumes, however, probably refers to {84**, Gratian}. Smith also possessed a copy of the *Summa Aurea* of Hostiensis, or Henry of Segusio (b. 13th century), which was a major commentary on Gregory's *Decretals*, described as being in "2 mag[nis]. vol[uminibus]" (see Adams A1044); however, Smith noted that in 1576 these were still in the possession of two friends, to whom Smith had loaned legal books in 1573 (f. 97r).

the workshop of Garrett Godfrey, the roll of wyverns, griffins and lions, with initials “GG” beneath lions (GRI), alongside the roll of small diapered quatrefoil diamonds (GRIV); remains of clasps, corners reinforced with metal; all vols rebaked. Chain staple scars to front boards (evidence of scar to vol. 4 visible despite repairs).

Shelfmarks: C.c.[1]-5 (numbers present in vols 2, 3 and 5 only); 6-7-[1]-5 (numbers present in vols 3 and 5 only).

Annotations: occasional annotations in an early hand of Smith’s to all except the fourth volume. Earlier ownership inscription to vol. 2 of Paul Rutland: “Sum Pauli Rutland”; much of the underlining and the series of repeated single dotted marks in the margins are likely to be his.⁸²² Smith undoubtedly purchased these books in the 1530s, therefore, and on the second-hand market in Cambridge. The question is whether Smith bought this and other second-hand volumes from Garrett Godfrey directly, or whether he had them rebound by Godfrey after purchasing them.⁸²³ Edge titles, volume numbers. No Queens’ number.

MS49, f. 99r (“Avice[n]na in 5. great volumes”).

Cambridge libraries: No other copies.

Adams A2230.

- 82* Foxe, John (1516/17-1587),⁸²⁴ *Rerum ecclesia gestarum, quae postremis & periculosis his temporibus evenerunt, maximarumq[ue] per Europam persecutionum, ac sanctorum Dei martyrum, caeterarumq[ue] rerum si quae insignioris exempli sint, digesti per regna & nationes commentarii. Pars prima ...* (Basel, Brylinger and Oporinus, 1559).⁸²⁵ Folio.

M.24.9.⁸²⁶ Rebound in late 18th- or early 19th-century calf, morocco spine label, gilt. No earlier shelfmarks.

Annotations: Smith’s signature, the later style, with flourishing (printer’s device

⁸²² Rutland was a Cambridge graduate licensed by the University to practice medicine in 1529, having been made a Fellow of St. John’s in 1528; his degree of MD was incorporated from Padua. He died in 1532 (*ACAD*).

⁸²³ See {63, Zabarella}, which also bears the name of an earlier owner.

⁸²⁴ There is a copy of John Foxe’s *De Christo Crucifixo Concio* (London, Day, 1571) at the Mazarine Library in Paris (shelfmark 13186), with a presentation inscription from Foxe to Smith, and with Smith’s signature and annotations. I have been unable to view this book and I am very grateful to Richard Simpson for this information. The date of publication of this book coincided with Foxe’s publication, also with the printer John Day (see {89**, Caius}), of the text of the *Reformatio Legum Ecclesiasticarum*, the projected reform of ecclesiastical law that had failed in 1552; Smith was listed on the 1571 commission appointed by Parliament, though it is unclear if this group ever met (op. cit. Bray (2000), pp. xlix and lxxxvi).

⁸²⁵ A second part, covering the Continental Reformed martyrs, was printed by Brylinger in Basel in 1563 (Adams P177); Corpus Christi and Cambridge UL also possess copies of this second part.

⁸²⁶ This book is in the store-room at the far end of Queens’ library, on the “overflow” shelves for the main sequence of shelves in the Old Library. This does not necessarily mean that it arrived contemporaneously with its binding, which is late eighteenth- or early nineteenth-century calf; next to Foxe is a set of ecclesiastical histories (Basel, Oporinus, 1560-1574) (M.24.1-8) in their original bindings and bearing chain staple scars, possibly from the earlier library (though not appearing in the 1580 inventory of Queens’ library).

excised, partially affecting signature). Smith's annotations throughout, very much in the later hand associated with his reading of historical books and chronicles in the 1560s. The two identical edge titles, which also run in opposite directions, appear to be in Smith's hand. No Queens' number.

MS49, f. 89v.

Cambridge libraries: Corpus (Matthew Parker, 1575), Magdalen, Sidney, Peterhouse (Andrew Perne, 1589), Trinity, UL.

Adams F813.

- 83* Gobler, Justin (1504-1567), *De capitalibus judiciis constitutio ...* (Basel, Oporinus, 1543). Folio.

Not in MS49.

Cambridge libraries: Trinity Hall (William Mouse, 1588),⁸²⁷ UL.

Adams C1358 (see under Charles V).

Bound with:

Millaeus, Joannes [Jean Mille de Souvigny] (c.1490-1563), *Praxis criminis persequendi: elegantibus aliquot figuris illustrata ...* (Paris, de Colines, 1541).

H.1.17(2). Full-page woodcut illustrations to second work showing various tortures and punishments. Queens' copy imperfect, wanting fp. 85. Bound in 16th-century blindstamped calf, rebaked, narrow roll of "capstans" and foliage (Oldham RP.a(2)), for which see also {74, Bellonus}, forming a blank panel with thick three-line fillets; outer blank panels at fore-edge corners bisected by fillets. Extensive printed waste, removed during restoration, from an edition of the *CJC* printed by Jean du Pré (Paris, c.1495), with fragments of medieval MS waste, showing gloss (stored in separate folder). Chain staple scar. Shelfmarks: E.c.18; 8-1-16.

Annotations: Smith's annotations occur to the second work only, very much in the "legal" hand of the 1540s, trimmed; this trimming seems to have occurred when these two works were bound together, i.e. during Smith's lifetime, since the edge title and number are visible to both fore-edges. Queens' number: XXVII.

Not in MS49.

Not in Adams.

- 84* Gratian (b. 12th century), *Decreti huius plenissimum argumentu[m]: Inserirur proprio in loco arbo consanguinitati et assi (etc.) ...* (Paris, Andrée Boucard for Jean Petit, 1522). Quarto.

K.9.5. Queens' copy imperfect, title-page torn away (possibly with Smith's signature). Rebound in 17th-century calf, fillets. Medieval MS waste used as spine-guards from a copy of Laurent d'Orléans (b. 13th century), *La Somme le Roi*, with colophon. No chain staple scar. No earlier shelfmarks.

Annotations: Occasional annotations in Smith's "legal" hand, including notes concerning the Eucharist and the "real presence". Later bibliographical notes to first leaf, appearing in other of Smith's legal books (e.g. {61, Archidiaconus}, possibly in

⁸²⁷ See {98**, Agustín} and {99**, Faber}

the hand of Richard Bryan).⁸²⁸ No Queens' number.
 MS49, f. 96v ("Decreta"?).⁸²⁹
 Cambridge libraries: No other copies.
 Adams G1047.

- 85* Lagus, Conrad (1500-1546), *Juris utriusque traditio methodica: omnem omnium titulorum, tam Pontificii quam Caesarei juris materiam & genus, glossarum item & intepretum abstrusiora vocabula scienter & summatim explicatum ...* (Frankfurt, Egenolphus, 1543). Folio.
 H.2.18. Bound in 16th-century calf, two rolls, the larger with portrait medallions and foliage (Oldham HM.h(28)), the smaller with foliage (Oldham FP.g(14)), around blank inner panel with small arabesque centrepiece and cornerpieces (not in Oldham). Medieval MS waste used as pastedowns; to front, leaf from a 13th-century copy of Boethius, *Contra Eutychem et Nestorium*; to rear, leaf from a 13th-century copy of Augustine's *Confessions*, Liber VII, chapters 5-6. Chain staple scar. Shelfmarks: E.c.17; 8-2-22.
 Annotations: Smith's signature appears twice with slightly different embellishments: the first is in the somewhat earlier style, i.e. with some very basic flourishing and with the accentuated ascender on the capital "S", almost certainly contemporaneous with the book; the second, to fp. A1r, is in the later style, with extensive flourishing and an unembellished capital, and is undoubtedly contemporaneous with Smith's date to this page: "13 Sept. 1552" (fp. 1r). Similarly, occasional annotations in Smith's hand, in two programmes: one apparently from the 1540s, in his "legal" hand of that period, the other in a later hand, with occasional doodles, commonly seen in his historical books of the 1550s. Queens' number: XXX.
 MS49, f. 99v.
 Cambridge libraries: Peterhouse (Andrew Perne, 1589).
 Adams L48.
- 86* Tunstall, Cuthbert (1474-1559), *De arte supputandi libri quattuor* (London, Pynson, 1522). Quarto.
 ?D.1.38. Title-page with woodcut border, woodcut diagrams to text. Bound in 16th-century calf over wooden boards, intentional scarring to boards. Medieval MS waste, two leaves from the same manuscript, a 14th-century copy of Aristotle's *Metaphysics*, used as pastedowns; sheet of printed waste to rear from an early 16th-century theological work, partially torn away. No chain staple scar. Shelfmarks: 4-1-38.
 No clear evidence of Smith's ownership. Annotations: Ownership inscription to title-page of Clement Smith (d. 1611), who was Sir Thomas Smith's nephew: "Clemens Smith ex dono Magistri Gardiner Anno D[omi]ni 1575".⁸³⁰ Marginal annotations in

⁸²⁸ See note to {38, Boccaccio}.

⁸²⁹ See note to {80, Decretales}.

⁸³⁰ The simplest explanation for how this book came to Queens' lies with Clement Smith, who was Smith's nephew and matriculated at the college in 1572. In Smith's will he was named as the recipient of a set of books that Smith had chosen for him (Plato, Aristotle, Livy and

four distinct hands, none of them apparently Smith's: firstly, a 16th-century "humanist" italic hand, annotating the first section; secondly, a similar though separate hand makes annotations to extracts from Guillaume Budé's *De Asse* (1514), glossing this with comparisons between Roman and English coins (either of these hands may be Clement Smith's);⁸³¹ there are also two separate later hands, either late 16th- or early 17th-century. Pen trials and calculations to front free flyleaf, verso of final leaf and printed waste at rear, in various hands, one being a Latin text clearly in the hand of one of the later annotators; some of these spell out the name 'Thomas Smith' in italic and secretary, though all instances of the name are apparently later, i.e. late 16th- or early 17th century; other names include "John Pleys" (Fellow of Queens' 1617-1632) and "Leonard Milborn(?)". No Queens' number.

MS49, f. 92r.

Cambridge libraries: Caius, Christ's, Corpus (Matthew Parker, 1575), King's, Peterhouse (Andrew Perne, 1589), Sidney (Anne Harington, 1616), UL (two copies). Not in Adams.⁸³²

Cicero) and, moreover, was allowed first choice of up to ten books from Smith's collection, on condition that he give them to the Library if he ever left Queens' (Smith does not seem to have had him pegged as a strong academic prospect, since in his will he declared that none of his relatives was "learned"). Nonetheless, by 1576/77 Clement Smith was the incumbent of the arithmetical lectureship (while still only a bachelor of arts) that his uncle had founded at Queens' in 1573 (QC 4, f. 126r). Smith also sent his nephew just over twenty books in April 1576, which he noted when compiling his library list for that year (MS49, f. 98r); these comprised Greek books of literature and history, Latin books of grammar and rhetoric, and one mathematical book ("Compendium arithmetice") by Heinrich Glarean (1488-1563), probably *De VI arithmeticae practicae speciebus ... epitome* (Freiburg, Faber, 1539), which surely related to Clement Smith's position as arithmetical lecturer. In terms of the Tunstall, however, this narrative is complicated by the inscription to the title-page, which notes that Clement Smith received this book from one "Magist[er] Gardiner" in 1575. (What is somewhat odd about this inscription is that the "Smith" resembles the hand of Thomas Smith, though is presumably Clement's, while the "ex dono" portion also seems to be in a slightly different hand, possibly Gardiner's). Given the year of the inscription, this was surely a gift to Clement Smith coinciding with his BA, which occurred in 1575/6, or perhaps his election as Fellow of Queens' immediately afterwards. It is unclear how this book might have passed from Thomas Smith's library to Gardiner before 1575, i.e. during Smith's lifetime, especially given that a copy was mentioned in Smith's 1576 inventory. We must assume, therefore, given that there is no clear evidence of Smith's owning this book, that this is simply a different copy.

⁸³¹ See *Appendix ex Budaei Libro* (etc.), fp. z4. Andrew Burnett has noted the similarity between these annotations and notes made in Smith's commonplace book (MS83, f. 115r), but this is apparently coincidental; op. cit. Burnett, Simpson and Thorpe (2017), pp. 113-114.

⁸³² Adams notes only the Paris edition by Estienne of 1529 (A1122).

BOOKS BELONGING TO SIR THOMAS SMITH NOT AT QUEENS, LISTED
ALPHABETICALLY BY LOCATION⁸³³

Bodleian Library, Oxford

87** *Ashm.* 157.⁸³⁴

Cardano, Gerolamo (1501-1576), *Libelli quinq[ue] ... I. De suppleme[n]to Almanach (etc.) ... Additis insuper Tabulis ascensoru[m] rectoru[m] & obliquaru[m] eclipticae (etc.) ... Eiusdem ... Aphorismorum Astronomicorum ...* (Nuremberg, Petreius, 1547). Quarto.

Woodcut geniture diagrams. Bound in later 16th-century (Cambridge?) blindstamped calf, central stamp of blank shield with spiral corners, border of fillets; rebacked.⁸³⁵

Offsetting to front free endpaper (bearing Smith's notes) from pastedowns, evidently a pocket medieval manuscript, since removed (possibly during rebacking); vellum stub used as spineguard to rear. No chain staple scar or Queens' shelfmarks.

Annotations: Smith's signature to title-page, "Thomas Smithus", with flourishing, evidently in the middle style; Smith's date to title-page, matching notes on front free endpaper, "1555^{oo}". Smith's annotations throughout, matching the hand and the content of the earlier programme of annotation in Smith's *De re rustica* ({41, Columella}). Smith's annotations are chiefly to Cardano's works on casting genitures (horoscopes), reflecting Smith's interest in these as tools for prognostication in his reading – as shown by his use of this symbol in his annotations to ancient and modern histories (see {18, Suetonius} and {14, Platina}) – as well as his own practice in the art, which he declared to have begun in 1555, the same year he dated his reading of the Cardano.⁸³⁶ Smith has amended at least one of the printed geniture diagrams by

⁸³³ This is by no means a complete list (see note to {82*, Foxe}). There are, no doubt, books I am unaware of, and many more that are sure to be identified as having belonged to Smith; during the four years of my PhD, five of Smith's books have been newly identified (see {91**, 93** and 94**-96**}). In all cases I am indebted to the help of others, either for alerting me to the books in the first place, or for facilitating access to them, or both: John Colley, Mark Earngey, William Poole and Richard Simpson; special thanks to Emma Laws of Exeter Cathedral Library, Jenni Lecky-Thompson of Trinity Hall Library, Cambridge, Philippa Marks of the British Library, Lucille Munoz of Queens' College Library, Cambridge, Renae Satterley of Middle Temple Library, and Hannah Smith of Eton College Library; I am also grateful to the many other library staff at the institutions listed below, and elsewhere (too many to name), who have facilitated access or provided information.

⁸³⁴ Cf. Anthony Grafton, *Cardano's Cosmos* (Cambridge, MA: Harvard University Press, 1999), pp. 103-104. I am extremely grateful to William Poole for pointing out the existence of Smith's Cardano (not a moment too soon).

⁸³⁵ An identical binding appears on a sammelband at Queens' of mostly medical books printed in the 1560s, which, interestingly, contains a work on astrological genitures, Samuel Eisenmenger's (1534-1585) *De usu partium coeli oratio* (Tübingen, Morhart, 1563) (H.19.27(4)).

⁸³⁶ BL MS Sloane 325 contains Smith's astrological predictions ("Chronocratores", ff. 10r-11r), and horoscopes and geniture diagrams (ff. 7r, 13r-83r); in his autobiography (ff. 2r-6r), for the year 1555, Smith recorded a "vehement" desire to study astrology

moving the moon into the correct *locus* as described in Cardano's text; another instance where information has been added is possibly in a later hand. Annotations in Smith's hand to front free endpaper (showing loss of some details at gutter caused by rebacking): tables for the year 1555 showing the longitudes and latitudes of the stars with their Zodiacal positions (remains of separate piece of paper attached with sealing wax), derived from two astrological books listed in Smith's library;⁸³⁷ to verso of final leaf, with references to Cardano's *Aphorismorum Astronomicorum*; and to loose sheet of paper, laid in at front, also with references to Cardano's *Aphorismorum*. Signature to title-page of William Lilly (1602-1681), astrologer and author of a substantial work in English on astrological techniques (including the calculation of nativities), *Christian Astrology* (1647). Lilly's books were purchased from his widow by his close friend Elias Ashmole (1617-1692), and passed from him to the Bodleian. Occasional annotations apparently in Lilly's hand (alongside Smith's annotations) to the *Aphorismorum*, which Lilly included in English (translated by Henry Coley (1633-1704)) as part of his *Anima Astrologiae* (1676); some of these annotations correspond to aphorisms included in Lilly's selection. Inscription to the loose sheet laid in at front, noting the book's author and title, again apparently in Lilly's hand. One manicule in Lilly's hand, with his own annotation, but numerous other manicules and marginal notes (including numbering) not corresponding to Lilly's selection, and annotations in a third hand (though not apparently belonging to Ashmole), as well as folio numeration to the contents page in this hand, therefore indicating several annotators later than Smith. No Queens' number; edge title.⁸³⁸ MS49, f. 93v.⁸³⁹ Cambridge libraries: UL. Adams C684.

88** *N.1.5 Jur. Seld. (1-3).*

Pyrrhus, Johannes (Giano Pirro Pincio) (b. 15th century), *De vitis pontificum Tridentinorum, libri duodecim ... De gestis ducum Tridentorum, De Gallorum senonum adventu in Italiam, De origine urbis Tridentinae, De appellatione et transitu Alpium, De confinibus Italiae* ([colophon: Mantua, Rufinelli, 1546]). Folio. MS49, f. 89r.

Not in Adams.

Bound with:

Saraina, Torello (1475-1550), *De origine et amplitudine civitatis Veronae ...* (Verona,

("veheme[n]tissimus ardor & desideriu[m] ... astrologiam discendi"). Op. cit. Simpson (2017), pp. 1-2, and Grafton (1999), pp. 112, 185-186 and 191-192.

⁸³⁷ Erasmus Reinhold (1511-53), *Tabulae directionum* (first pub. Tübingen, Morhart, 1554) and Alfonso X, King of Castile (1221-84), *Astronomicae Tabulae* (first pub. Venice, Ratdolt, 1483; Smith's edition was almost certainly either Paris, Wechel, 1545, or the second Wechel edition of 1553) (f. 93v).

⁸³⁸ See note on fore-edge numbering to {2, Bede}.

⁸³⁹ Smith also listed copies of Cardano's *De subtilitate* (first pub. Nuremberg, Petreius, 1550) and Cardano's commentary on Ptolemy's *Quadripartitum* (first pub. Basel, Petri, 1554) (f. 93r).

Putelleti, 1540).

Saraina with woodcut portrait, and full-page and folding architectural woodcuts. Bound in late 17th- or early 18th-century sprinkled panelled calf, roll-tooled frame with floriated cornerpieces.

Annotations: Signature to first work, "Thomas Smithus", apparently in the earlier style, though Smith's annotations to this work are apparently in a later hand; no signature or annotations to the second work by Pyrrhus. Occasional annotations to the Saraina in Smith's hand.

Not in MS49.⁸⁴⁰

Cambridge libraries: Sidney, UL.

Adams S393.

British Library

89** *Henry Davis Gift 61*⁸⁴¹

Caius, John (1510-1573), *De antiquitate Cantebrigiensis Academiae Libri duo ... In quorum secundo de Oxoniensis quoque Gymnasii antiquitate disseritur, & Cantebrigiense longe eo antiquius esse definitur ...* Anon., ("incerto Authore [Oxoniensis] Gymnasii"), *Assertio Antiquitatis Oxoniensis Academiae ...* Caius, *De pronuntiatione Graecae & Latinae linguae cum scriptione nova libellus* (London, Day, 1574). Quarto.

Bound in 16th-century gold-tooled calf from the bindery of Archbishop Matthew Parker (1504-1574) at Lambeth Palace Library:⁸⁴² central stamp of oval within large diamond cartouche with winged cherubs at head and foot, fleurons above and below, cornerpieces within frame of fillets and floriated cornerpieces, different set of fleurons at corners within outer border of single fillet; gaufered edges, gilt; rebacked, corners repaired.

Annotations: Presentation inscription to verso of final leaf from Parker to Smith: "D. Thomae Smyth Equitaurato fratri charissimo Matthaëus Cantuar: mutuae amicitiae pignus dedi", with later note identifying Parker and Smith; Smith's signature to title-page, erased (abraded away) but with flourishing still visible. Occasional annotations in Smith's hand to first work, concerning ancient Britons and Caius's argument that Cambridge was founded in the fourth century AD by an exiled Spanish prince, "Cantaber"; Smith sketched the large and ancient black tome (*antiquit[atis]. nigri codicis*) that Caius claimed was evidence of Cambridge's antiquity (p. 28); Smith also made notes on the etymology of an Anglo-Saxon name (p. 203); no signs of reading

⁸⁴⁰ It seems these books might therefore have been bound together in Smith's lifetime.

⁸⁴¹ Mirjam M. Foot, *The Henry Davis Gift: A Collection of Bookbindings* (London: The British Library, 1983), II, pp. 86-88.

⁸⁴² Cf. G.D. Hobson, *Bindings in Cambridge Libraries: Seventy-Two Plates* (Cambridge: Cambridge University Press, 1929), Plate 35 (p. 96). This seems to be confirmed by the presence of the same floriated tool that appears above and below the cartouche on Smith's copy, but, moreover, by the same design of the roll tool border on the binding of Plate 35 being used for the gaufered edges on Smith's copy.

to the work on ancient Greek pronunciation. Occasional annotations in more than one later hand; occasional striations in blind. Numerous later ownership inscriptions, including late-16th or 17th-century inscription of Edmund Symondes to title-page, with motto (?) “FSLA”; motto in a different hand to title-page, “Res tuas age”, identified with Henry Molle (c.1597-1658), a fellow of King’s College, Cambridge;⁸⁴³ further ownership inscription to title-page, apparently later, erased. Inscription to front free endpaper of Sir Thomas Wilson (1560-1629), with motto from Horace: “O[mn]e crede diem tibi diluxisse superu[m]” (‘Believe that every day that has dawned is your last.’); evidence of possible bookplate removal from front free endpaper; notes on Caius’s work in two seventeenth-century hands to front and rear pastedowns, with further inscription erased from rear free endpaper; front pastedown with twentieth-century inscription of Edward Gordon Duff (1916) and bookplate of Henry Davis.⁸⁴⁴ No Queens’ number or edge title (though possibly due to gauffering and gilt edges). MS49, f. 89v.

Cambridge libraries: Caius (three copies), Christ’s, Corpus (Matthew Parker (1575) and John Parker (1618)), Fitzwilliam Museum, King’s, Newnham, Peterhouse (Perne (1589), Queens’, St. Catherine’s, St. John’s, Trinity, Trinity Hall, UL. Not in Adams.

90** 1043.h.3

Vitruvius (b. 1st century BC), ed. Guillaume Philandrier (1505-1563), *De architectura libri X ...* Nicholas of Cusa (1401-1464), *Dialogo de staticis experimentis* ([Strasbourg, Messerschmidt for Knobloch], 1550). Quarto.

Woodcut architectural illustrations throughout. Rebound.

Annotations: Smith’s signature, “T. Smythus”, with price code.

MS49, f. 94r.

Cambridge libraries: Emmanuel (incomplete), Trinity (Smith’s copy; see {97**, Vitruvius}).

Adams V907.

Eton College Library

91** Fh.4.03

Lactantius (b. 3rd century), *Divinarum institutionum libri VII ...* ([colophon: Basel, Cratander, 1524]).⁸⁴⁵ Quarto.

Bound in 16th-century calf by the workshop of Garrett Godfrey, the roll of wyverns, griffins and lions with initials “GG” below lions (GRI), around central panel of single roll of diapered quatrefoils within diamonds (GRIV); 18th-century red morocco label

⁸⁴³ David Pearson and the Centre for Editing Lives and Letters (CELL), *Book Owners Online* (BOO) (London: The Bibliographical Society, 2023).

⁸⁴⁴ Sold at the sale of the Earl of Sunderland to Bernard Quaritch in 1881; subsequently Maggs (cat. 1941).

⁸⁴⁵ First printed in Italy in 1465 by Pannartz and Sweynheym; this was the first book printed in Italy. An earlier Cratander edition appeared in 1521.

added to spine; binding split at spine.

Annotations: Signatures of Smith and Andrew Perne (c.1519-1589) to title-page, “Thomas Smyth”, in the early humanist style, crossed through, presumably by Perne: “Andreas perne pretiu[m] sxx^d”.⁸⁴⁶ Annotations throughout in Perne’s hand, including trefoil *notae* and elaborate manicules, showing sleeves and even a bearded man, one or two other doodles. Apparently no annotations in Smith’s hand, though the doodling is more characteristic of Smith than Perne, and it may be that these visual annotations are in fact Smith’s; see the similar manicules in {100** Gaza}. Edge titles: title to fore-edge, probably in Smith’s hand and with possible Queens’ number visible; title to edge at head of book in Perne’s hand.⁸⁴⁷ Boards with pen trials and calculations. Printed *ex dono* label of John Reynolds (1671-1758), dated 1751.

Not in MS49.⁸⁴⁸

Cambridge libraries: Corpus (Matthew Parker, 1575), UL.

Adams L19.

Exeter Cathedral Library

92** C44

Constantine VII (b. 10th century), commissioner, and Cassianus Bassus (“Scholasticus”) (b. 7th century), compiler, ed. Johann Alexander Brassicanus (c.1500-1539), [Greek title:] *Geoponika ... De re rustica selectorum libri XX ... Aristotle, De plantis libri duo Graeci ...* (Basel, [Winter, 1539]). Octavo. Bound in 16th-century blindstamped calf, the roll of strapwork and foliage (Oldham SW.b(3)), single roll forming blind panel, three-line fillets (see {9, Postellus}, {65, Institutiones} and {67, Mainerius}); rebaked, endpapers renewed; pastedowns preserved, two leaves of medieval manuscript, Gothic hand, paraphs and initials in red and blue, flourishing in red.

Annotations: Smith’s signature to title-page, “Thomas Smithus”, in the late style, with flourishing, with signature and price note of John Ponet (see {19, Tacitus}): “Joannes Ponetus 2s”, his hand in this case more easily distinguishable from Smith’s.

Annotated throughout in Latin and Greek in several programmes of annotation, all apparently in Smith’s hand, though it is impossible to rule out that some of the Greek annotations may be Ponet’s; many of these are in a pale brown ink, much faded; Smith’s later Latin and Greek annotations appear in a darker ink (see {41, Columella} for an extremely closely-linked set of annotations). Later inscription to title-page noting the compiler’s name. 19th-century bookplate of Exeter Cathedral Library.

⁸⁴⁶ Andrew Perne was a contemporary of Smith’s at Queens’ from 1540, when he was elected Fellow of the college. He bequeathed his large library to Peterhouse, for which he had been collecting specific books before his death, as well as his collections of coins and mathematical instruments.

⁸⁴⁷ For an example of this practice on a book of Perne’s at Queens’, Conrad Heresbach, *Rei rusticate librorum quatuor* (Cologne, Birckmann, 1570) (D.18.13), which is in a Cambridge calf binding with Perne’s initials.

⁸⁴⁸ This book almost certainly came into Perne’s possession in the 1530s or 1540s.

MS49, f. 92v.

Cambridge libraries: Corpus (Matthew Parker, 1575), Emmanuel, UL.
Adams G448.

Lambeth Palace Library

93** *Sion C11/P69 GRY*

Plato (b. 5th century BC), [Greek title:] Hapanta Platonos ... Platonis omnis opera ... (Basel, Valderus, 1534).⁸⁴⁹ Folio.

Imperfect, part one only, wanting the commentaries of Proclus.⁸⁵⁰ Rebound in modern boards, pages heavily restored. Printed donation label of Edmund Waple, Vicar of St. Sepulchre, London, 1712, whose books were given to Sion College.

Annotations: Smith's signature in Greek to title-page, "Thomas o Smithos".

Copiously annotated throughout in Greek in Smith's hand, evidently in more than one programme of annotation: one is in an early, refined and miniscule hand (see {20, Blondus} for a comparator), with which Smith has dated one set of annotations to the *Timaeus Locrus*, a paraphrase of Plato's dialogue *Timaeus* (the main text of which Smith did not annotate), to the section "On Death": "1538, 2^o Octob[ris]. relegi" (i.e. I read this again), appearing in dark ink; this section therefore seems to contain two programmes of Smith's reading, the earlier being in a different hand, also appearing in {81*, Avicenna}, which uses a much larger and less refined Greek script, and is written here in a brown and faded ink. There is also occasional evidence in the Plato of a larger hand, very refined, which is characteristic of Smith's medical books of similar date; see {48, Ruellius}, in which Smith also employs occasional doodles, but not as extensively as here. Smith uses numerous doodles in his Plato, apparently more in keeping with a somewhat later period of annotation (in line with the annotations, also in Greek, in {101**, Josephus}), but many of the doodles here appear to be somewhat earlier, with examples also being found in the section dated 1538. As is the case in his medical books, therefore, Smith was evidently using doodles from the 1530s, though his Greek books at Queens' from this period do not contain any (see, however, the binding of {50, Dioscorides}).

MS49, f. 92v.

Cambridge libraries: Caius (John Caius, 1573), Clare, Emmanuel, Pembroke, St. John's (Miles Buckley, 1559), Trinity.
Adams P1437.

⁸⁴⁹ The first edition of Plato's works in Greek was printed in Venice by Aldus Manutius in 1513; the first Latin edition of Plato's works, translated by Marsilio Ficino, was printed in Florence by Lorenzo de Alopa in 1484-1485. Smith makes references to Ficino's translation in his reading of his Greek Plato.

⁸⁵⁰ Adams P2139. Smith lists a copy of Proclus's commentary in his 1576 inventory (f. 92v).

94** *L(B) [RBR(B)]*

[Bellay, Jean du (1492-1560)], Oraison escripte suyvant lintention du Roy Treschrestien, aux Serenissimes, Revere[n]dissimes, Tresillustres, Tresexcellens, Magnifiques, Treshauls Seigneurs, & a tous les estats du saint Empire assemblez en la ville de Spire (Paris, Robert Estienne, 1544). Quarto.

Not in Adams.

[Bound with:]

Defense pour le Roy de France Treschrestien, a lencontre des injures & detractions de Jaques Omphalius, faictes nagueres en Latin par ung Serviteur du Roy, & maintenant traduicte en Francois par Simon Brunel.

Not in Adams.

[And:]

[Danès, Pierre (1497-1577)], Apologie, faicte par un Serviteur du Roy, contre les calomnies des Imperiaux: Sur la descente du Turc (Paris, Charles Estienne, 1552).

Not in Adams.

[And:]

Seconde apologie, contre les calomnies des Imperiaux: sur les causes, & ouverture de la guerre.

Not in Adams.

[And:]

Giovio, Paolo (1483-1552),⁸⁵² Abbrege de l’histoire des Vicontes et Ducz de Milan, le droict desquels appartient a la couronne de France ...

Rebound in modern boards. Last work with woodcut portraits.

Annotations: Smith’s annotations throughout, predominantly in French but also Latin and Greek, in a later hand, probably dating from the 1560s, with the doodles of towns and portraits characteristic of the historical style; heavily trimmed. The first work

⁸⁵¹ Smith seems to have been made an Honorary Bencher of the Middle Temple sometime in the 1550s or 1560s, though the accession records for this period have been lost; his name and coat of arms appear in a stained glass window in the oriel window of Middle Temple Hall (op. cit. Williamson, p. 45)). I am grateful to Renae Satterley and Barnaby Bryan for this information. Both these books likely came to the Middle Temple after Smith’s death. Smith also became a member of Doctors’ Commons in 1574, most likely another honorary appointment (George Drury Squibb, *Doctors’ Commons* (Oxford: Oxford University News, 1977), p. 160). There is a fourth book at Middle Temple possibly connected to Smith, a sammelband of Ramus’s *Arithmetic* (Paris, Wechel, 1555) and Cicero’s *Topica* (Paris, Richardus, 1549) (L(B) (a 30026)), bearing an inscription in the hand of its owner, Thomas Mayson, which claims it was given to him by Smith: “Ex dono Thomae Smith Equitis”. Smith listed neither work in his library. A similar note appears in a copy of a book in the Houghton Library at Harvard, a Greek copy of Dionysius Periegetes’ *Cosmographia* with Proclus’ *De Sphaera* (Basel, Bebelius, 1523) (GEN *EC Sm573 Zz523d), which Smith did list in his 1566 inventory (MS83, f. 150r); my thanks to Daniel Fried for pointing this out. All of Smith’s books at Middle Temple Library were in the bequest of Robert Ashley (1565-1641), which also re-established the library.

⁸⁵² See {16-17}.

bears a signature, “Guillotiers”, not in Smith’s hand, and notes of the other titles in the sammelband, possibly in a different hand, presumably that of a later owner. MS49, f. 90r (“Exemplaria literaru[m] in defens[i]one] H[enr]<sup>i[co] 2ⁱ”).
Cambridge libraries: Fitzwilliam Museum.
Adams G696.</sup>

95** *L530 (a) [RBR(A)]*

Caron, Louis le (1534-1613), *Les dialogues de loys ...* (Paris, Longis, 1556). Octavo.
Rebound in later calf.
Annotations: Smith’s signature to title-page, in the later style, with flourishing, “Thomas Smith”. No annotations to text.
MS49, f. 92v.
Not in Adams.

96** *L530 (a 30026)*

Contarini, Gasparo (1483-1542), *De magistratibus, & repbu[lica]. Venetorum libri quinq[ue]*. (Basel, [colophon: Froben and Episcopius, 1544]). Octavo.
Rebound in modern boards.
Annotations: Smith’s signature to title-page, “Thomas Smith”. Smith’s annotations throughout in a neat, miniscule hand.
Not in MS49.
Cambridge libraries: Clare.
Adams C2566.

Trinity College, Cambridge, Wren Library

97** *L.18.145(2)*

Vitruvius (b. 1st century BC), ed. Guillaume Philandrier (1505-1563), *De architectura libri X ...* Nicholas of Cusa (1401-1464), *Dialogo de staticis experimentis* ([Strasbourg, Messerschmidt for Knobloch], 1550). Quarto.
Cambridge libraries: Emmanuel (incomplete).
MS49, f. 94r; for Smith’s other copy of this edition, see {90**, Vitruvius}.
Adams V907.

Bound with:

Alberti, Leon Battista (1404-1472), *De re aedificatoria libri decem* (Strasbourg, Cammerlander, 1541).
Bound in 17th-century panelled Cambridge calf, cornerpieces, sprinkled edges.
Annotations: Smith’s signature to first work, “Thomas Smithus”, with extensive flourishing; extensively annotated throughout in Smith’s hand.
Not in MS49 (clearly this was bound with the Vitruvius after leaving Smith’s collection).
Cambridge libraries: No other copies.
Adams A492.

Trinity Hall, Cambridge, Old Library

98** N*.2.26.

Agustín, Antonio (1517-1586), *Emendationum & opinionum libri IIII ... Torelli, Lelio* (1498-1576), *Ad Gallum & legem Velleam; Ad Catonem & Paulum; De militiis ex casu ...* (Basel, [colophon: Oporinus, 1544]). Folio.

Not in MS49.

Cambridge libraries: No other copies.

Adams A2239.

Bound with:

Gobler, Justin (1504-1567), *De capitalibus judiciis constitutio*, Germanice primum evulgata; *Constitutio de pace publica tenenda*, Vuormaciae edita; In l[egem]. respiciendum, tit[ulum]. *Pandectarum de Poenis ...* (Basel, [colophon: Oporinus, 1543]).

Bound in 16th-century Cambridge calf, supralibros with the arms of William Cecil (see note to {41, Euclid}), frame of three-line fillets with floriated cornerpieces; rebaked. MS waste used as spineguards from large Bible with gloss, written in a Gothic hand. Chain staple scar.

Annotations: Smith's signature to the first work in the style of the middle to later periods, i.e. somewhat later than the date of this book: "Thomas Smith. in p[er]chme[n]t not cut", i.e. instructions to the bookseller or binder not to bind the book and not to trim the edges (for a similar note in Smith's hand, see {72, Tiraquellus}); the trimming must have happened when the book was put into the Cecil binding, presumably after arriving at Trinity Hall, which was apparently also when the second work – almost certainly not Smith's – was added;⁸⁵³ price code possibly in Smith's hand: "3s 4d". Ownership signature of William Mouse (d. 1588) who bequeathed his library to Trinity Hall: "Guliel[mus]. Mowse". Occasional annotations to first work, not apparently in Smith's hand, so possibly by Mouse; his ownership inscription to title-page of second work, with earlier inscription in a sixteenth-century hand: "Arundel, G.A.", with flourish.⁸⁵⁴

⁸⁵³ For bindings with Cecil's arms see note to {41, Euclid}. The example at Trinity Hall is interesting because it raises the idea that money from Cecil's donation was not only used for new purchases, but also to bind books from donations and bequests. This may have been the case for a book in a Cecil binding at Queens', the *Postillae* of Johann Ferus (Cologne, Birckmann, 1559-1564) (I.13.19(2)), donated by Queens' President Humphrey Tindall. This was especially likely if – as indicated by Smith's note here – these bequests were of books still requiring leather bindings.

⁸⁵⁴ Emmanuel College Library possesses a book previously owned by Henry Fitzalan, Earl of Arundel (1512-1580), which bears the very similar inscription, "Arundel", as well as "Lumley". Thanks to Amy Leahy at Emmanuel College Library for this information. Mouse supposedly had a habit of collecting books which had belonged to eminent figures, into which category Smith would undoubtedly have fallen, especially in the eyes of a fellow "civilian" or civil lawyer.

Not in MS49.⁸⁵⁵

Cambridge libraries: Queens', UL.

Adams C1358 (see under Charles V).

99** Faber, Johann (1478-1541), ed. Johannes de Gradibus (d. c.1525), *Lectura sup[er] quatuor libros institutionu[m] ...* ([colophon: Lyon, Bonny for Giunta], 1531).

Quarto.

Title-page in red and black. Bound in 16th-century Cambridge(?) calf, diamond centrepiece formed of flour floriated stamps within frame of fillets, floriated cornerpieces using the same tool as centrepiece; rebaked, endpapers renewed. No chain staple scar.

Annotations: Signature of Smith to title-page, "Thomas Smithus", very much in the early style; initials "T.S." added to shield on woodcut title-page, smudged. Occasional annotations in Smith's hand, very much the hand associated with his legal annotations of the 1540s, with some doodles, mostly on family law and inheritance, as well as the role of the judge. Signature of William Mouse ("W. Mowse"). Pen trials to rear dated 1634. Edge titles in Smith's hand, possible Queens' number visible.

MS49, f. 96r ("Institutiones in co[m]mentario."(?)).

Cambridge libraries: No other copies.

Adams F70.

University Library, Cambridge

100** *Inc. 2.B.3.134[1805]*

Gaza, Theodorus (b. 15th century), *Introductivae gra[m]matices libri quatuor*.

Eiusdem de mensibus opusculum sanequa[m]pulchtu[m] [sic]; Apollonius Dyscolus (b. 2nd century), *De constructione libri quatuor*; Aelius Herodianus (b. 2nd century), *De numeris* (Venice, Aldus, 1495). Small folio.

Bound in 16th-century blindstamped calf, roll of daisies forming central panel of diapered "pineapple" stamps and half-stamps (not in Oldham). MS waste used as spineguard, part of illuminated initial visible to rear, gilt, along with cords from sewing of binding. Printed waste: two bifolia from an incunable edition of Ovid's *Fasti*, the leaf to the rear with pen trials in a humanist hand, smudged. Inscription to board in the hand of Henry Bullock (d. 1526): "Magister Bulloke".⁸⁵⁶ Bookplate of

⁸⁵⁵ It is striking that several of the books in this section were not apparently listed in Smith's inventories; possibly they left his collection prior to 1566 (as was apparently the case for {91**, Lactantius}).

⁸⁵⁶ Henry Bullock was a fellow of Queens' and a friend of Erasmus, addressed in correspondence as "Bovillus". His books were purchased for the Queens' library after his death, during the presidency of Simon Heynes (see note to {24, Eusebius}), in whose accounts they are listed ("Forinseca Recepta", Misc B, QC 77, f. 77v; op. cit. Sargent, pp. 168-170). The Gaza appears in this list (valued at 16d), which makes the absence of a chain staple scar on this volume surprising; it is possible that this book, as a standard guide to ancient Greek, immediately entered the *electione*, i.e. the distribution of books to the college fellows, and was consequently never chained in the library (see {43, Aesop}). Indeed, Smith

George I, dated 1715; formerly in the library of John Moore, Bishop of Norwich and later Ely (1646-1714), which was purchased by George I for presentation to Cambridge University.⁸⁵⁷

Annotations: Smith's signature to title-page, apparently very early, "Thomae Smythi". Occasional annotations in Smith's hand in red crayon (see {70, Oldendorp}), all in Greek, with manicules to margins, scroll-style banners around titles, and paraphs added within the text. Edge title possibly in Bullock's hand.

MS49, f. 97v.

Cambridge libraries: St. John's, Trinity (two copies).

Oates 2166.⁸⁵⁸

101** C*.4.9(B)

Josephus, Flavius (b. 1st century), [Greek title:] Phlabiou Iosepou Ioudaikes archaiologias logoi 20; Ioudaikes haloseos logoi 7. Peri archaiotetos Ioudaion kata Apionos logi 2. Eis tous Makkabaious logos ... Flavii Josephi Opera. (Basel, Froben, 1544). Folio.

Title-page printed in red and black. Rebound in later panelled calf. Bookplate of George I, dated 1715; formerly in the library of John Moore, Bishop of Norwich and later Ely (1646-1714) (see {100**, Gaza}).

Annotations: Smith's signature, in the later style, "Tho. Smith", with flourishing; Greek signature, faded and obscure in places, "He Thomas Smithos biblos", with price code also in Greek: "a.[phi] m.[delta]", i.e. 1s 12d(?); addition of scroll-style banner to title, as in {100**, Gaza}, and embellishments to Froben's printer's device, including tongues for the two snakes; Greek inscription, "logos". Copiously annotated in Greek throughout, apparently in the hand of the middle to later periods and with doodling consistent with Smith's reading of historical books in that period; possibly a relatively late example of sustained annotation in Greek for Smith (see {93**, Plato}).

MS49, f. 90v.

Cambridge libraries: Caius (William Branthwaite, 1619), Corpus (Matthew Parker, 1575), Emmanuel, Pembroke, Peterhouse (Andrew Perne, 1589), Queens', Sidney, St. John's, Trinity, Westminster College.

Adams J351.

may well have redeemed it himself and never returned it. There is no clear evidence that any of Bullock's books have survived into the holdings of the library today.

⁸⁵⁷ See *Catalogi librorum manuscriptorum Angliae et Hiberniae* (Oxford, E Theatro Sheldoniano, 1697), v. II, p. 382, no. 124.

⁸⁵⁸ J.C.T. Oates, *Catalogue of the Fifteenth-Century Books in the University Library, Cambridge* (Cambridge: 1954).

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