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Humanism and Legal Historiography in Late Sixteenth and Early Seventeenth Century England: The Elizabethan Society of Antiquaries

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of the requirements for the degree of
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Abstract

From about 1586 until about 1607 a distinctive group met regularly in London to discuss topics of interest and significance. The group, numbering about forty individuals, has become known as the Elizabethan Society of Antiquaries. This small group could count as some of its members distinguished figures such as William Camden, Henry Spelman, Robert Cotton, John Dodderidge and William Lambarde. Many group members were either Members of Parliament, heralds, the holders of important offices, or had some combination of these experiences. But perhaps the Society's most telling characteristic was that the overwhelming majority of its members were either practising lawyers or men with legal training who occupied quasi-legal posts. From their intimate connections with the law, group members possessed proficiencies in documentary research and analysis, in the balancing of evidence, and in producing supported argumentation in the face of disputed or uncertain facts or theories.

The novelty of recoverable work of the Elizabethan Society of Antiquaries lies in its application of a consciously historical methodology to the study of law and legal institutions. The group's intellectual genealogy, which might broadly be described as Renaissance humanism, was one which emphasised the significance of critical thought and systematic method to the enterprise of philological and historical scholarship. Although this intellectual orientation was at odds, often, with the accepted history of the common law, to a significant extent group members moulded the new methodology of "humanism" to an historical inquiry of the law.

The political implications of a small and prominent group of lawyers and scholars, a group which critically and systematically examined the origins and emergences of the most venerable of legal institutions, should not be underestimated. The Society eventually succumbed to the constraints of contemporary political pressure and, at a more human and mundane level, the temptations of peaceful retirement.

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Table of Contents

1. Introduction	**1**
2. Antiquarianism and Legal History	**8**
2.1 Introduction	**8**
2.2 English Antiquarianism	**10**
2.3 Law and History	**15**
2.4 Method	**24**
3. The English Legal Renaissance	**31**
3.1 Structures and Change	**31**
3.2 The Renaissance	**46**
3.3 Continental Humanism	**53**
3.4 Legal Education in England	**61**
3.5 Conclusion	**71**
4. The Elizabethan Society of Antiquaries	**77**
4.1 The Primary Sources and other Contemporary Treatments	**77**
4.2 Historiography	**81**
4.3 Analysis	**102**
5. Membership	**105**
5.1 Introduction	**105**
5.2 Primary Evidence	**113**
5.3 Contemporary Secondary evidence	**117**
5.4 Secondary evidence	**120**
5.5 Commentary	**121**
6. "...this Society tendeth...": Group Cohesion and Enterprise	**130**
6.1 Group Characteristics	**131**
6.2 Group Enterprise	**158**
6.3 Group Members: Other responsibilities, age and death	**200**
6.4 Summary	**203**
7. The Early Stuart Half-Century	**208**
7.1 Politics and Scholarship	**209**
7.2 The 'Whig Interpretation'	**216**
8. Conclusion	**229**
Appendices	**238**
Bibliography	**323**

1. Introduction

Scholars have long since given up on the *res gestae* of kings and great men as a suitable explication of history. Similarly the arid accounts of institutional change which predominate in accepted histories provide little in the way of an explanation of social experience. More recent attempts to present the social experiences of scholarly life have situated the *res gestae* and the institutions within functional social matrixes.[1] An alternative to the traditional approaches, and a variant of the "social history" approach, is the examination of particular groups which have occupied positions of critical importance. During the so-called Middle Ages, and even well into the sixteenth and seventeenth centuries, one might select the clergy as such a group. For early modern England the lawyers, as an occupational group, held a vital and strategic role.[2] The development and sophistication of the English legal profession in the sixteenth and early seventeenth centuries provides the historian, and especially the *legal* historian, with an

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1 See, for example: Schnapp, A., *The Discovery of the Past: The Origins of Archaeology*, London, British Museum Press, 1996 pp. 139-142 generally, and Sharpe, K., *Sir Robert Cotton, 1586-1631: History and Politics in Early Modern England*, Oxford, Oxford University Press, 1979, for a "social" biography of Cotton; see also Collinson, P., and Craig, J., ed.s, *The Reformation in English Towns, 1500-1640*, New York, St. Martin's Press, 1998 re regional religious experiences; and Cressy, D., *Bonfires and Bells: National Memory and the Protestant Calendar in Elizabethan and Stuart England*, London, Weidenfeld and Nicolson, 1989 and Cressy, D., *Birth, Marriage and Death: Ritual, Religion and the Life-cycle in Tudor and Stuart England*, Oxford, Oxford University Press, 1997 on popular culture and customs.

2 Bouwsma, W.J., "Lawyers In Early Modern Culture", *American Historical Review*, 78 (1973) 303.

opportunity to investigate the roots and the character of social change, and (perhaps more importantly) to understand how that change was self-consciously appreciated by some of its leading actors. The Elizabethan Society of Antiquaries is the subject of this thesis, and it is through the medium of this group that it will be possible to reveal something of the social experience of English legal thinkers of the period. During the fifteen-eighties and fifteen-nineties, and into the first few years of the seventeenth century, the Elizabethan Society of Antiquaries met regularly in London. The group included many of the sharpest legal and historical intellects of the period. Camden, Dodderidge, Stow, Cotton, Ley, Lambarde, Thynne, Davies, and Spelman were some of the better known members. Although the association never achieved official recognition, its meetings assisted in the establishment of a scholarly environment amongst English thinkers sensitive to the examination of legal and institutional history. The group's activities demonstrate that historico-legal studies had by this time achieved a significant degree of intellectual legitimacy.

The surviving material product of the Society is a collection of papers which had originally been read by certain members at some of their meetings. Collected and edited in the early eighteenth century, under the title *Curious Discourses*, these short pieces communicate a real inquisitiveness about the emergence and the history of English laws, customs, and institutions. The "discourses" also demonstrate the adoption of novel methods of inquiry. It is argued that the papers evidence attempts to utilise what we now describe as primary source materials: after the dissolution of the monasteries such materials had become more readily available to a wider

community of scholars. More specifically however, access to other primary source materials, in the form of royal and heraldic records as well as legal records, was exploited by group members who were, by profession, record keepers, heralds and above all lawyers. The interests of the membership, demonstrated through the particular topics chosen for discussion, were diverse. However legal and quasi-legal themes overshadowed all else. Legal matters were nonetheless contextualised and linked with a multitude of distinct subjects such as funeral customs, the extent of land, knights fees, titles of the aristocracy, castles, shires, coinage, judicial procedure, lawful combat, the Inns of Court, heralds and forest law. The ambit of the group enterprise was, however, limited by an important factor: Englishness. The topics discussed were normally confined, by general consensus, to England and English sources were similarly the preferred materials of research.

These two restrictions, the law and Englishness, define (to a certain degree) the character of the Society. But the group was not as insular as might be thought initially. Notwithstanding their backgrounds, the members' writings show that in many ways their thinking transcended the ideal-type of the contemporary common law mind. A number of the members made occasional references to the models of humanist ideas current on the continent, and the group's collective method of inquiry went well beyond the lawyer's narrowly purposive and precedent-based research. The advent of printing had recently facilitated a more rapid circulation of new ideas and this, in turn, enhanced the possibilities for textual synthetics. There is also evidence that some members had started to identify potentially disturbing

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discontinuities in English legal history. The question of feudalism and the impact of the Norman Conquest, for example, became problematic.

The first substantive chapter of this thesis, Chapter 2, deals with questions of perspective and method. The initial section of this chapter is devoted to an examination of the roles and functions of antiquarianism and legal history. It advances the question of `what is a discipline ?' From this cornerstone the particular disciplines of law and history, and their hybrid, legal history, are subjected to more detailed investigation. In the course of this analysis a number of recurrent themes and issues in common law based legal historiography are introduced. Lastly this chapter considers the method of prosopography, a specific research method employed in subsequent chapters.

The third chapter, entitled *The English Legal Renaissance*, aims to contextualise the immediate subject of investigation. The chapter attempts to demonstrate why certain writers wrote as they did at a certain point in time and tries to explain why what was propagated differed from its antecedents and from ensuing scholarship. A social matrix is constructed and the term "renaissance" is problematised. Included is a survey of the population and considered are the intertwined questions of families, patriarchy, economic growth, a middle class, changing patterns of land holding, overseas adventures and the technology of printing. From this point the chapter moves on to contemplate the usefulness and possible meanings of the term "renaissance" and its connections with humanist

thought. The strong continental humanist tradition is noted, with special regard to European legal humanist schools of thought. The foregoing is then set against the established systems of education and legal pedagogy in England in order to make some assessment of the kind of social and intellectual environment which existed for the members of the Society.

Having established the methodological and contextual foundations of inquiry, Chapter 4 asks: how it is possible to say that the Society "existed" at all; whether it is possible to ascribe precise dates (to its formation or its meetings); and whether it is possible to give some preliminary description to its characteristics and functions. The primary documentary evidence is inspected, along with a survey of such secondary treatments as can be considered significant. The chapter examines the literary lineages by which the Elizabethan Society of Antiquaries is known. Chapter 5 continues the focus on source materials, but with a slightly different objective. Entitled *Membership*, this chapter embarks upon the prosopographical enterprise. After further consideration of the most important documentary reference points an attempt is made to identify positively individuals who were members of the group.

Chapter 6 pursues the prosopographical venture. Under the rubric *"...this Society tendeth..."* is included an attempt to link together the individual members of the Society by reference to certain shared experiences or common characteristics. The legal inclination is revealed as most consequential of these. It is prosopography

at its most problematic level, and therefore what may at first blush seem fragmentary or incomplete it is hoped will be understood as offered in an appropriately cautious manner. From there Chapter 6 returns to firmer ground with the analysis of the major documentary evidence of the Society's work: the "discourses". Before reaching some tentative conclusions on the subject, the chapter then moves to consider a single shared experience of group members about which there has been little attention: the careers, life spans and deaths of members of the collective.

Chapter 7, the final substantive chapter, looks at the aftermath to the Elizabethan Society of Antiquaries. This chapter probably follows Chapters 2 and 3 most comfortably in the sense that many of the methodological issues and contextual themes raised in the earlier chapters are revisited. The chapter is entitled *The Early Stuart Half-Century*, and it sets out to examine the immediate and longer term political, legal and intellectual climates of post-Elizabethan England. In much the same way that Chapter 3 considered "renaissance" as a concept, Chapter 7 aims to analyse the concept of "revolution". In particular, the historical practice of periodisation and the interplay between histories of continuities and histories of disjunction is subjected to further scrutiny.

Prior examinations of the Elizabethan Society of Antiquaries have had little regard to the correlation between the members' legal backgrounds and the infiltration of humanism as a scholarly method into Elizabethan England. Because almost all of the members of the Society were lawyers the group collectively possessed expertise

in many of the methodological faculties appropriate to legal and institutional inquiry along humanist lines. Conversely, members' typically English legal isolationism offset this humanist attachment to a certain degree. In France this kind of project had proved very successful indeed. The promising enterprise of the English antiquaries was, however, short lived. Just a few years after the death of the great Queen for whom the period is named, the Society was, unfortunately, curtailed then quashed by contemporary political exigencies. The group, according to Spelman (the only member to write about the group itself), did not dare to test the support of their new King at a time when writing on certain topics had become potentially factious. It was also a time when many members had only recently died, while others had grown quite old.

2. Antiquarianism and Legal History

2.1 Introduction

Not entirely with his tongue in his cheek, in his 1948 monograph *The Renaissance in Historical Thought* W.K. Ferguson stated, in relation to the genre of writing to which we now turn, "what is mirrored in the writings we have studied, though often seen darkly as in a glass". He nevertheless emphasised that the past is made up of events, events which are capable of being given meaning and construction.[1] While accepting the limitations of individual bias, and the influences of scholarly tradition, it is still incumbent upon the legal historian to give some meaning to recorded phenomena. To interpret the past adequately, one must consciously attempt to recognise one's own perspective, and how that viewpoint relates to its intellectual heritage.[2] The necessity for this kind of self consciousness is amplified when the task at hand involves not only the interpretation of historical

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1 See Ferguson, W.K.,*The Renaissance in Historical Thought: Five Centuries of Interpretation*, Cambridge (Massachusetts), Riverside, 1948, pp. 386-387, quote at p. 386 - itself a dull reflection of St Paul (*I Corinthians*, 13). Ferguson has elsewhere noted: "The interrelation of these various forms of historical activity may be difficult to establish with certainty; but the scholar who ignores the possibility of a causal relation between them and the subject of his own special interest, or who is content to recount *what* occurred without venturing to suggest *why* it may have occurred, is, I think, using the concept of scientific objectivity as a pretext for avoiding the necessity of thought.": Ferguson, W.K., "The Interpretation of the Renaissance: Suggestions for a Synthesis", in Kristeller, P.O. and Wiener, P.P., ed.s, *Renaissance Essays*, New York, Harper, 1968, p. 62. See also Kramer, L., "Intellectual History and Reality: The Search for Connections", *Historical Reflections*, 13 (1986) 517-545 at 519-521. Cf. Rand, E.K., "Mediaeval Gloom and Mediaeval Uniformity", *Speculum*, 1 (1926) 253-268 at 262-263.

2 Cf. Ferguson, *op. cit.*, p. 388.

events but also the interpretation of a threshold for the writing of legal history itself. Piggott has noted:

> "In studying the origins and development of historical disciplines, we are in effect engaged in the investigation of the history of ideas; ideas about the past held by those who are now the objects of our own historical investigation, and the techniques they devised, deliberately or accidentally, to obtain and interpret the basic material from which history can be written. The sixteenth and seventeenth centuries constitute a formative period in the development of such ideas in Britain, and we can see at that time the construction of disciplines to organise and investigate more than one type of historical source-material."[3]

Baker has specifically identified the importance of the Elizabethan Society of Antiquaries as a type of historico-legal genesis:

> "We are told that the Renaissance gave man an awareness of his past, and if ever the history of English legal history comes to be written the

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3 Piggott, S., "Antiquarian Thought In The Sixteenth And Seventeenth Centuries" in Fox, L., ed., *English Historical Scholarship in Sixteenth and Seventeenth Centuries,* London, Oxford University Press, 1956, p. 93. See also Southgate, B.C., "'No Other Wisdom'? Humanist Reactions To Science And Scientism In The Seventeenth Century", *The Seventeenth Century*, 5 (1990) 71-92 and Appendix 2, *infra*.

story will begin in the first Elizabethan age - the age of William Lambard, John Dodderidge, Francis Tate and Roger Owen. But those first legal antiquaries were preoccupied with dark and distant problems about the origins of the common law and its Englishness..."[4]

This chapter aims to investigate some of the basic historiographical and methodological issues raised by the thesis. In the first section, the chapter examines the phenomenon of English Antiquarianism and its connections with historical genres and the legal profession. From this point the chapter explores the relationship of legal and historical studies, and the hybrid discipline of legal history. The final section of the chapter turns to a consideration of prosopographical methodology.

2.2 English Antiquarianism

In the late sixteenth and early seventeenth centuries the term "historian" had not yet reached the degree of established definition by which we understand the term today. The members of the Elizabethan Society of Antiquaries certainly did not refer to themselves as historians. They referred to themselves as "antiquaries".[5] Perhaps only a couple of the group's members were what we would describe today as

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4 Baker, J.H., "The Dark Age Of English Legal History, 1500-1700", in his *The Legal Profession And The Common Law*, London, Hambledon, 1986, p. 435.

5 Camden, W., *Britannia*, London, 5th edition, 1600, "Ad Lectorem", p.30, Spelman, Sir H., "The Occasion": Bodley MS *e Mus* 107, fols. 1-2.See Woolf, D.R., "Erudition and the Idea of History in Renaissance England", *Renaissance Quarterly*, 40 (1987) 11-48 at 17-27.

"historians". Who were the antiquaries? In one sense the antiquaries were earnest amateurs and dilettantes. They were all male, and they were almost exclusively members of the "gentry". Some were based in London and others oscillated between town and country. They were wealthy and successful enough to have the time to spare for conducting research on topics of interest to their association, and to attend conferences whilst in London during the Term. In another sense the antiquaries were discriminating professionals. Almost all of the membership of the group was educated in the legal system and a very large number of members made their living, at least in part, from the practice of the law. Many of the members, especially the heralds, also had more specialised interests in archival management. The way in which topics were selected for investigation, and the way in which these topics were researched and presented, indicates that there was a consensus amongst the group about certain things of collective interest, and how such things could be better understood.

The antiquaries studied what they called the "monuments": material items (documentary or otherwise) which they had exhumed as direct evidence about their chosen topics. In relation to the group's documentary investigations perhaps the most interesting and important of the methodological propensities of the Elizabethan Society of Antiquaries, in terms of engendering hypothesis and comment, was etymology. In countless instances throughout the "discourses", the remnants of the Society's documentary records, an etymological approach is in evidence. Brooks and Sharpe comment:

> "In the 1590s, William Camden introduced the members of the Society to Europe, especially those of France with whom he had entered into correspondence. Camden spoke directly of "a consonancy and a correspondency between the name of a thing and the thing named." In light of Camden's example, most members of the Society employed etymological analysis in their discourses on the history of English institutions and offices."[6]

Etymology, for the antiquaries, was an important means of accessing the past; it was a method, an agreed technique, towards that end.[7] Etymology additionally had the authority and propriety of being both a mode of analysis with a distinguished and cosmopolitan descent of classical and scholastic heritage. It was also an approach consonant with accepted practices of common law learning.

In many other ways the antiquaries were relatively out of step with purely "historical" developments in the writing of history. One of the important themes of contemporary historical thought received from classical sources was that of the cycle. For centuries up until the late fifteen hundreds English "historians" had recorded the great deeds of their nation in *Chronicles,* which drew heavily upon

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6 Brooks, C. and Sharpe, K., "Debate; History, English Law And The Renaissance", *Past And Present*, 72 (1976) 133-142 at p. 138.

7 The group's etymological proclivities have been reiterated, more recently, by Parry: Parry, G., *The Trophies of Time: English Antiquarians of the Seventeenth Century*, Oxford, Oxford University Press, 1995, pp. 29-31.

recurrent motifs.[8] There is no evidence of attempts by the antiquaries to adopt the chronicler's approach. Perhaps of greater importance, however, was a newer style, or fashion, of historical writing, a style which Smuts terms "analytic" but which is probably better expressed as "politic". Many active intellectuals of the time, especially associates of great magnates such as the Earl of Essex, drew on their thespian experiences at the Inns of Court to produce works (including but not limited to historical works) which criticised a perceived decadence within the Stuart Court.[9] The "historical" works of this period were often studies of political upheaval. They also contained an underlying message about how such discord might be quelled by a wise and just ruler, a ruler who could, through prudence and practicality, eliminate threats to the proper functioning of institutions. Smuts' exemplar "historian" is, not surprisingly, Bacon.[10]

The members of the Society of Antiquaries could not, as a group, realistically be portrayed as historians of this kind. From the Society perhaps only Camden and Spelman are remembered today chiefly for their historiographical significance. The historical work of the Society was not so politically inspired or pragmatic as, for

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8 Woolf, D.R., "Genre into Artifact: The Decline of the English Chronicle in the Sixteenth Century", *The Sixteenth Century Journal,* 19 (1988) 321-354.

9 Kamps, I., *Historiography and Ideology in Stuart Drama*, Cambridge, Cambridge University Press, 1996, pp. 26-46 and Levy, F.J., "Hayward, Daniel, and the Beginnings of Politic History in England", *Huntington Library Quarterly*, 50 (1987) 1-34.

10 Smuts, R.M., *Court Culture And The Origins Of A Royalist Tradition In Early Stuart England*, Philadelphia, University of Pennsylvania Press, 1987, pp. 76, 79 and 259-261. See *infra* Chapter 3.

example, Bacon's or Hayward's.[11] Its work was instructive, but detached and legalistic. Its audience was more private and restricted. In this sense Pocock's claim, that the material which early seventeenth century Englishmen used in their interpretation of the common law was absent of any basis of comparison, is overly conservative. The antiquaries were figures of at least some note, whose opinions were of some value. However, it would equally be an exaggeration to say, with Sharpe, that in the Society of Antiquaries we can find revealed much of any precise contemporary political relevance, or that the opinions of the antiquaries necessarily carried much or any political "weight".[12]

If anything, comparatively recent changes in the genres of historical writing had had the effect of distancing commentary from an eventful context, a trend which was, eventually, to mature into criticism and debate.[13] The Elizabethan Society of Antiquaries collectively essayed a style of historical writing, redolent of the forensic qualifications of the majority of its members, in which we can find epitomized (for both better and worse) many of the conventions of contemporary legal history.

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11 Levy, *op. cit.*

12 Pocock, J.G.A., *The Ancient Constitution And The Feudal Law*, 2nd ed., Cambridge, Cambridge University Press, 1987, chapter 3 and Sharpe, *Sir Robert Cotton, 1586-1631: History and Politics in Early Modern England*, p. 23. See also Kamps, *op. cit.*, p. 47 ff.

13 Woolf, "Genre into Artifact", *loc. cit.*

2.3 Law and History

Law and history have certain methodological similarities. Foremost among these is the notion that the results of study, "conclusions" or "decisions", must be based upon "evidence". Both history and law, operating in the field of human activity, seek to represent authentic phenomena, and human elements of interpretation are required to be, to a degree at least, subjected to "rules of evidence". Both disciplines can be characterised, therefore, by this methodological attribute. In this sense these two disciplines owe much to their antecedent "diplomatic", especially in so far as that proto-discipline trained its neophytes in the study and exegesis of documents.[14]

With this much in common between legal and historical methodologies, it is a paradox that the hybrid specialty of legal history, despite appearances, accords exceedingly little significance to historically critical analysis. This paradox may be a peculiarly English enigma, as Kiralfy has noted:

"The attitude of the English Lawyer towards his law as an institution

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14 White, *op. cit.*, pp.120-123, Kelley, D.R., "Clio and the Lawyers: Forms of Historical Consciousness in Medieval Jurisprudence", *Medievalia et Humanistica*, new ser. 5 (1974) 25-49 at 25-26 and Kelley, D.R., "*Historia Integra*: Francois Baudouin's Conception of History", *Journal of the History of Ideas*, 25 (1964) 35-57 at 54-57. See also Chaplais, P., *Diplomatic Documents Preserved in the Public Record Office*, London, Her Majesty's Stationery Office, 1964, Chaplais, P., *English Royal Documents: King John - Henry VI, 1199 - 1461*, Oxford, Clarendon Press, 1971, Chaplais, P., *Essays in Medieval Diplomacy and Administration*, London, Hambledon Press, 1981 and Chaplais, P., *English Medieval Diplomatic Practice*, London, Her Majesty's Stationery Office, 1975-1982.

independent of the machinery of its creation is ambiguous. The fundamental principles of English Law are not indigenous, but transplanted from the European continent in the eleventh century, and not of great antiquity. They have since developed on the basis of custom, practice, and ideas of what is right and reasonable. Hence one would expect the English Lawyer to be drawn to ideas of natural law and morals, and be a supporter of the historical and metaphysical schools of jurisprudence. However the opposite appears, at least superficially, to be the case where law is studied in England in abstract terms. All the emphasis is laid on authority and legality, on positive approaches."[15]

Kiralfy proposed that the root of this paradox might itself be historically revealed, in the constitutional crisis of the seventeenth century. [16] The result, for Kiralfy, was that English lawyers have, since the triumph of Parliament, invested their efforts in the political system and process, rather than in theoretical concepts and principles. The Elizabethan Society of Antiquaries stood at the point immediately antecedent to this

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15 Kiralfy, A., "Law and Right In English Legal History", in Olschki, L.S., ed., *La Formazione Storica Del Diritto Moderno In Europa (Atti Del Terzo Congresso Internazionale Della Società Italiana Di Storia Del Dirrito)*, Florence, 1978, pp.1069-1086 at 1069. (This article was republished, under the same title, in the *Journal of Legal History*, 6 (1985) 49-61.)

16 *id.*, pp. 1069 and 1084. The question persists in Australia: *Building Construction Employees and Builders' Labourers Federation* v *Minister for Industrial Relations (NSW)* (1986) 7 NSWLR 372; *Union Steamship Co of Australia Pty Ltd* v *King* (1988) 166 CLR 1 and *Kable* v *The Director of Public Prosecutions (NSW)* (1996) 70 ALJR 814.

critical moment. It was precisely the Society's potential of realising itself as an "historical school of jurisprudence" which was to become an impairment in the heated vessel of Stuart politics.[17]

There is another, and earlier, historical reason for the common law's rejection of history. Tangible advances in the physical sciences during the sixteenth and seventeenth centuries provided a paradigm for the successful production and management of knowledge. Amongst others Shapiro has outlined, under the rubric "The Diffusion of Scientific Knowledge", the utilisation of the new scientific methodology in other fields of study, particularly in the human and social fields of study.[18] English lawyers were no less keen than philosophers and political thinkers to adopt the "positive" method which had proven so effective a tool for investigation. In many ways the lawyers had a special enthusiasm for an approach which centred upon systematised method. The pragmatic technique of English law thus (apparently) eschewed the historical, "natural law", approach as impractical and speculative: with the result that the courts were inherently limited in their scope to

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17 For the more theory based approach of the period prior to the conflict see Baker, J.H., "English Law And The Renaissance", *Cambridge Law Journal*, 44 (1985) 46-61 at 51-53. This theme is revisited in Chapter 7, *infra*.

18 Shapiro, B., "Law And Science In Seventeenth Century England", *Stanford Law Review*, 21 (1969) 712 at 732-736. Her archetype is, of course, Bacon. See also Woolf, D.R., "Disciplinary History and Historical Culture. A Critique of the History of History: The Case of Early Modern England", *Cromohs*, 2 (1997) 1-25, Feingold, M., *The Mathematicians' Apprenticeship: Science, Universities and Society in England, 1560-1640*, Cambridge, Cambridge University Press, 1984, Johnson, F.R., "Gresham College: Precursor Of The Royal Society", *The Journal Of The History Of Ideas*, 1 (1940) 413-438 especially at 413-414 and Appendix 2, *infra*.

employ the "dangerous abstract notions"[19] implicit in such an approach. This reasoning accords with Rodgers' assessment that by the early seventeenth century the common law attitude towards history was dominated by a "custom theory" which held, as an "article of faith", that the law was a body of "immemorial custom":

> "The development of a 'theory' of customary law was accompanied, between about 1550 and the beginning of the seventeenth century, by a more general toughening of insular common law attitudes and thought. The result was that by the early 1600s the belief that the common law was merely an expression of immemorial custom had become an article of faith. The development of a theory of custom was partly a symptom, and partly a cause of this process, but it may also owe something to the fact that the courts were seeking to defend themselves against the new conciliar courts, and to the Tudor centralisation of government. The peculiarly English attitude to

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19 Kiralfy, *op. cit.*, pp. 1085-1086. Contra: Haines, C.G., *The Revival of Natural Law Concepts*, Cambridge (Massachusetts), Harvard University Press, 1930, pp. 29-39 - a work redolent of American, and specifically Harvard based, interbellum realism which indicates the omnipresence of "natural law" influences. In a reversal of roles, Morton J. Horwitz, Dean of Harvard Law School, in his H.L.A. Hart Lecture in Jurisprudence and Moral Philosophy (presented at University College Oxford on 18 May 1995) presses the ideological function of the separation between law and history as one of facilitating a neutral and apolitical means for legal discourse: Horwitz, M.J., "Why is Anglo-American Jurisprudence Unhistorical?", *Oxford Journal of Legal Studies*, 17 (1997) 551-586, particularly at 565-568.

history that resulted was certainly not consciously constructed."[20]

Again, we see little if any conscious construction of the common law as an 'article of faith' from the writings which we know to have been the records of the Society's transactions. The writings are nationalistic certainly, but not dogmatic. There is evident an interest in methodical approaches, but in a juristic rather than a thoroughly analytical sense.

There is yet another way of interpreting this phenomenon, of the contemporary lack of interest in legal history (in the face of an overwhelmingly pragmatic philosophy), and that is to propose a conceptual conflation of God-given law, the law of nature, and "positive" law. It is to say that this distinction, based upon the source of legal authority, is anachronistic to the times under examination. For its own part, this alternative interpretation assumes that the unconscious outlook was actually a "natural law" orientation, at least in the sense that natural law was inherently "reasonable" or "rational". It may explains, for example, how many traditional legal practices of local manorial custom could be quashed - as indeed during this period they were - where such practices were held to be "unreasonable". The interpretation nonetheless entails a practice silently informed by the very "abstract notions" which the so-called pragmatic approach, by definition, forswears.

It therefore, ultimately, rests upon the impregnable notion of the common law as

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20 Rodgers, C.P., "Humanism, History And The Common Law", *Journal Of Legal History*, 6 (1985) 129-156 at 136. See *id.* at 141-146 for Rodgers' reasons for this insularity. See also Pocock, *op. cit.*, pp 36-38.

enshrined national custom. Controversially, Kelley has claimed that when Maitland said, in his famous Rede lecture[21], that the sixteenth century was when English law was "saved but isolated", we should really understand that this was when English historical scholarship was "isolated but stagnated". For Kelly, while the French were reinterpreting and reappraising:

> "The English, on the other hand, clung even more tenaciously to their myths, and they continued to rest their case upon the aboriginal character and prehistorical origin of common law. The fact that between Fortescue and Coke lay over a century of exploration into European legal and institutional history, much of it by professional jurists, did not seem to matter."[22]

Impractical and abstract, the historical project has much to offer the study of law. As an alternative and corrective to the arid positivism of the common law approach we might look beyond England.[23] Kantorowicz's delineation of Savigny's programme for an historical "school" of law accentuates the value of historicising legal studies - precisely in order to bring them more consciously within the broader

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21 Maitland, F.W., *English Law And The Renaissance*, Cambridge, Cambridge University Press, 1901.

22 Kelley, D.R., "History, English Law And The Renaissance", *Past And Present*, 65 (1974) 24 at 30. Rodgers essentially agrees: Rodgers, *op. cit.*, pp. 141-146.

23 See Kelley, "*Historia Integra*", pp. 54-57, Kelley, "History, English Law And The Renaissance", pp. 28-29 and Rodgers, *op. cit.*, pp. 153-154. See *infra*, Chapter 3.

realm of the human and social sciences.[24] To a very large degree this was also Maitland's project.[25] But as Kantorowicz correctly noted, while the two approaches

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24 "The unhistorical school of natural law, which had till now held the field believes that the law could arbitrarily be produced by the legislator at any given moment. The historical school teaches that the contents of the law are necessarily determined by the whole past of the nation, and therefore cannot be changed arbitrarily. Thus, like the language, the manners, and the constitution of a nation, all law is exclusively determined by the nation's peculiar character by what was later called the *Volksgeist*. Like language, manners and constitution, law has no separate existence, but is a simple function or facet of the whole life of the nation. In early times the common conviction of the people is the origin of the law. But with the development of civilization the making of law, like every other activity, becomes a distinct function, and is now exercised by the legal profession. In every higher civilization the jurists, therefore, represent the people in the creation of the law. Thus, law is always organically connected with the development of social life. It arises from silent, anonymous forces which are not directed by arbitrary and conscious intention, but operate in the way of customary law. Legislation transcends the ability of young as well as of declining nations, and nations in their prime neither need nor care for legislation; only the writing down of the existing customary law or decisions of controversial questions, perhaps in the form of provisional decrees, or purely political legislation should be permissible. The real remedy for the deficiencies of German law was to apply strictly historical methods, and thus to purify the original Roman law from its defilement through modern ignorance and indifference. History alone, Savigny declared, is the road to the understanding of our own conditions.": Kantorowicz, H., "Savigny and the Historical School of Law", *Law Quarterly Review*, 53 (1937) 326-343 at 332-333. See also Friedrich, C.J., "Law and History", *Vanderbilt Law Review*, 14 (1961) 1027-1048 and Schiffman, Z.S., "Renaissance Historicism Reconsidered", *History and Theory*, 24 (1985) 170-182 at 173 ff.

25 Maitland's far-reaching views are well expressed in his inaugural lecture delivered in the Arts School at Cambridge on 13 October 1888 and subsequently published as "Why the History of English Law is not Written", in Fisher, H.A.L., ed., *The Collected Papers of Frederick William Maitland*, 3 volumes, Cambridge, Cambridge University Press, 1911, vol. 1, pp. 480-497. See also Plucknett, T.F.T., "Maitland's View of Law and History", *Law Quarterly Review*, 67 (1951) 179-194,Elton, G.R., *F.W. Maitland*, London, Weidenfeld and Nicolson, 1985, as well as Baker, "English Law And The Renaissance", pp. 46-47, Kelley, "History, English Law And The Renaissance", p. 25, and Blaas, P.B.M., *Continuity and Anachronism: Parliamentary and Constitutional Development in Whig Historiography and in the Anti-Whig Reaction between 1890 and 1930*, The Hague, Nijhoff, 1978, pp. 240-273.

are eminently compatible, there has been an unfailing resistance to synthesis:

> "It is usual in [England], in describing and criticizing the historical school, to oppose Savigny's conceptions to those of John Austin, who had called Savigny's pamphlet 'specious but hollow' in his own uncouth but profound work. But this is based on a misunderstanding. When Austin considers law a command of the Sovereign, he tries to justify and explain its binding force; when Savigny considers law as an unconscious emanation of the *Volksgeist*, he tries to justify and explain the contents of the law. Austin's theory is a rational construction, Savigny's chiefly a sociological description." [26]

Instead of such an organic fusion with the social or interpretative sciences, English legal "science" allies itself with, or attempts to emulate, the positivist model of the physical sciences.[27] The effect has been to render the critical study of legal history a

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[26] Kantorowicz, *op. cit.*, p. 334. See also Fuller, S.M., "Some Contemporary Approaches to the Study of Legal History and Jurisprudence", *Tulsa Law Journal*, 10 (1975) 576-582 and 'The Whig Interpretation' in Chapter 7, *infra*,

[27] Levine's "Natural History and the New Philosophy: Bacon, Harvey and the Two Cultures": Levine, J.M., *Humanism and History: Origins of Modern English Historiography*, Ithaca, Cornell University Press, 1987, pp. 123-154 provides the best overview. There are many examples, but Pollock can be taken as an archetype: Pollock, F., "The Science of Case Law", *Essays in Jurisprudence and Ethics*, London, 1882, 237-260, Pollock, F., "The History of the Law of Nature: A Preliminary Study", *Journal of the Society of Comparative Legislation*, New Series 2 (1900) 418-433 and Pollock, F., "Reason and Conscience in Sixteenth-Century Jurisprudence", *Law Quarterly Review*, 24 (1908) 373-384. See also Hazeltine, H., "Selden As Legal Historian: A Comment In Criticism And Appreciation", *Harvard Law Review*, 24 (1910-

fairly marginal activity.[28] While many have issued almost plaintive cries for the study of legal history,[29] Shapiro has described the intrinsic effect as one which has created a "legal-history ghetto", where any degree of historico-legal analysis (as exists at all) "becomes part of the cultural trimmings rather than the heart of legal instruction".[30] Alas the most recent attempts to break free of this ghetto, styling itself "critical", often fails to move from polemic to the production of knowledge.[31]

1911) pp. 105 & 205 at 109-114 and 207-211,Funk, D.R., "Legal History as Empirical Social Science in Theory and Practice", *Houston Law Journal*, 23 (1984) 311-338 and Millon, D., "Positivism in the Historiography of the Common Law", *Wisconsin Law Review*, [1989] 669-714. Berman has associated, convincingly, this genealogy with canon law: Berman, H.J., "The Origins of Western Legal Science", *Harvard Law Review*, 90 (1977) 894-943, cf. Bassett, W.W., "Revisionist History: The Study of Legal Origins", *Jurist*, 45 (1985) 230-250 and Binder, G., "Angels and Infidels: Hierarchy and Historicism in Medieval Legal History", *Buffalo Law Review*, 35 (1986) 527-599.

28 Prest, W.R., "Law And Women's Rights In Early Modern England", *The Seventeenth Century*, 6 (1991) 169-187 at 169.

29 Eg. Wolff, H.J., "The Science of Ancient Legal History", *Lawyers Guild Review*, 10 (1950) 47-51 and Campbell, E., "Lawyers' Uses of Legal History", *University of Queensland Law Journal*, 6 (1968) 1-23.

30 Shapiro, *op. cit.*, p. 728. See also Woodard, C., "History, Legal History and Legal Education", *Virginia Law Review*, 53 (1967) 89-121 and Raak, D.W., "Some Reflections on the Role of Legal History in Legal Education", *Duquesne Law Review*, 26 (1988) 893-923. An example: Shepard, R.T., "The Importance Of Legal History For Modern Lawyering", *Indiana Law Review*, 30 (1997) 1-6. Cf. Parker, G., "The Masochism of the Legal Historian", *University of Toronto Law Journal*, 24 (1974) 279-316 and Patterson, L., "On the Margin: Postmodernism, Ironic History, and Medieval Studies", *Speculum*, 65 (1990) 87-108.

31 See Unger, R.M., *The Critical Legal Studies Movement*, Cambridge (Massachusetts), Harvard University Press, 1983, especially pp. 6-8 and 104 ff., Astorino, S.J., "History and Legal Discourse: The Language of the New Legal History", *Duquesne Law Review*, 23 (1985) 363-374 and Horwitz, M.J., "Progressive Legal Historiography", *Oregon Law Review*, 63 (1984) 679-687. Horwitz, and (implicitly) Nelson (Nelson, W.E., "Legal and Constitutional

2.4 Method

Given these initial conclusions, the method employed for the study of the Elizabethan Society of Antiquaries requires some explanation. To avoid both the Scylla of "law school trimmings" and the Charybdis of postmodern or "critical legal studies" relativism requires, if it is possible, the deliberate constitution of a methodology designed to meet the needs of the subject at hand. Along with the kind of textual analysis of primary and secondary materials with which lawyers, historians and philologists generally are acquainted, the study of a group, by necessity, calls for the utilisation of a more complex, and hence a rather more disputed, method known as prosopography.

Prosopography is a term which is familiar to historians but almost unknown amongst lawyers. Prosopography consists of the analysis of the shared conditions and experiences of a group of individuals via the examination of their (collective)

History: The Incompatibility of Critical Legal Studies and Legal History", *Annual Survey of American Law*, [1984] 227-264.) particularly criticise the techniques of Gordon, in relation to whose emergent critical legal studies programme see: Gordon, R.W., "Recent Trends in Legal Historiography", *Law Library Journal*, 69 (1976) 462-468, Gordon, R.W., "Historicism In Legal Scholarship", *Yale Law Journal*, 90 (1981) 1017-1056 and Gordon, R.W., "Critical Legal Histories", *Stanford Law Review*, 36 (1984) 57-125. It seems that Horwitz is far more "orthodox in his progressivism" than Gordon. In this vein see also Teubner, G., "The King's Many Bodies: The Self-Deconstruction Of Law's Hierarchy", *Law And Society Review*, 31 (1997) 763-787, Boyer, A.D., "Sir Edward Coke, Ciceronianus: Classical Rhetoric and the Common Law Tradition", *International Journal for the Semiotics of Law*, 10 (1997) 3-36, Ross, R.J., "The Memorial Culture of Early Modern English Lawyers: Memory as Keyword, Shelter, and Identity", *Yale Journal of Law and the Humanities*, 10 (1998) 229-326 and Weisberg, R.H., "It's a Positivist, It's a Pragmatist, It's a *Codifier*!: Reflections on Nietzsche and Stendhal", *Cardozo Law Review*, 18 (1996) 85-96.

lives. Typically such analysis involves the delineation of the "group" and then the uniform application of a selection of questions about factors like social class, wealth, religion and occupation to each "member". The answers to such questions may then be assembled and examined for patterns, variables and affinities within the defined group. The objective of the method is to unveil otherwise concealed influences within political or social structures and organisations, influences which may not be apparent from analyses of overt political statements or institutional arrangements. The prosopographical method can be identified with two styles of historical research. The first may be termed the elitist school. Elitist prosopography typically focusses upon the micro-politics of small but significant groups such as ruling elites. The method is apparent in the attention paid by historians of, for example, Members of Parliament as a "group", to factors such as their marriage connections, business interests and educational backgrounds. The result is normally a series of detailed case studies of "members", with the paradigm exemplified in the colossal and ongoing *History Of Parliament* project.[32] The historians of the Roman republican period have worked the method almost to the point of exhaustion, and in so doing they have also made some exceptionally valuable and critical assessments of the

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32 Volumes currently in print include: Roskell, J.S. ed.,*The History Of Parliament: The House Of Commons 1386-1481*, 4 volumes, Sutton, 1992, Bindoff, S.T.,ed., *The History Of Parliament: The House Of Commons 1509-1558*, 3 volumes, Secker and Warburg, 1982, Hasler, P.W., ed.,*The History Of Parliament: The House Of Commons 1558-1603*, 3 volumes, London, Her Majesty's Stationery Office, 1981, Basil Duke Henning, ed., *The History Of Parliament: The House Of Commons 1660-1690*, 3 volumes, Secker and Warburg, 1983, Sir Lewis Namier and John Brooke, ed.s, *The History Of Parliament: The House Of Commons 1754-1790*, 3 volumes, London, Her Majesty's Stationery Office, 1964 and Thorne, R.G., ed., *The History Of Parliament: The House Of Commons 1790-1820*, 5 volumes, Secker and Warburg, 1986.

reliability and utility of the method and its application to "elites".[33] The second genre of prosopography may be termed the mass school. This approach typically focusses upon a much wider "group" than the elitist school, and tends to be more consciously sociological and statistical in its analysis of broad social phenomena.[34]

The attraction of prosopography is conspicuous: the method explicitly shifts the analytical emphasis, from the recurrently desolate interpretation of the famous acts of 'great men' and the ideal operations of institutional models, to another level of human and social action. It offers a perspective which can be broader and more profound than more traditional forms of history. Yet in accepting the obvious appeal of this tool, one must not overlook the serious handicaps which attend its employment. The method is dependent upon an extensive, if not comprehensive, stockpile of data concerning the members of the identified group, a prerequisite which almost never subsists. The usual starting point for the would-be prosopographer is a fact-base which is fragmentary, lacking in detail about some

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33 Some of the most significant examples of Roman republican elite prosopography in application include: Gelzer, M., *The Roman Nobility*, English translation, Oxford, Blackwell, 1969 (originally published in 1912), Badian, E., *Foreign Clientelae 264-70 BC*, Oxford, Clarendon Press, 1958 and Gruen, E.S., *The Last Generation Of The Roman Republic*, Berkeley, University of California Press, 1974. See also, for further discussion of the method in this context, Broughton, T.R.S., "Senate and Senators of the Roman Republic: The Prosopographical Approach", *Aufstieg und Niedergang der Romishen Welt*, 1.1 (1972) 250-265 and Wikander, C. and O., "Republican Prosopography: Some Reconsiderations", *Opuscula Romana*, 12 (1979) 1-12.

34 See Stone, L., "Prosopography", *Daedalus*, 100 (1971), 46-79, *passim*.

prosopographical method to legal history is justified by the fact that, inherently, lawyers have always been assiduous record keepers. In recent years this type of analysis has been successfully applied by Ives, Clendenin, Prest and Lemmings to the reasonably confined topic of the history of the English legal profession.[39] This study focusses more sharply upon the legal experiences of a group whose connection with the law has, it is contended, been underestimated. Does the specific study of the significance of legal influences upon the Elizabethan Society of Antiquaries satisfy Stone's other prerequisites? The size of the group is quite small indeed, with apparently not more than 106 possible members, amongst whom a sizeable proportion are fairly well known historical actors.[40] The recoverable evidence is considerable in quantity and also quite detailed in nature, and what exists can be tested for its reliability.[41] It would appear that, experimentally at least, that the

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employment: Stone, L., "The Educational Revolution In England, 1560-1640", *Past and Present*, 28 (1954) 41-80.

39 Ives, E.W., "Some Aspects Of The Legal Profession In The Late Fifteenth And Early Sixteenth Centuries", (unpublished doctoral dissertation, University of London, 1955), Ives, E.W., *The Common Lawyers Of Pre-Reformation England*, Cambridge, Cambridge University Press, 1983, Clendenin, T.B., "The Common Lawyers In Parliament And Society: A Social And Political Study Of The Common Lawyers In The First Jacobean Parliament", (unpublished doctoral dissertation, University of North Carolina, 1975), pp. 4-10, Prest, W. R., *The Inns of Court under Elizabeth I and the Early Stuarts: 1590-1640*, London, Longman, 1972, especially at p.221, Prest, W., *The Rise Of The Barristers: A Social History Of The English Bar 1590-1640*, Oxford, Clarendon Press, 1986 and Lemmings, D., *Gentlemen And Barristers: The Inns Of Court And The English Bar 1680-1730*, Oxford, Clarendon Press, 1990. The method has also been utilised, in relation to the contemporary scientific community: Feingold, *op. cit.*, especially pp. 122-165 and 190-213.

40 See Chapters 5 and 6, *infra*.

41 See Chapter 4, *infra*.

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40 See Chapters 5 and 6, *infra*.

41 See Chapter 4, *infra*.

prosopographical method should offer some important insights to the resolution of the designated issue.

Before passing from this question, it ought to be noted that Stone's criteria are squarely and expressly aimed towards what was earlier described as "elite" prosopography. Although the question of "mass" prosopography is not directly raised by the present subject, there are nonetheless some interesting general observations which should be made in relation to mass prosopography and legal history. Small groups, by definition, exist within the context of larger ones. Mass prosopography, as we have noticed, draws heavily upon statistical and sociological methodologies. The sociological analysis of law is most closely associated with scholars of the legal realist school. At its limit, claiming that there are no such things as legal rules, and that what is (analytically) mistaken for "rules" is simply the politics, economic interests and personal biases of individual judges (as expressed through cases by careful choice of precedents), legal realism present a very different understanding of the legal system and its constitution. The approach may be extrapolated, in the study of legal history, to a consideration of such factors upon any legal actors (be they judges, legislators, bureaucrats or writers). American legal history has been greatly influenced by American legal realism. The value of the sociological approach, even to the study of specifically targeted "elites", is in the provision of contextual data, of “facts”, capable of situating the chosen group within

an historical and social environment.[42]

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42 See Merton, R.K., "Science, Technology and Society in Seventeenth Century England", *Osiris*, 4 (1938) 360-632, especially at 367-372.

3. The English Legal Renaissance

The fundamental aim of this chapter is to provide a broad prologue to some of the specific and particular analyses contained in the following chapters. So while this chapter does not profess to describe the historical, intellectual and legal context of the subject matter of the thesis in detail there is, naturally, some advantage in the contextualisation of specific issues. An overview of the demographics, economics and technologies of late Elizabethan England serves to situate events within a societal matrix. From there, the question of whether or not the period under investigation can be considered a renaissance, and whether the idea of "Renaissance" or the practice of periodisation are at all useful, needs to be noticed and evaluated. How the emerging method of humanism related to this notion of "Renaissance", and how the associations of these concepts with the study and practice of law in England at the time can be understood, are questions which need to be addressed.

3.1 Structures and Change

The late sixteenth century and the early seventeenth century is a time which, presently, we describe as "early modern". That description already bears a certain worn and tired visage. Was the period special? By looking at indices such as population and patriarchy we can notice slow, long-term change. Other perspectives, like economics, war or technologies, provide examples of faster, more eventful, change.

The total population of England during the Elizabethan period can only be roughly estimated due to the fact that population records were not nationally systematised until 1801. Extant records, in the form of parish registers, musters, house and hearth tax records and the like, provide piecemeal evidence which suggests a population range for the period of between four and seven million persons surviving beyond infancy.[1] The estimate of Wrigley *et al* is rather conservative: a population of about five million in 1600, but this figure increased from a base of about three million of a century before. This estimate is based on various (daunting) statistical projections, and has been revised downwards by De Vries, who reckons on a population (of England and Wales) which rose from 2.6 million in 1500 to 4.4 million in 1600.[2] The sixteenth century most likely experienced something close to a doubling of England's population. Urbanisation accelerated, with the population of London probably increasing fivefold over the same period.[3] Economic growth also

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1 Phillips, W., "Elizabeth I and her subjects", (1967) *British Tax Review* 404, Sharpe, J.A., *Early Modern England: A Social History 1550-1760*, London, Arnold, 1987, pp 36-55 and Jack, S.M., *Trade And Industry In Tudor And Stuart England*, London, Allen and Unwin, 1977, pp 29-31.

2 Wrigley, E.A. and Schofield, R.S., *The Population History of England, 1541-1871*, London, Arnold, 1981, *passim* and De Vries, J., *European Urbanisation: 1500-1800*, Cambridge (Massachusetts), Harvard University Press, 1984, p.36. Stone's estimate of the total population is greater, and more specific, at between five and five and a half million: Stone, "The Educational Revolution In England, 1560-1640", p. 57. Houlbrooke is in broad agreement with these figures, but adds that the numbers are especially significant when seen in light of the base of only about two million in 1470: Houlbrooke, R.A., *The English Family, 1450-1700*, London, Longman, 1984, p. 27. Merton's estimate is also within these parameters: Merton, *op. cit.*, p. 571. See also Jack, S.M., *Towns In Tudor And Stuart Britain*, New York, St.Martin's Press, 1996, pp. 169-170.

3 De Vries, *op. cit.*, pp. 29, 195 and 308-309 and Jack, *Towns In Tudor And Stuart Britain*, p. 92, and more generally pp. 159-184. Cf. Wright, L. B., *Middle Class*

burgeoned, particularly in the comparatively new sphere of land as a marketable commodity. Houlbrooke has demonstrated that there was a surplus of labour, in the form of a growing class of landless poor which, in turn, lead to a large degree of internal geographical migration, the settlement of hitherto unpopulated areas and urbanisation.[4] Economic growth, while healthy, did not keep pace with the population explosion. In addition to this, many English towns (not just London) hosted significant enclaves of foreign migrants, most of whom can be shown to have moved for economic rather than religious reasons.[5] This, if correct, makes for an image of the overall population which, though small, had undergone a recent and dramatic increase, was mobile, and increasingly cosmopolitan.

The primary unit of society in England (as elsewhere in Europe) remained the nuclear family, or at the broadest the elementary group consisting of parents, children, kinsfolk and servants living in one house, under one head. The overwhelmingly predominant pattern was, however, for households to accommodate just two generations - parents and children.[6] The average age for marriage and the establishment of the household seems to have been in the middle to late twenties, an

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Culture in Elizabethan England, Chapel Hill, University of North Carolina Press, 1935, p 10.

4 Houlbrooke, *loc. cit.*,

5 Rich, E. E., "The Population Of Elizabethan England", *Economic History Review*, 2nd Series, 2 (1950) 247-265 at 260-263, Houlbrooke, *op. cit.*, p. 28 and Jack, *Towns In Tudor And Stuart Britain*, pp. 23-26.

6 Houlbrooke, *op. cit.*, pp. 18-20 and Wrightson, K., *English Society, 1580-1680*, London, Hutchinson, 1982, pp. 89-118.

age at which the economic requirements of establishment could be met following a period of paid employment, apprenticeship or inheritance. At higher social levels marriage seems to have often occurred a little earlier, owing to the greater availability of economic resources and the influences of dynastic arrangements.[7] The actual size of households was very much dependent upon social and economic status, and whether it was located rurally or in a town. Houlbrooke estimates that while the average labourer's household numbered approximately four persons, the average for the gentry (which he puts at about two percent of the population) was eight persons. Within the gentry itself families might be very large indeed, with peers averaging forty-member households (often due to a large number of servants and the practice of married children still living within the household).[8]

Within the home the common law regarded the position of the wife as being almost completely subordinate to the husband. Her goods became his and under the doctrine of *curtsey* a husband became entitled to hold his wife's lands for the duration of his own life as soon as a child was born of the marriage (which child would, if it lived long enough, be its mother's heir).[9] The life estate of the widower in such circumstances was termed "tenure by curtsey of England". As a husband

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7 Houlbrooke, *op. cit.*, p. 20, Wrightson, *op. cit.*, pp. 66-88 and Pottage, A., "Proprietary Strategies: The Legal Fabric Of Aristocratic Settlements", *Modern Law Review*, 61 (1998) 162-187.

8 Houlbrooke, *op. cit.*, pp. 23-24. See generally: Byrne, M.St.C., *Elizabethan Life In Town And Country*, London, Methuen, 1954 and Jack, *Towns In Tudor And Stuart Britain*, pp 19-33.

9 The right endured even if the wife subsequently died without leaving issue.

and father the male head of the household held significant disciplinary powers which might be exercised, free of external interference, over his wife and children.[10] Society of the time can therefore, while acknowledging the power which was unquestionably exercised by some women and especially widows, be characterised as thoroughly patriarchal. Nor is there any evidence that the period between 1560 and 1660 was marked by any cataclysmic change in the nature of English patriarchy. The historical records available for any investigation of gender based relations in this period have been almost entirely produced by men. However it cannot be said that the period was without gendered conflict. Fletcher submits that there was a restless dynamic in marriage at this time, and that while patriarchal order rested upon the moral and social example of the heads of households, women were not docile and passive.[11] For instance, the wife's duty was to set an example of obedience to children and servants, but more privately, and Fletcher contends it was

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10 Houlbrooke, *op. cit.*, p. 22 and Sharpe, J.A., *Early Modern England: A Social History 1550-1760*, pp 63-64. See also Underdown, D.E., "The Taming of the Scold: The Enforcement of Patriarchal Authority in Early Modern England" and Amussen, S.D., "Gender, Family and Social Order, 1550-1725" in Fletcher, A.J. and Stevenson, J., ed.s, *Order and Disorder in Early Modern England*, Cambridge, Cambridge University Press, 1985 at 116-136 and 196-217 respectively and Prest, "Law And Women's Rights In Early Modern England", pp. 169-172.

11 Fletcher, A., "Men's Dilemma: The Future of Patriarchy in England, 1560-1660", *Transactions of the Royal Historical Society*, 6th ser. vol.4 (1994) 61-81 at 63 and Houlbrooke, *op. cit.*, p. 19. See also three articles by Alison Wall: "Patterns of politics in England, 1558-1625", *The Historical Journal*, 31 (1988) 947-963; "Elizabethan precept and feminine practice: the Thynne family of Longleat", *History*, 75 (1990) 23-38 and "For love, money, or politics? a clandestine marriage and the Elizabethan Court of Arches", *The Historical Journal*, 38 (1995) 511-533.

a more equal and spirited relationship.[12] A certain apprehension amongst English men about women is evidenced by literature showing an obsession with the dangers ascribed to womanhood. During the period there was an intense unease about women and the need to control them.[13] Fletcher's argument is that men worked hard to put down women's assertive behaviour and came together to defend the gendered order. The weapons of this defence were prescriptive literature, satirical literature, community action and relevant legislation and its enforcement.[14] Again, the picture which forms itself depicts a society marked by flux rather than calm.

At other levels of analysis there was more noticeable change, and Hughes refers to the century preceding the Civil War as 'A Century Of Social Change'.[15] The machinery and volume of exchange underwent a rapid transformation. An important factor in England's economic growth was the solidity of its currency. After the debasement of the coinage in the 1540s, the value of the pound remained a

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12 Fletcher, "Men's Dilemma: The Future of Patriarchy in England, 1560-1660", p. 65.

13 *id.*, pp. 67-71 and Greenblatt, S.J., *Learning To Curse: Essays In Early Modern Culture*, New York, Routledge, 1990, pp. 80-98 and 131-145.

14 Fletcher, "Men's Dilemma: The Future of Patriarchy in England, 1560-1660", p. 73. An example of the last is provided by Fletcher: 18 Eliz c 3 - legislation introduced to punish women who had given birth to illegitimate children, *id* at 78-79. See Wright, *op. cit.*, pp. 465-507.

15 Hughes, A., *The Causes Of The English Civil War*, London, Macmillan, 1991, her summary: pp. 126-133.

constant after its ordering by Elizabeth in 1560.[16] Gresham founded the Royal Exchange as England's bourse in 1566.[17] A market economy, in consumables and luxuries as well as land, enabled cash and security investments in foreign trading ventures and domestic agricultural projects. The period also included the exploration of distant lands, foreign and domestic conflicts, profound religious turbulence and pivotal technological advancement.

One of the main themes of change during the period was the dilution of the agricultural economy by the infiltration of commercial capital. English agriculture, according to Kerridge, had for centuries been more economically advanced than elsewhere in Europe.[18] Thorne's thesis, from 1951, held that in the sixteenth century the approach of innovative agricultural entrepreneurs was to treat land holding as a money-making activity.[19] The methods used by this emerging group resulted in

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16 Challis, C.E., *The Tudor Coinage*, Manchester, Manchester University Press, 1978, pp. 81-134, Challis, C.E., "The Debasement Of The Coinage", *Economic History Review*, 20 (1967) 441-466, Gould, J.D., *The Great Debasement: Currency And The Economy In Mid-Tudor England*, Oxford, Clarendon Press, 1970 and Braudel, F., *Civilisation and Capitalism: 15th - 18th Century*, London, Collins, 1982, 3 vols: vol 3, p 356 ff. See also Turberville, A.S., "Changing Views Of The Renaissance", *History*, 16 (1932) 289-297 at 296.

17 Johnson, *op. cit.* And Adamson, I.R., "The Administration of Gresham College and its Fluctuating Fortunes as a Scientific Institution in the Seventeenth Century", *History of Education*, 9 (1980) 13-25 and Feingold, *op. cit.*, pp. 166-189.

18 Kerridge, E., *The Common Fields Of England*, Manchester, Manchester University Press, 1992, *passim*.

19 Thorne, S.E.,"Tudor Social Transformation And Legal Change", (1951) 26 *New York University Law Review* 10 at 10-11. An important although now somewhat outmoded work which appears to be permeated by the themes of Maitland's two

enmity from small copyholders and freeholders. The business of landholding gradually destroyed traditional village society. These techniques involved a determined employment of the central law courts' superior juridical position to gradually efface local legal custom (as being "unreasonable", and therefore invalid).[20] But entrepreneurialism was also opposed by many of the aristocracy, as by many of the gentry who had only more recently established themselves as "land holders". This perennial conflict thus intensified, and while purchasers demanded security of transaction, the aristocracy and some gentry sought to preserve their positions by asserting the venerable protection of heirs and remaindermen.[21] Thorne traced the fall of the entail by judicial device, particularly after 1540, and its subsequent resurrection at the end of the of the seventeenth century - when

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famous essays "The Mystery of Seisin" and "The Beatitude of Seisin", which were first published in the *Law Quarterly Review*, respectively in 1886 and 1888 and are reproduced in Fisher, H.A.L., ed., *The Collected Papers of Frederick William Maitland*, 3 volumes, Cambridge, Cambridge University Press, 1911, vol. 1, at pp. 358-384 and 407-457 respectively.

20 Thirsk, J., "Enclosing And Engrossing" in Thirsk, J., ed., *The Agrarian History Of England And Wales*, vol. 4 1500-1640, Cambridge, Cambridge University Press, 1967, Chapter 5, pp. 200-255, "The Common Fields", "The Origin Of The Common Fields" and "Tudor Enclosures" in her *The Rural Economy Of England: Collected Essays*, London, Hambledon, 1984,Yelling, J.A., *Common Field And Enclosure In England, 1450-1850*, London, Macmillan, 1977 and Kerridge, E., *The Agrarian Problems In The Sixteenth Century And After*, London, Allen and Unwin, 1969.

21 Tawney, R.H., "The Rise of the Gentry, 1558-1640", *Economic History Review*, 11 (1941) 1-38 and Cooper, J.P., "Patterns Of Inheritance And Settlement By Great Landowners From The Fifteenth To The Eighteenth Century", in Goody, J., Thirsk, J. and Thompson, E.P., ed.s, *Family And Inheritance: Rural Society In Western Europe, 1200-1800*, Cambridge, Cambridge University Press, 1976, pp. 192-327 at pp. 192-233 and 299ff. See also Habakkuk, J., *Marriage, Debt And The Estates System: English Land Ownership, 1650-1950*, Oxford, Clarendon Press, 1994.

entrepreneurs invested more in industrial property, and a large landed aristocracy was re-established. Leases, and the rise of the fictitious demise in the action of ejectment, increased rights of landholders over what had been known as termors (tenants). Thorne noted that of the one hundred and thirty-five peers in the House of Lords in 1640 over half had obtained their titles since 1603. The Stuart creation of new nobility was in large part a recognition of economic realities: it was clear that the economic power of the older aristocracy had been eclipsed by the parvenus. Thorne interpreted the period 1540-1640 as 'a hundred years war' of the emerging bourgeoisie against the ancient doctrines of real property law. His view was that this long struggle was technical in the extreme and left a mass of legal subtlety and misdirected ingenuity which was ultimately to the detriment of real property law.[22] Thorne's examples of this technical warfare in real property law were: the Rule in *Shelley's case*; the contingent remainder; shifting and springing uses; long term leases of 99 or 999 years; perpetuities; and the emergence of contract law.[23] Perhaps Thorne overstated the legal mindedness of the times. At the very least however there was much business for the legal community during this century. Law itself increasingly became seen as a commercial activity, and its vocation was indisputably affiliated with the rise of a new and powerful stratum in society.[24]

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22 Thorne, *op. cit.*, pp. 14-18.

23 *id*, pp 18 - 20. All of which represent a development of the illustrations of Maitland, in "The Mystery of Seisin", at pp. 366-367 and in "The Beatitude of Seisin", at p. 414 ff.

24 Prest, W. R., *The Inns of Court under Elizabeth I and the Early Stuarts: 1590-1640*, London, Longman, 1972, pp 21-46, Ives, E.W., "Some Aspects Of The Legal Profession In The Late Fifteenth And Early Sixteenth Centuries",

The year 1588 is of course symbolised by the defeat of the Armada. That symbolism, of naval victory and independence, was borne out in reality by many other far flung achievements. In not much more than a single generation English seamen struck out to the four corners of the world, establishing overseas colonies and direct trading access to the Indies markets. The age of naval exploration and colonisation and global trade had reached England. To the west beckoned a new world of limitless mystery (and certainly gold), and to the east the India trade at its source.[25] It was also in 1588 that Cavendish returned to Plymouth having retraced Drake's westward global circumnavigation of eight years before. Like Drake, Cavendish also brought back much Spanish booty. By this stage there had already been attempts to plant colonies on the east coast of North America, in Newfoundland in 1583 and in Virginia two years later. There was probably more interest, however, in quickly exploiting the trade routes eastwards: the Dutch had already begun their seizure of Portuguese monopolies and there was no time to be lost. In 1591 Lancaster set out on the first of his voyages to the Indies via the eastern route. Lancaster repeated the voyage in 1601, and was followed twice by Middleton - in 1604 and 1610. In 1611 Saris landed in Japan. The English East India Company had by then been chartered, in 1600.[26] The war with Spain did not, however, represent

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(unpublished doctoral dissertation, University of London, 1955), Ives, E.W., *The Common Lawyers Of Pre-Reformation England*, Cambridge, Cambridge University Press, 1983, pp. 285-329 and Clendenin, *op. cit.*, pp. 61-96.

25 James, L., *The Rise and Fall of the British Empire*, second edition, London, Abacus, 1998, pp. 3-26.

26 Napier, W., Gilbert, J. and Holland, J., *Pacific Voyages*, New York, Doubleday, 1973, p. 76 ff, Lenman, B.P., "England, the International Gem Trade and the

England's only military commitment. Associated with naval exploration was intermittent naval warfare on the high seas. There were also sporadic but significant expeditions to the Low Countries, and the imposing and on-going engagement in Ireland. Again, all of these developments in trade, foreign relations and war, this general broadening of the perspective on the world[27], contributed to legal work in the capital and consequently enhanced income and prestige for England's lawyers.

The burden of these changes, which certainly benefitted a numerically small part of the community, was borne by the bulk of the populace. The Elizabethan success story was no romance for the masses. By the 1590s the stresses and displacements bred of Hughes' 'century of social change' and Thorne's 'hundred years war' were manifest in a partial break down in law and order. With immediate causes in recurrent famines, poor harvests, unemployment, localised outbreaks of plague and other diseases, and mutinies amongst demobilising soldiers, serious instances of riot and sedition were on the rise. The 1590s have been described, by some at least, to be a decade of crisis.[28]

Growth of Geographical Knowledge from Columbus to James I" in Brink, J.R. and Gentrup, W.F., ed.s, *Renaissance Culture in Context: Theory and Practice*, Cambridge, Scolar Press, 1993, pp. 86-99 and Fussner, F.S., *The Historical Revolution; English Historical Writing And Thought 1580-1640*, London, Routledge, 1962, p. 7.

27 Wright, *op. cit.*, pp. 508-548.

28 Sharpe, J., "Social Strain and Social Dislocation, 1585 - 1603", in Guy, J., ed., *The Reign of Elizabeth: Court and Culture in the Last Decade*, Cambridge, Cambridge University Press, 1995, pp. 192-211, and particularly Outhwaite, R.B., "Dearth, The English Crown and the 'Crisis of the 1590s'" and Clark, P., "A Crisis Contained? The Condition of English Towns in the 1590s" in Clark,

Finally, after about a century of printing in England, access to printed material was had by almost all groups and levels in society.[29] In fact new occupations were brought about by printing itself.[30] New theories were able to develop with an historically unprecedented access to accumulated knowledge, and more abundantly stocked bookshelves expanded opportunities to consult and compare different texts.[31] Writings from various regions and diverse textual traditions were more available and were combined to bring about 'cross-cultural' interchange. Eisenstein sees the first century of printing as marked by intellectual upheaval: as a flourishing, wide-angled and unfocused scholarship. But she also notes that a countervailing religious single-mindedness stiffened with printing: an

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P., ed., *The European Crisis of the 1590s*, London, Allen and Unwin, 1985, pp. 23-43 and 44-66 respectively. On the plague, and other epidemics, see the comprehensive study: Slack, P., *The Impact of Plague in Tudor and Stuart England*, London, Routledge and Kegan Paul, 1985.

29 See Merton, *op. cit.*, Boas, M., *The Scientific Renaissance: 1450-1630*, London, Collins, 1962, *passim*, Stearns, R.P., "The Scientific Spirit in England in Early Modern Times", *Isis* , 34 (1943) 293-300 and Fussner, *op. cit.*, p. 8.

30 Eisenstein, E.L., *The Printing Press as an Agent of Change: Communications and Cultural Transformations in Early Modern Europe*, 2 volumes, Cambridge, Cambridge University Press, 1979, pp. 18-25 and Eisenstein, E.L., "Some Conjectures about the Impact of Printing on Western Society and Thought: A Preliminary Report", *Journal of Modern History*, 40 (1968) 1-57 at 5-6.

31 Eisenstein, *The Printing Press as an Agent of Change: Communications and Cultural Transformations in Early Modern Europe*, pp. 132-149, Eisenstein, "Some Conjectures about the Impact of Printing on Western Society and Thought: A Preliminary Report", pp. 6-7 and 24-29, Topulos, K., "A Common Lawyer's Bookshelf Recreated: An Annotated Bibliography of a Collection of Sixteenth-Century English Law Books", *Law Library Journal*, 84 (1992) 641-686 and Ong, W.J., "Writing Is A Technology That Restructures Thought", in Baumann, G., ed., *The Written Word: Literacy In Transition*, Oxford, Clarendon Press, 1986, pp. 23-48.

intensification of both religiousity and secularism.[32] The standardisation of printing, the production of exactly repeatable textual and pictorial statements, also assisted developing enterprises which required efficient planning, methodological attention to detail, and rational calculation. The people who consolidated the new diagrams and grammars applied routines which were conducive to a new collegiality, and editorial decisions about layout helped to reorganise the thinking of readers.[33] Similarly, adaptations of textual formats contributed much to the rationalisation of the diverse. By 1500, legal fictions were already being devised to accommodate the patenting of inventions, a subject of much controversy.[34] A similar change took place with the assignment of literary properties, and a new individualism emerged, with the eponymous inventor and the personal author.[35] Spoken words could be

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32 Boas, *op. cit.*, pp. 28-30 and 47-48 and Eisenstein, *The Printing Press as an Agent of Change: Communications and Cultural Transformations in Early Modern Europe*, pp. 181-225.

33 Eisenstein, *The Printing Press as an Agent of Change: Communications and Cultural Transformations in Early Modern Europe*, pp. 88-107, Pearson, D., "Scholars and Bibliophiles: Book Collectors in Oxford, 1550-1650", in Myers, R. and Harris, M., ed.s, *Antiquaries, Book Collectors and the Circles of Learning*, Winchester, St. Paul's Bibliographies, 1996, pp. 1-26 and, more generally, Grafton, A., *Commerce with the Classics: Ancient Books and Renaissance Readers*, Ann Arbor, University of Michigan Press, 1997.

34 Thirsk, J., *Economic Policy And Projects: The Development Of A Consumer Society In Early Modern England*, Oxford, Clarendon Press, 1978, pp. 51-60 and 98-99.

35 Eisenstein, *The Printing Press as an Agent of Change: Communications and Cultural Transformations in Early Modern Europe*, pp. 228-237, Feather, J., "Authors, Publishers and Politicians: the history of copyright and the book trade", *European Intellectual Property Review*, 10 (1988) 377-380, Feather, J., "From Rights in Copies to Copyright: the recognition of authors' rights in English law and practice in the sixteenth and seventeenth centuries", *Cardozo Arts and Entertainment Law Journal*, 10 (1992) 455-473 and Woolf, "Genre

conveyed by printed messages and even be replaced by them: the story teller was being replaced by the literate villager (who read out loud).[36] The mediaeval "hearing" society eventually became separated by a vast psychological and cultural gulf from the early modern "reading" one.[37] The clergy were vulnerable to the challenge of being defunct as they no longer monopolised the keeping of old texts.[38] The emergence of family bibles, and the transference of functions from the priest to the parents (at home), reinforced the patriarchy. A new "concept of childhood" emerged as the gap widened between literate and oral cultures. Book-learning gradually became a focus of daily life during childhood, adolescence and early adulthood.[39] Finally, a sharper division between the private and public sphere accompanied the advent of printed publicity: communal solidarity dissolved but vicarious participation in more distant events was enhanced.[40] The "literary

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into Artifact", *loc. cit.*

36 See Thorndike, L., "Public readings of new works in Medieval universities", *Speculum*, 1, (1927) pp.101-103.

37 Eisenstein, *The Printing Press as an Agent of Change: Communications and Cultural Transformations in Early Modern Europe*, pp. 129-136. Cf. Cressy, D., *Literacy and the Social Order: Reading and Writing in Tudor and Stuart England*, Cambridge, Cambridge University Press, 1980 and Woolf, D.R., "Speech, Text and Time: The Sense of Hearing and the Sense of the Past in Renaissance England", *Albion*, 18 (1986) 159-193.

38 Eisenstein, *The Printing Press as an Agent of Change: Communications and Cultural Transformations in Early Modern Europe*, pp. 313-329.

39 *id.*, pp. 424-431.

40 *id.*, pp. 136-159, Eisenstein, "Some Conjectures about the Impact of Printing on Western Society and Thought: A Preliminary Report", p. 42 and Levy, F.J., "How Information Spread Among the Gentry, 1550-1640", *Journal of British Studies*, 21 (1982) 11-34. For a quite different view, one which significantly

Renaissance", still burgeoning in late sixteenth century England, was powered by the technology of printing.[41]

The preceding account of some of England's enduring patterns and also some of the societal changes helps to set the scene for a period of history with which we will be concerned. Part of this chapter must therefore deal with the issue of "periodisation" in historical studies. It seems clear that any decision as to how to periodise depends on one's objective. If one's goal is to explain the events which occurred during a certain time, then one should try to envision those events within a theoretical framework which is capable of providing some assistance in fashioning the sought after explanations. From the standpoint of the legal historian this may require, for example, a conceptual framework which permits differentiation between the events of the so-called Middle Ages and the Renaissance. In a sense therefore the issue of "periodisation" is itself a working through of the methodology of contextual writing. The useage of certain terms, like "Renaissance", establishes a discursive

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downplays the importance of printing and literacy, see Thomas, K., "The Meaning Of Literacy In Early Modern England", in Baumann, G., ed., *The Written Word: Literacy In Transition*, Oxford, Clarendon Press, 1986, pp.97-122. See also Wright, *op. cit.*, pp. 121-169.

41 See generally Dubrow, H. and Strier, R., ed.s, *The Historical Renaissance: New Essays on Tudor and Stuart Literature and Culture*, Chicago, University of Chicago Press, 1988, Grafton, *op. cit.*, Helgerson, R., *Forms of Nationhood: The Elizabethan Writing of England*, Chicago, University of Chicago Press, 1992, Boyer, *op. cit.*, and Ross, R.J., "The Commoning Of The Common Law: The Renaissance Debate Over Printing English Law, 1520-1640", *University Of Pennsylvania Law Review*, 146 (1998) 323. Although some of the legal antiquaries were known as writers (chiefly of legal matters), only few like Sir John Davies might have claimed any notoriety as literati: see *infra* Chapter 6.

system in which suggested explanations can be given meaning. A relationship between a term (like "Renaissance") and an agenda, such as what we now describe as "humanism", might then be probed in a relevant and cautious way.

3.2 The Renaissance

The notion of a renaissance which effectively terminated the so-called Middle Ages has for centuries fashioned our understanding of the unfolding of Western European civilization. Representations of its amplitude, its nature and spirit, have varied over the years.[42] The idea was restricted initially to a revivification of classical art and culture. From there the theory of the "Renaissance" was expanded as intellectuals gradually added what was thought to be the quintessence of the "modern", at least for the time being. Ferguson has commented that as the Renaissance withdrew into the past, it also acquired more finite chronological limits:

> "It gradually ceased to be something still taking place and became an event which had occurred in a more or less definite period in the past. Finally the process of expanding the content of the rebirth, while at the same time limiting it to a past age, culminated in the conception of the Renaissance as a period in the history of European civilization, a period characterized by a spirit common to all aspects of its

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[42] See generally Jacob, E.F., "Changing Views Of The Renaissance", *History*, 16 (1931) 214-229 and Bush, D., *The Renaissance and English Humanism*, Toronto, University of Toronto Press, 1939, particularly chapter 1 "Modern Theories of the Renaissance", pp. 13-38.

culture."[43]

For Ferguson the conclusion of this agenda was the nineteenth century work of Jacob Burckhardt, who reconstructed the "varied strands" of humanist, Protestant, rationalist, Romantic, liberal, and idealist traditions. Burckhardt's translation of the "Renaissance" attained ubiquitous contemporary acknowledgment: it became, in Ferguson's words,"*the* traditional interpretation, an established orthodoxy". It was not long, however, before acceptance engendered dissent and Burckhardt's temporal and geographical confines were successively increased and contracted to match the prevailing argument.[44]

For convenience the term "Renaissance" will therefore be used, initially at least, as though there were consensus as to its meaning: we will assume that something significant happened in Europe from the fourteenth to the sixteenth centuries which justifies our attention. One approach to demonstrating the veracity of this assumption is to ask how people of the time saw it themselves. Weisinger's thesis is that the actors of the Renaissance were actually very aware of the fact that they were doing and experiencing something new and different: that the idea of the "Renaissance" was created in the Renaissance. It is worth testing. The method,

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43 Ferguson, *op. cit.*, p. ix.

44 *id.*, pp ix-x, Ferguson, W. K., "The Reinterpretation of the Renaissance" in his *Facets of the Renaissance*, New York, Harper, 1959, pp 1-17 and Ferguson, W.K., "Humanist Views of the Renaissance", *American Historical Review*, 45 (1939-40), 1-28 at 1.

fundamentally phenomenological, relies upon the scrutiny of particular writers in those centuries and what they thought they were doing which distinguished them from their antecedents. It aims to provide coexistent observation and discussion of the Renaissance phenomenon.[45] The best example of this kind of phenomenology is the identification of "Renaissance" writers referring to the more recent past in terms which distinguish it from the present in such a way as to indicate its distance. The work of Edelman is one of the earliest of this type of study.

> "The Latin texts particularly have yielded numerous items, interesting for their early date. *Media tempestas*, found once in 1469, was soon followed by *media aetas* (1518) and *media antiquitas* (1519), *media tempora* (1531) and *media tempus* (1534), *medium aevum* (1604), *intermedia tempora* (1620), *medium seculum* and *media secula* (1625), *inter media aetas* (1639)."[46]

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45 Weisinger, H., "The Self-Awareness of the Renaissance as a Criterion of the Renaissance", *Papers of the Michigan Academy of Science, Arts and Letters*, 29 (1944) 561-567 at 562-563 and Weisinger, H., "Ideas of History during the Renaissance" and Trinkaus, C., "The Problem of Free Will in the Renaissance and the Reformation" in Kristeller, and Wiener, ed.s, *op. cit.*, at pp.71 and 187-198 respectively. See also Gilmore, M. P., "The Renaissance Conception of the Lessons of History" in Ferguson, W. K., ed., *Facets of the Renaissance*, New York, Harper, 1959, pp 73-98 at p. 73 ff, Fussner, *op. cit.*, p. 3 ff, Nelson, N.E., "Individualism As A Criterion Of The Renaissance", *Journal Of English And Germanic Philology*, 32 (1933) 316-334. Contra: Ferguson, "Humanist Views of the Renaissance", p. 2 and Schiffman, *op. cit.*, *passim*.

46 Edelman, N., "The Early Uses of *Medium Aevum, Moyen Age*, Middle Ages", *Romanic Review*, 29 (1938) 3-25 at 4-5.

More particularly, Edelman recognised that such an awareness, of the remote quality of the earlier times referred to, is especially evident in the writings of Camden and Spelman .[47] Robinson points out that when late sixteenth century writers used terms like "middle ages" it was meant to refer to the period between the Incarnation and Judgement Day, it was (according to Robinson) only with the "Renaissance" that such terms were applied to the period between "Antiquity" and the "modern period".[48] Other English denotations of this period included: Barbarous Age(s); Dark Age(s); Obscure Age(s); Leaden Age(s); Monkish Age(s); Muddy Age(s) and the Gothic Period.[49]

Arguing the alternative, against periodisation, provides equally cogent explanations of phenomena. The abiding theme is continuity and gentle evolution.[50]

It is probably true that most of the things claimed as new in the Renaissance already

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47 *id.*, pp. 6-9. See, *infra,* Appendix 1.

48 Robinson, F.C., "Medieval, The Middle Ages", *Speculum*, 59 (1984) 745-756 at 749. 'The Renaissance' being linked, as will be seen below, with 'humanism': "Yet another terminus often given for the Middle Ages is the so-called 'Revival of Learning', that marvelous era when Humanist scholars 'discovered' classical texts and restored them to mankind after the long Gothic night. Medievalists must always smile a little over these 'discoveries', for we know where the humanists discovered those classical texts - namely, in medieval manuscripts, where medieval scribes had been carefully preserving them for mankind over the centuries.", *id*, at 750.

49 *id.*, p. 749. See also Gordon, G.S.,"Medium Aevum and the Middle Ages", *Tracts of the Society for Pure English*, 19 (1925) 3-28.

50 Elliott, J. H., "Revolution and Continuity in Early Modern Europe", *Past and Present*, 42 (1968) 35, *passim*.

existed in the so-called Middle Ages.[51] But perhaps they were harmless in the Middle Ages and became dangerous in the Renaissance. Panofsky and Ginzburg argue that it was the fact that most people had already changed their mental orientation that made these `new' things dangerous - that people were ready to receive the ideas, inventions and discoveries in the Renaissance which they wouldn't or couldn't in the Middle Ages. Much of this change in outlook was to do with the idea of `creation'. In Middle Ages it was God who created but in Renaissance it was man who was 'inspired'.[52]

More controversially, Kristeller has stated that the term "Renaissance" is almost completely unnecessary because, since the increase in the quantum of knowledge on the so-called Middle Ages, there was in fact no measurable re-birth at all. However he acknowledges that it is true to say, despite the fact that there had previously been numerous claims of a new breakthrough, such claims were much more persistent during this named period:

> "Even if we were convinced that it was an empty claim and that the humanists did not bring about a real Renaissance, we would still be forced to admit that the illusion itself was characteristic of that period

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51 Turberville, *op. cit.*, p. 289.

52 Panofsky, E., "Renaissance and Renasences", *Kenyon Review*, 6 (1944), pp.201-236 at 232-233 and Ginzburg, C., "High And Low: The Theme Of Forbidden Knowledge In The Sixteenth and Seventeenth Centuries", *Past and Present*, 73 (1976) 28-41 at 38. See also Turberville, *op. cit.*, p. 293.

> and that the term Renaissance thus had at least a subjective meaning."[53]

The general aim is to re-examine the relationship between the Renaissance and the Middle Ages from the point of view, not of mediaeval universalism, but of mediaeval regionalism. For instance Kristeller notes also that Italy, in particular, was isolated from and behind French mediaevalism and was always more in contact with its Roman heritage and its Byzantine links.[54] "Renaissance" was, in truth, simply the gradual emergence of the widespread humanist method, and this, in turn, meant "the general tendency of the age to attach the greatest importance to classical studies, and to consider classical antiquity as the common standard and model by which to guide all cultural activities."[55] Yet even this theory, the "Renaissance" / humanism (the "rise in classical scholarship") theory, is not entirely satisfactory for Kristeller because it fails to account for the cosmopolitan activities of humanists such:

> "The humanists were not classical scholars who for personal reasons had a craving for eloquence, but, *vice versa*, they were professional rhetoricians, heirs and successors of the medieval rhetoricians, who developed the belief, then new and modern, that the best way to

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53 Kristeller, P.O., "Humanism and Scholasticism in the Italian Renaissance", *Byzantion*, 17 (1944 - 45) 346-374 at 347.

54 *id.*, pp. 348-350.

55 *id.*, p. 350 and Panofsky, *op. cit.*, pp. 202-203.

achieve eloquence was to imitate classical models, and who were thus driven to study the classics and to found classical philology."[56]

Whilst there is, therefore, a clear relationship between "Renaissance" and "humanism", the terms are not synonymous. It may be very difficult, as Gilson has recounted, to disconnect the two phenomena.[57] For Kristeller the "humanism as the new world view of the 'Renaissance'" theory is equally flawed because of the persistence, throughout the period, of scholastics and a comparative lack of interest in philosophy by the humanists.[58] The humanists, as a "group", emerged principally from scholars of grammar and rhetoric and from that point they influenced, but did not control in terms of directing discourse or subject matter, other areas of

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56 Kristeller, *op. cit.*, pp. 352-353.

57 Gilson, E., "Humanisme Medieval et Renaissance", in his *Les idees et les lettres*, Paris, Vrin, 1955, pp. 171-196 at 172: "Ce n'est pas chose facile. Elle nous arrive toute chargée d'implications et de connotations dont l'examen n'a jamais été sérieusement tenté. Certains historiens, par exemple, l'associent étroitement avec la Réforme, qui n'en aurait été selon eux que l'aspect religieux. Il y a probablement sous ce jugement quelque vérité profonde, dans la mesure où Renaissance et Réforme s'opposent à la théologie médiévale, et ce serait une erreur grave que de négliger cet aspect de la question. Il est également certain que l'Humanisme et la Réforme ont concouru, chacun par leur méthodes propres, à produire certains effets sur le terrain religieux, de sorte que ces effets leur appartiennent pour ainsi dire en commun. De ce nombre sont l'important renouveau de l'exégèse biblique et le développement des études patristiques par exemple. Mais il serait encore beaucoup plus inexact de confondre la Renaissance et la Réforme que de les isoler, car dans la mesure où l'Humanisme est l'exaltation de la nature, il est la négation de la Réforme dans son essence même."

58 Kristeller, *op. cit.*, pp. 353-354.

knowledge where they were amateurs.[59] Above all Kristeller links this "group" with the university. When scholars began to describe their field, dealing with the consolidation of the discrete mediaeval entities of grammar, rhetoric and poetry, as *studia humanitatis*, this description was not, according to Kristeller, a revolution in *weltanschauung*: "The term seems to have originated in the slang of university students and gradually penetrated into official useage."[60]

3.3 Continental Humanism

The term "humanism" is derived from the Italian *umanesimo*, which probably dates from, at the earliest, the second half of the fifteenth century. The word did not gain wide useage until the nineteenth century, and thus may be interpreted by us, either broadly or narrowly. Our understanding of the compass of the phenomenon which we use the term to describe is thus conditioned by the breadth we allow the term..[61] The Italian *umanesimo* is itself derived from the Latin *humanitas*.[62] The

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59 *id.*, pp. 354-356.

60 *id.*, pp. 363-366 (quote at 366). See also Gray, H.H., "Renaissance Humanism: The Pursuit of Eloquence", in Kristeller, and Wiener, *op. cit.*, pp. 199-216.

61 Fox's rather constricted definition is not followed here, in favour of a less restrained and more emergent interpretation: Fox, A. and Guy, J., *Reassessing The Henrician Age: Humanism Politics and Reform 1500-1550*, Oxford, Blackwell, 1986, especially cc. 1 and 2, *passim.*

62 Campana, A., "The Origin of the Word Humanist", *Journal of the Warburg and Courtauld Institutes*, 9 (1946) 60-73 at 61-66. Campana details nine documents using the latin *humanitas* (and its derivatives) from 1512, and their relation with *umanesimo*. The etymology has been retraced, without significant modification, more recently in Guistiniani, V.R., "Homo, humanus, and the meaning of 'humanism'", *Journal of the History of Ideas*, 46 (1985) 167-195 at 168-171. Further on Italian origins: Randall, J.H., "The Development of Scientific

etymology of the word, according to Campana, is to be connected with a discrete discipline of study within the mediaeval university system because of its *ista* (*umanista*) suffix. Earlier *ista* are appended to other discrete disciplines of study, and it seems that this is the word to describe the `faculty of Humanities'.[63] Campana concluded that the word primarily "is closely connected with the scholastic system: it qualifies a person as a public or private teacher of classical literature, of the chair of *humanitas* or *umanita*", but he added that the word can also refer (in a broader sense) to a student in the same field.[64] Campana's thrust (consistent with Kristeller's) is that the word, far from its elevated associations with the appeal to classical *humanitas*, has "humbler" origins as a descriptive term for a chair or tutorial programme in the syllabus of the university. The diffusion of the word across Europe was apparently quite prolonged: reaching Germany in 1515; France in 1539 and England in 1589.[65] The phenomenon emerges as something of an indeterminate cultural and intellectual realignment amongst scholars, with, perhaps, some special significance for the study of law.[66] Kisch acknowledges that the reception of classical learning and Roman law was underway well before the advent of humanism, and that the latter therefore had little impact upon the law, perhaps only

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Method in the School of Padua", in Kristeller and Wiener, *op. cit.*, pp. 217-251.

63 Campana, *op. cit.*, pp. 67-68.

64 *id.*, p. 66.

65 Campana, *op. cit.*, pp. 69-71 and Guistiniani, *op. cit.*, pp. 171-174. Cf.Hyma, A., "The Continental Origins of English Humanism", *Huntington Library Quarterly*, 1 (1940) 1-25.

66 Campana, *op. cit.*, p. 69.

excepting that "humanism" did at least promote an intellectual culture which enriched legal research.[67] He states:

> "No harmful effect on the progressive development of the dogmatics of law is to be attributed to humanistic jurisprudence...This intellectual movement of the sixteenth century had a lasting influence on and value for the historical development of law, of legal theory and jurisprudence, of legal ideas and their use in the practical application of the law."[68]

Nevertheless the name "humanism" has been associated with a current of activity beginning in Italy in the fifteenth century whose objectives are represented as the reform of letters, art, thought and manners. The new method was not immediately applied to the study of the law, but came to the law via the other "new" sciences. Law was thus gradually drawn into an emerging and general intellectual movement as a discrete but nonetheless connected province.[69] Among the first legal

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67 Kisch, G., "Humanistic Jurisprudence", *Studies in the Renaissance*, 8 (1961) 71-87 at 73-75. See also Gilmore, M.P., "The Jurisprudence of Humanism", *Traditio*, 17 (1961) 493-501, and in relation to the antecedent history of Reception: Rose, J., "The Legal Profession In Medieval England: A History Of Regulation", *Syracuse Law Review*, 48 (1998) 1-137 at 34-41.

68 Kisch, *op. cit.*, pp. 85-86.

69 *The Continental Legal History Series*, vol. 1, *A General Survey*, London, 1912, p. 148 and Shaller, T.K., "English Law and the Renaissance: The Common Law and Humanism in the Sixteenth Century", (unpublished doctoral dissertation, Harvard University, 1979), pp. 48-65.

humanists, in Italy, were Lorenzo Valla (who died in 1457), his student Pomponius Leto (1428-1498), and Angelo Politian (1454-1496). Superior textual analyses and interpretations of Roman law fragments, and their attempts at synthetic reconstructions of legal histories unquestionably separated these writers from their Glossator precursors. Their successor, Andrew Alciat (1492-1552), transplanted the new method to France where he lived from 1518.[70] In France the humanist method thrived during the sixteenth century. The great French humanist jurists Budé (died 1540), Cujas (1522-1590), Doneau (born 1527), Baudouin (1520-1573) Hotman (1524-1590) and Bodin (born 1530) utterly transformed the study of law by their insistence on the direct examination of primary sources and the application of a critical scrutiny towards the history of law.[71]

Budé's application of the new science to mediaeval history resulted in

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70 *id.*, pp. 150-151.

71 *id.*, pp. 252-259, Hallam, H., *Introduction To The Literature Of Europe*, second ed., London, Murray, 1843, generally at vol. 1 pp 402-405 and specifically, in vol. 2, re: Hotman at 35-37 and 74-75; Bodin at 51-69 and Cujas at 70-73, Levy, F.J.,*Tudor Historical Thought*, San Marino (California), Huntington Library Publications, 1967, generally at pp. 33-42 and specifically re: Bodin at 166, 206 and 243-253; Budé at 54 and 124; Cujas and Hotman at 166, and Stevens, L.C., "The Contributions Of French Jurists To The Humanism Of The Renaissance", *Studies In The Renaissance*, 1 (1954), p. 92 ff. See also Pocock, *op. cit.*, pp 1-29 and 70-79, Kelley, D.R., *Foundations Of Modern Historical Scholarship: Language, Law And History In The French Renaissance*, New York, Columbia University Press, 1970, Reynolds, B.*Proponents of Limited Monarchy in Sixteenth Century France: François Hotman and Jean Bodin*, New York, Columbia University Press, 1931, Gilbert, N. W., *Renaissance Concepts of Method*, New York, Columbia University Press, 1960, pp. 93-98, Kelley, "*Historia Integra*", Rodgers, *op. cit.*, pp. 130-133, Ferguson, "Humanist Views of the Renaissance", pp. 3-4 and Woolf, "Erudition and the Idea of History in Renaissance England", at 15-17.

widening the scope and deepening the perspective of historical inquiry as well as improving historical method.[72] His influence was significant. More contentious is Kelley's claim that Budé's work on the history of French institutions and his restitution of the *Digest* "were fully recognised by later generations of historians and jurists, as was his view that, whatever aid might be derived from classical scholarship, modern society had to be interpreted in its own terms".[73] With Budé, Cujas' eminence was not only in his sequel to Budé's *Annotations*, entitled *Observations and Emendations*, and in his other legal texts, but in the influence he exerted upon the next generation of scholars:

> "These men, lawyers by training but historians by method, classicists by taste but medievalists by persuasion, formed a kind of unofficial society of antiquaries devoted to the reconstruction of French culture and institutions in the critical spirit of philology. Although a number of traditional motives may be found in their work, their true point of departure was not formal historiography but legal humanism."[74]

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72 Grafton, *op. cit.*, p. 136 ff.

73 Kelley, D.R., "Guillaume Bude And The First Historical School Of Law", (1967) 72 *American Historical Review*, 807 at 811. See also Kelley, D.R., "Legal Humanism and the Sense of History", *Studies in the Renaissance*, 13 (1966) 184-199.

74 Kelley, "Guillaume Bude And The First Historical School Of Law", pp. 832-833. Kelley concludes: "The relativism in Budé's point of view represents another important step in the rise of historicism... In short, they were, within the limits of the original definition, historicists. They accepted the principle of individuality in the sense that, in nominalist fashion, they regarded language not only as a reflection of a particular culture but as a copy of reality in terms of that

The primary objective of this 'French method' was to humanise the study of law by associating it with the 'good letters' and 'good arts' of grammar, dialectic, rhetoric, history, poetry and philosophy, and above all with a reference to the idea of a "classical" tradition. Consequently the fundamental function of legal humanism was to re-establish Roman law as the foundation of the European cultural lineage. To a large degree this involved the task of cleansing Roman law of the feudal appendages which it had accumulated over the centuries.[75]

In France humanism, first as a method of inquiry, gained a solid foothold and eventually institutional recognition in the universities and a professional partnership with legal practitioners. While the humanist perspective came to form greater and greater parts of university syllabi, efforts were also made to incorporate and contextualise more traditional perspectives and modes of education.[76] Incorporating

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culture. If they believed in a suprahistorical world, they left it to the philosophers. They accepted the principle of development in the sense that they acknowledged--indeed tried to chart--the temporal changes to which every society was subject, especially in language and customs; for such (in the phrase of Cicero made famous by Montaigne) was the human condition. Finally, they accepted the principle of relativism in that they insisted upon the uniqueness, without denying the comparability, of individual cultures. Ultimately, it is the work of these men, alumni of the first historical school of law, that justifies the conclusion that legal humanism was one of the major steps in the rise of historicism.": *id*, at 834.

75 Kelley, "Legal Humanism and the Sense of History", pp. 186-189. Cf. Bush, *op. cit.*, pp. 39-68.

76 "Cela parait un mystére. On a dit : Comment ces gens connaissentils les coutumes ? Comment vont-ils aborder le droit coutumier ? Ils vont devenir d'effroyables pédants et vont déformer le droit coutumier. Or l'humanisme juridique français des juristes practiciens est essentiellement un humanisme qui a amené à se représenter le droit coutumier comme un ensemble, à y chercher

the practical perspective directed many French legal humanists towards the indigenous elements of the law of France, a topic which particularly interested Bodin.[77]

There was, by the late sixteenth century a rich tradition of continental legal humanism for English scholars and lawyers to draw upon. Jean Bodin was probably one of the most influential of the continental writers on English politics and intellectual life during the latter sixteenth century. Bodin's principal and seminal work *Republique* was published 1576; its predecessor - *Methodus ad facilum historiarum cognitionem* having been published ten years earlier.[78] According to Brown, Bodin was so dissatisfied with the ahistorical study of law in France,

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des régles générales, à construire un systéme de droit coutumier susceptible de servir de base à une interprétation juridique pour laquelle tous les principles du droit romain peuvent être valablement utilisés, sans arriver pour cela à déformer le droit coutumier. Voilà la notion que je crois essentielle à bien comprendre pour cet humanisme juridique francais et c'est en cela qu'il se distingue des autres humanismes juridiques.": Reulos, M., "L'importance des praticiens dans l'humanisme juridique", *Pedagogues et Juristes*, 119-133 at 120-126, quote at 121.

77 Some modern German scholars have challenged this approach, however Kisch goes to considerable trouble to defend legal humanism from their charge that humanism, in its rediscovery of Antiquity, necessarily entailed a certain *Weldfremdheit*. Kisch, with Reulos, emphasises the practical elements of the European humanists' works. Kisch, *op. cit.*, pp. 75-87.

78 Bodin, Jean, *Method For The Easy Comprehension Of History*, tr. Reynolds, B., New York, Columbia University Press, 1945. See also Smith, C.I., "Jean Bodin and Comparative Law", *Journal of the History of Ideas*, 25 (1964) 417-422 at 417-418, Franklin, J.H., *Jean Bodin And The Sixteenth-Century Revolution In The Methodology Of Law And History*, New York, Columbia University Press, 1963, Reynolds, B. "Shifting Currents in Historical Criticism", in Kristeller, and Wiener, *op. cit.*, pp. 115-136 and Reynolds, *Proponents of Limited Monarchy in Sixteenth Century France*.

focussed as it was on Rome, that he set out to explore his own *ius gentium*, and that meant combining law and history.[79] Although Brown's claim was that Bodin's historical theorising had almost no influence on or interest to English scholars,[80] Bodin's historical analysis of various states, ancient and contemporary, and their laws pertaining to government, was in fact highly regarded by at least some English lawyers.[81]

Against all of this most English lawyers had quite fixed ideas about their own practices. For the most part the jurists of England resisted the adoption of the new, humanist, methods. Much of this resistance was due to the necessary reverence of practitioners for the established traditions of the courts. The entrenched methods had, for centuries, enabled lawyers to gain a social and economic ascendancy which ill-disposed them towards any really thoroughgoing change in outlook.[82] So the French experience was not repeated to any significant degree. On the other hand, a

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79 Brown, J.L., *The Methodus Ad Facilem Historiarum Cogitionem of Jean Bodin: A Critical Study*, Washington D.C., The Catholic University of America Press, 1939, pp. 29-45.

80 *id.*, pp. 174-177.

81 Cf. Dean, L.F., "Bodin's *Methodus* in England Before 1625", *Modern Philology*, 39 (1942) 160-166, Smith, *op. cit.*, pp. 419-422 and Levy, *Tudor Historical Thought*, p. 247. See also *The Tanistry* (1608) Davis 28, Terrill, R.J., "The Application Of The Comparative Method By English Civilians: The Case Of William Fulbecke And Thomas Ridley", *The Journal Of Legal History*, 2 (1981) 169 and Schoeck, R.J., "Sir Thomas More: Humanist And Lawyer", (1964-5) 34 *University Of Toronto Quarterly*, 1.

82 *The Continental Legal History Series*, vol. 1, *A General Survey*, London, 1912, p. 151.

few English thinkers were far from insensible to the current of humanism. Figures like Cheke, Colet, Elyot, Latimer, Linacre and of course Sir Thomas More, had associations and acceptance with the most "humanist" of circles across the entire continent.[83] William Camden, one of our present subjects, corresponded with Gentili, Gruter, Isaac Casaubon, Peiresc, Hotman and de Thou on matters of mutual scholarly interest. Camden unquestionably introduced others amongst the subject group, particularly Cotton and Spelman, to his European connections.[84]

3.4 Legal Education in England

The native outlook of the English legal community had its foundations in the common law doctrine based education provided at the Inns of Court.[85] The impact of the method of humanism and the technology of printing on education in England

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83 Bush, *op. cit.*, particularly chapter 3, "English Humanism", pp. 69-100, Caspari, F., *Humanism and the Social Order in Tudor England*, Chicago, University of Chicago Press, 1954, especially chapter 1, "The Social and Intellectual Foundations of English Humanism", pp. 1-27 and Hudson, H.H., "John Leland's List of Early English Humanists", *Huntington Library Quarterly*, 2 (1938) 301-304. Cf. Hyma, *loc. cit.* Contra: Phillimore, J.S., "Blessed Thomas More and the Arrest of Humanism in England", *Dublin Review*, 153 (1913) 1-26.

84 Van Norden, L., "Peiresc and the English Scholars", *Huntington Library Quarterly*, 12 (1948-1949) 369-389. See also Parry, *op. cit.*, p. 26 and Feingold, *op. cit.*, pp. 83, 100-101, 131 and 133-134,

85 As Maitland commented, and as Baker has explained, "law schools make tough law": Maitland, *op. cit.*, pp. 25-28 and Baker, J.H., "The Inns Of Court And Legal Doctrine" in Charles-Edwards, T.M., Owen, M.E. and Walters, D.B., ed.s, *Lawyers And Laymen*, Cardiff, University Of Wales Press, 1986, pp. 274-286 at 274-275 and Baker, "English Law And The Renaissance", *passim*. For an unusual comparison of the Inns of Court with their mediaeval Islamic counterparts see: Makdisi, G., "The Guilds of Law in Medieval Legal History", *Cleveland State Law Review*, 34 (1985-1986) 3-18.

generally[86] - and on legal education in particular - was still, however, significant. England was unique in training its common lawyers outside of the universities, still the Inns became in practice, if not in name, integrated academies - or at the very least institutions focussed upon the broader study of what we would now call aspects of the humanities and social sciences, as well as practical know-how such as surveying.[87] Henry VIII might have considered formally establishing the Inns as a university, although any such plan was never realised.[88] Under Elizabeth two other unrealised educational plans, for the education of (aristocratic) wards, proposed by the Lord Keeper Sir Nicolas Bacon and Sir Humphrey Gilbert, contained serious and compulsory elements of legal education.[89] As well as the law, students at the Inns read widely in literature and drama. Schoeck has remarked:

> "During the sixteenth century the education of many of the common lawyers was not so strictly and severely professional as it had been in the Middle Ages. During this century the custom of starting one's career at the universities became more widespread, and Holdsworth has indicated at least one instance in which a student kept his terms in

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86 Wright, *op. cit.*, pp. 43-80.

87 Caspari, *op. cit.*, pp. 142-143. See also Schnapp, *op. cit.*, p. 154 and Piggott, S., *Ruins in a Landscape, Essays in Antiquarianism*, Edinburgh, Edinburgh University Press, 1976, p.111.

88 Bland, D.S., "Henry VIII's Royal Commission On The Inns Of Court", *Journal of the Society of Public Teachers of Law*, 10 (1968) 178-194 at 180-181.

89 Conway Davies, J., "Elizabethan Plans and Proposals for Education", *Durham Research Review*, 2 (1954) 1-8.

> London, at an Inn, while he was at the university; such students would of course, have had the traditional rhetorical training in the universities. And in large part because of the less technical and more humanistic education, lawyers of the later sixteenth and seventeenth centuries are more often men of wider learning and deeper cultural interests."[90]

By the mid sixteenth century the Inns were at the centre of English literary activity, with the most important literary off-shoot of the Inns being tragic drama.[91] The Inns were also profoundly influenced by the general increase in more purely "scientific" interest which marked the period. The inspiration of Bacon, in particular, touched the legal community acutely.[92] Nevertheless the focus of the Inns, despite the varied activities which can be associated with the institution, was primarily legal

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90 Schoeck, R.J., "Rhetoric And Law In Sixteenth Century England", (1953) 50 *Studies In Philology*, 110 at 123-124. See also Finkelpearl, P.J., *John Marston Of The Middle Temple*, Cambridge (Massachusetts), Harvard University Press, 1969, pp. 3-18.

91 Schoeck, *id.*, pp. 110-111, Bland, D.S., "Rhetoric and the Law Student in Sixteenth Century England", *Studies in Philology*, 54 (1957) 498 at 507-508, O'Sullivan, R., "Edmund Plowden: Apprentice Of The Middle Temple", *Connecticut Bar Journal*, 28 (1954) 307-328 at 310-311 and 315ff and Green, A.W., *The Inns Of Court And Early English Drama*, New Haven, Yale University Press, 1931, pp. 8-21. See also Prest, *op. cit.*, pp. 137-143, Cunningham, J.P., *Dancing in the Inns of Court*, London, Jordan and Sons, 1965, and Finkelpearl, *op. cit.*, pp. 32-44.

92 Stearns, *op. cit.*, *passim*, Shapiro, *op. cit.*, Kocher, P.H., "Francis Bacon On The Science Of Jurisprudence", *Journal of the History Of Ideas*, 18 (1957) 3-26 and Turberville, *op. cit.*, p. 295.

education.[93]

This broadening of the scope of legal education corresponded with what has been perceived as a decline in more strictly legal professional standards of education.[94] Proof of this degeneration is submitted by Holdsworth in two sets of Judges' Orders, of 1557 and 1591, which attempted to introduce greater rigour to the readings offered at the Inns.[95] There is some degree of dispute as to whether this "decline" was long and gradual[96] or short and rapid.[97] It is agreed, however, that by the time of the Civil War that the system of the Inns was so weakened as to expire amid the tumult. Certainly during the latter sixteenth century there was a marked

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93 See Aikenhead, I.D., "Stidents of the Common Law 1590-1650: Lives and Ideas at the Inns of Court", *University of Toronto Law Journal*, 27 (1977) 243-256. Aikenhead states, with some justification, that this role is downplayed by historians of the profession in favour of the cultural and social operations: see, for example *id.*, p.245 n. 7 and the criticism of Prest.

94 Holdsworth, W. S., "The Disappearance of the Educational System of the Inns of Court", *University of Pennsylvania Law Review*, 69 (1920-1921) 201-222, Hammer, C.I., "Bolts And Chapel Moots At Linclon's Inn In The Sixteenth Century", *Journal of the Society of Public Teachers of Law*, 11 new ser. (1970-71) 24-28 and Chroust, A.-H., "The Beginning, Flourishing and Decline of the Inns of Court: The Consolidation of the English Legal Profession After 1400", *Vanderbilt Law Review*, 10 (1956) 79-123 at 116-119.

95 Holdsworth, *op. cit.*, pp. 201-202. More generally see Baker, J.H., "The Education of Common Lawyers: 1250-1650", *Vortraege zur Justizforschung*, 1 (1992) 1-17 at 11-14.

96 Charlton, K., "Liberal Education and the Inns of Court in the Sixteenth Century", *British Journal of Educational Studies*, 9 (1960) 25-38 at 29-38.

97 Prest, W.R., "The Learning Exercises At The Inns Of Court 1590-1640", *Journal of the Society of Public Teachers of Law*, 9 (1967) 301-313 and Prest, W.R., "Legal Education Of The Gentry At The Inns Of Court, 1560-1640", *Past And Present*, 38 (1967) 20-39.

decline in mooting and aural exercises at the Inns. This deterioration was contemporaneous with the advent of printing.[98]

Terrill argues the decline in practical standards at the Inns corresponds with the introduction of humanist text book programmes for the study of law.[99] The idea of the "method book" (text book), which became common in the study of law, was copied from the method books of the humanists for their princely patrons. From there the method book became widespread throughout all disciplines of learning.[100] So far as this new method of learning was applied to the study of law in England, the first attempt at condensing the law to a text can be found in Thomas Wilson's *The Arte Of Rhetorique* (1553). A second attempt was made by William Fulbecke in his *A Direction Or Preparation To The Study Of Lawe* (1600). Dodderidge's *The English Lawyer*, probably written during the 1620s, was published posthumously in 1631.[101]

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98 Terrill, R.J., "Humanism And Rhetoric In Legal Education: The Contribution Of Sir John Dodderidge (1555-1628)", *The Journal Of Legal History*, 2 (1981) 30, Prest, "The Learning Exercises At The Inns Of Court 1590-1640", pp. 310-313 and Holdsworth, *op. cit.*, p. 203. See also Ross, *op. cit.* and Hoeflich, M.H., "Legal History and the History of the Book", *University of Kansas Law Review*, 46 (1998) 415-431.

99 Terrill, "Humanism And Rhetoric In Legal Education: The Contribution Of Sir John Dodderidge (1555-1628)", pp. 30 at 34.

100 *id.*, p. 31.

101 Its second half, "Methodus studenti", was earlier published in 1629 under the title *The Lawyer's Light*. See *id.*, pp. 34-39 Prest, *The Inns of Court under Elizabeth I and the Early Stuarts: 1590-1640*, pp. 143-149 and Shaller, *op. cit.*, pp. 145-207.

During the sixteenth century there was also a decline in the 'chronicle' (the traditional form of historical writing), and a corresponding emergence of the new form of 'politic history' along with the rise of antiquaries treatises. According to Woolf this is normally attributed to the rise of humanism, but he contends it also had much to do with printing, publication trends, and prices. As such, Woolf explains that the functions of the chronicle (information, news, history and entertainment) dissolved into and are expressed by (after printing) a number of new genres: almanacs; newsbooks (and ultimately newspapers); treatises and histories; and drama, prose and verse. The chronicle became a remnant, a resource for writing but not something read or written for its own value.[102] For the lawyer it was replaced by the cheaper and more easily used 'method book' and the detailed and focussed treatise.

At the same time, however, there is broad agreement that attendance at the Inns and the Universities increased, largely due to the rise of middle class economic prosperity and social aspirations.[103] Comprehensive analysis has been devoted to this issue by Stone who contends that there was an explosion in education between 1560 and 1640. He sets out to demonstrate this hypothesis, cautiously, with the use of statistics:

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102 Woolf, "Genre into Artifact", *passim*.

103 Prest, *The Inns of Court under Elizabeth I and the Early Stuarts: 1590-1640*, pp. 6 and 242-245, Terrill, "Humanism And Rhetoric In Legal Education: The Contribution Of Sir John Dodderidge (1555-1628)", pp. 30-31and 34 and Levy, *Tudor Historical Thought*, pp. 47-50. See also Sharpe, J.A., *Early Modern England: A Social History 1550-1760*, p. 256 ff.

> "The statistical evidence...is far from complete, and what there is needs interpretation and qualification. If the historian of a pre-nineteenth-century society seriously wants to pluck at the skirts of truth, he is obliged to use common sense and arguments of probability to apply correctives and supply lacunae. Since the problems are quantitative, the evidence must of necessity be set out in numerical terms, but it should never be forgotten that the graphs and tables represent approximations and best guesses rather than hard statistical facts."[104]

Stone's statistical and demographic conclusion is that of an English population of about 5.2 million, some 1240 yearly entrants into higher education (at the Universities or the Inns) represents 2.48% of the male age group in the 1630s. The figure demonstrates a massive increase on previous generations notwithstanding the overall population increase.[105] The numerous reasons identified by Stone for the expansion of education include: the demand for secular administrators and professionals created by declericalisation; a change in attitude towards seeing children less as property and more as individuals; the influence of humanist educators; a bourgeois cultural "aping" of the gentry (for want of any of their own patterns of social behaviour); the impetus of the property boom and growth in trade and industry; Puritan zeal for spread of knowledge; "Baconian" reformism and the

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104 Stone, "The Educational Revolution In England, 1560-1640", p. 41.

105 *id.*, pp. 54-57.

utilisation of education as a tool of social control.[106] In assessing the gravity of this growth one must, Stone suggests, strive to detect which social groups took advantage of the exceptional educational opportunities. The obvious answer is the gentry. However, Stone notes that compounded upon prosaic methodological difficulties in defining the status-category of "gentleman" is the clearly increasing number of the bourgeoisie who styled themselves gentlemen.[107] Nevertheless Stone submits that the expansion was so widespread as to reach most categories of the population (if not most of the population numerically):

> "The argument about what class was profiting from the growth in higher education is thus a largely meaningless one. So great was the boom - much greater than has hitherto been recognised - that all classes above a certain level took their part. Landed nobility and gentry, professional classes, urban bourgeoisie, urban artisans, all poured into the Universities, along with substantial numbers from tenant and copyhold families in the villages. Everyone was included except the very poor (who probably embraced the majority of the population). Educational opportunities for them were confined to the

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106 *id.*, pp. 69-73.

107 "...indeed the more successful merchants of London and the major ports were acquiring coats of arms and even knighthoods. Moreover, since after 1603 entry to an Inn of Court was theoretically confined to the sons of gentlemen, there was here a special incentive to misrepresentation of status.": *id.*, pp. 57-58. Note also in Cotton MS *Faustina* E.V. "A project touching a petition to be exhibited unto her maiesty for the erecting of her library and an Academy" clause 1.2 states "for the better information of all Noblemen and gentlemen" See, *infra*, Chapter 4.

bottom rung of the ladder by the usual factors: lack of strong motivation, and the need to make an early contribution to the family budget."[108]

Before Stone's investigation of the educational upswing, Hexter had already shown that the aristocracy had itself only recently become part of the educated community, but had rapidly infiltrated the system. Until the sixteenth century the education of the aristocracy had remained unchanged for centuries: it was deliberately anti-intellectual (or, in their terms, anti-clerkish), and was focussed mainly on music, hunting, warfare and fashion. Beginning sometime in Henry VIII's reign the aristocracy start to educate their sons at grammar schools, the universities and the Inns. By the end of the sixteenth century the aristocratic habit is to give their sons the 'clerkish' or 'bookish' education which at the start of the century they had for centuries disdained. The reason, argued Hexter, was so as to better serve their prince and the commonwealth: to re-invent themselves (by education), and thus to maintain the importance of the class in governance, in fact rising to the challenge of the emergent bourgeoisie.[109] For Weisinger this phenomenon, of itself, can be

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108 Stone, "The Educational Revolution In England, 1560-1640", p. 68.

109 Hexter, J.H., "The Education of the Aristocracy in the Renaissance", *Journal of Modern History*, 22 (1950) 1-20. In particular: "There are two cliches concerning this era so much a part of our historical tradition that to cast doubt on them smacks of heresy. One of those cliches concerns the rising middle class climbing to power over the prostrate body of the degenerate nobles. The other tells us how royal absolutism transformed some feudal lords into feeble court butterflies and left the reset to grumble and rot in the country, secluded from any role in government. These two cliches are by no means irreconcilable with one

interpreted as one of the signs of "Renaissance".[110]

To a very large extent therefore it was at the Universities, and especially the Inns of Court, where the intellectual activity of English humanism and the English "Renaissance" met with its concomitant social and economic phenomena. The educational boom was linked through the technology of printing to both the experience and effects of rudimentary capitalism and the new spread of ideas. The existence of a specialist university in the Inns placed legal thought in a special position of connectivity in this context.

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another; on the contrary, they are usually served up well-blended in the same dish....Yet how prostrate is a social group that, facing the challenge of new times, rises to meet it by engaging in an altogether new kind of activity - that of acquiring a kind of learning hitherto almost monopolized by clerics? The nobles who went chasing education with the ardor we have noted, can they be the same men as the nobles who, we are told, sat about in a somnolent stupor while brisk businessmen were snatching the seat of power out from under them? On the contrary is not their quest for learning a mark of the flexibility of Renaissance aristocrats, who, having lost the influence over the course of affairs that their bands of stout fellows had afforded them, were seeking, in a measure successfully, to exercise power in a changed world through new channels?...A description of the relationship between the aristocracy and the new monarchs that seeks to do justice to the actual complexity of the situation is a delicate and difficult business, but even this little study should have sufficed to show how inadequate to cope with it are banalities about Renaissance despots and a monstrous nobility, half court insect, half bucolic vegetable. Doubtless the nobility had its full share of such insectivora and flora, as what grouping of the sons of men does not; but the kind of education that Renaissance aristocrats were seeking and to some extent getting did not have as its object the multiplication of rural faineants or courtly sycophants.", pp.18-19. Cf. Caspari, *op. cit.*, pp. 132-156.

110 Weisinger, H., "Ideas of History during the Renaissance", in Kristeller, and Wiener, *op. cit.*, pp. 68-69.

3.5 Conclusion

The resolution to this broad ranging contextualisation of late sixteenth and early seventeenth century English legal history starts with Maitland's idea of "Renaissance". In his classic Rede Lecture entitled "English Law and the Renaissance" of 1901 Maitland asked:

> "How was it and why was it that in an age when old creeds of many kinds were crumbling and all knowledge was being transfigured, in an age which had revolted against its predecessor and was fully conscious of the revolt, one body of doctrine [the law] remained so intact...?"[111]

Maitland's admittedly tentative answer to this question was in England a national character, a "genius of a people", was embodied within the reports of indigenous law (starting with the Year Books) and a school of national law (collectively, the Inns) in a way which isolated but also protected England from the full effects of European humanism.[112] Having reached this point, in the latter part of the Rede Lecture Maitland's "Renaissance" is revealed as quaint and parochial: "We were having a little Renaissance of our own".[113]

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111 Maitland, *op. cit.*, pp. 4-5.

112 *id.*, p. 21 ff.

113 *id.*, p. 27.

Baker sees the underlying value of Maitland's monograph in its drawing scholarly attention away from an "internal changes in the common law" approach to legal history, and towards a wider, social context.[114] Arguing this line Baker stresses the intellectual, as well as the social and economic, elements of legal change. His principal example is legislation: the Statutes of Uses and Wills where "...the thinking behind the legislation was part of a much broader movement, rooted in the rise of feoffments to uses in the previous century and the manifold legal problems which this occasioned."[115] He gives other examples, the break with Rome and the development of contract and tort, to bolster his stance.[116] However Baker also recognises an equally viable approach through prosopography, which links with his intellectual scheme agreeably.[117] In so doing Baker returns to Maitland, and the idea that the Renaissance is a special period for English legal thinking, as indeed for all thinking in England and in Europe.[118] For our purposes the most interesting phenomenon discerned by Baker is a great similarity in the increasing "sophistication" of legal doctrine in both England and on the continent, albeit sourced from different foundations. Under the heading *"Doctrine In England"* the interpreter also emphasises the great importance of legal thought, outside the judgments of the courts, to be found in legal treatises and exercises stemming from

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114 Baker, "English Law And The Renaissance", p. 46.

115 *id.*, p. 47.

116 *id.*, pp. 48-49.

117 *id.*, pp. 49-50.

118 *id.*, p. 50.

the Inns. He compares them with the writings of the European jurists. The major difference noted is that in England *all* the lecturers were also practitioners.[119] In conclusion Baker says:

> "England was sailing with the jurisprudential tide, not against it; and the tough law of the inns of court, however impervious to Roman influence, was indeed susceptible to new ways of thinking about the legal process and the jurisprudence of the courts."[120]

One of the most important results of the period for historical and legal thought is identified by Ferguson: the birth of contextualism. It is manifest, in Ferguson's view, in a proclivity for "Renaissance" thinkers:

> "...to look to history not solely for the universal and unchanging values it was supposed to teach by example, but also for a temporal perspective that would explain the relation the present bore to a past different from it yet related to it in an ongoing process."[121]

According to Ferguson the intellectual temperament of "Renaissance" England was

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119 *id.*, pp. 51-53.

120 *id.*, p. 61.

121 Ferguson, A.B., *Utter Antiquity: Perceptions Of Prehistory In Renaissance England,* Durham, Duke University Press, 1993, p 5. See also Schiffman, *op. cit.*

not genuinely favourable to any thoroughgoing and methodical appraisal of sanctified mythologies. Relativism also easily lent itself to a sceptical outlook on a present marked by rapid change. English humanism steered study towards matters of immediate topical and national interest. The appeal of Bodin's work was obvious. English scholarship, totally in line with the common law approach, can thus be characterised to a very large degree as a pragmatic response to the world of affairs.[122] On the other hand, the politics of the time were, as Pocock has demonstrated, bound up with ideologies which made certain historical claims.[123] The emergence of historical method had made a new kind of evidence available for political actors to utilise and as the location of political conflict was often the courts, increasingly some legal practitioners needed to be informed by detailed historical research. The English antiquarian was foremost a serious-minded gentleman-lawyer who was absorbed in the serviceable past: a past which could be demonstrated to be germane to the present, and recoverable through the study of subjects such as the emergence of institutions and laws.[124] But in this sense it is difficult to ignore Kelley's understanding of Maitland's "Renaissance":

> "Maitland's observation was not only a lament about the state of historical studies, it was an indictment of one aspect of the whole common law tradition. The scholarly insularity he noted was not

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122 Ferguson, *Utter Antiquity*, p 10.

123 Pocock, *op. cit.* See also Fussner, *op. cit.*, pp. 49-53.

124 Kendrick, T.D. *British Antiquity*, London, Methuen 1950, p. 114.

simply a reflection of the "splendid isolation" of the nineteenth century or the shrinking empire of the twentieth, it was an enduring feature, a conditioned reflex if not a national trait, of English scholarship. Though associated most often with Victorian Whiggery, this attitude obviously has deeper roots. It figured perhaps most conspicuously in times of crisis, notably during the wars against France at the end of the eighteenth century and during the constitutional conflicts of the seventeenth century."[125]

There is much to be said for this longer term perspective, especially in that its alternative view to incipient Whig success, incipient Whig inadequacy, acts as a useful corrective to teleology. In this light the criticisms of Brooks and Sharpe, challenging Kelley's interpretation, basically as being overly gloomy, are interesting. They note that the Society of Antiquaries represented a kind of zenith in scholarship and particularly stress that in the 1590s Camden introduced other members of the Society to Europe. So for them whilst the results of the Society's efforts were marked by nationalistic conceit, and often the past was invoked in order to solve the problems of the present, the antiquaries were generally ready to admit that many "English" customs were not "ancient" and had actually been introduced by the Normans. It was only later, in their view, that political division really "narrowed scholarship".[126] It would appear, perhaps not surprisingly, that the English legal

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125 Kelley, "History, English Law And The Renaissance", p. 25.

126 Brooks, and Sharpe, *op. cit.*, at 138 and 142.

renaissance was limited both by its Englishness and its legality.

Paradoxically, the very fact that it is possible to either attribute so much significance to an English legal renaissance, or otherwise to denounce it as a false impression of contemporary and subsequent historiography, tends to suggest that the answers to the questions of whether or not the period under investigation can be considered a "renaissance", and whether the idea of "Renaissance" or the practice of periodisation are at all useful, should be tentative yeses. By positioning oneself in this way it is then possible to gain an understanding of the impact of measurable socio-economic changes and the emerging method of humanism and to see how they related to the study and practice of law in England. This is, of course, the internal logic of the discourse. It is therefore probably best to conclude by saying that the period was one of inherent change in terms of intellectual perspectives in the law as well as in other disciplines. But beyond that it is not really possible (or indeed helpful) to seek out any definitive truth upon which the facade can be mounted. This is the starting point realised by Rodgers:

> "The legal Renaissance was an open-ended movement of ideas, rooted in medieval scholasticism, and on the other hand pointing the way to the Scientific Revolution of the late seventeenth and eighteenth centuries."[127]

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127 Rodgers, *op. cit.*, p. 129.

4. The Elizabethan Society of Antiquaries

As a 'group', however we choose to define or use that term, the Elizabethan Society of Antiquaries has attracted relatively little attention from historical scholars interested in the period. Even less interest has been demonstrated by legal scholars. It is actually surprising that the coalescence of so many important figures has generated only a few direct studies and *excursi*. Yet the Society has never entirely lost its attraction to thinkers. Lineages of interest can be traced back to the seventeenth century itself, and twentieth century scholarship has, in its own way, rediscovered the rediscoverers. The history of the transmission of knowledge about the Society reveals many of the interesting questions of interpretation which are of direct relevance.

4.1 The Primary Sources, and Other Contemporary Treatments

A large number of papers generated by the Society survive, almost all of which are available in a few major English research libraries. The most important of these are Spelman's "The Occasion of this Discourse" and the so-called Cotton Petition, both of which reveal significant information about the organisation, membership and purpose of the Society. The "Cotton Petition" is a request from three named group members, addressed to Queen Elizabeth I, for the formal recognition and establishment of the Society. It details the objectives of the group,

and sets out a proposed organisational structure. It is unknown whether or not the petition was ever presented to Elizabeth. If it was, its prayers were certainly not answered. The existence and significance of the petition has been noticed by numerous writers concerned with the Society, but it has been the subject of especially renewed interest in the present century.[1] Spelman's "The Occasion" contains a brief internal history of the Society and, more importantly, is the only such account of the Society by one of its members.[2] Not until comparatively recently has its significance been fully appreciated.

The remaining primary evidence for the existence of the Society can be conveniently divided into five categories: letters between members; registers of members; notices of meetings; the written rescensions of oral reports delivered at meetings; and references in the published works of members. The Society was apparently the topic of two letters between members. One of these letters, from Richard Carew to Sir Robert Cotton, still survives in autograph.[3] The other letter, whose original manuscript is now lost, is paraphrased in Latin by Thomas Smith, and Richard Gough quotes its full English text. This second letter concerns the

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1 A facsimile of a draft is produced in Evans, J., *A History of the Society of Antiquaries*, Oxford, Oxford University Press, 1956, facing p.16. A composite transcription appears, *infra*, in Appendix 4.

2 A transcription appears, *infra*, in Appendix 5.

3 Cotton MS *Julius* C. III, fol. 30b.

membership of the clergyman Lancelot Andrewes.[4] There are two manuscript lists of members of the Society of Antiquaries. One of these, now kept in the Norfolk Record Office, is in Spelman's own hand.[5] The other is prefixed by the rubric "The names of all those which were somoned at this tyme", and is signed, "per me, Ch. Lailand".[6] Together with Lailand's list (within the same manuscript cluster) there are also two surviving manuscript notices to attend meetings. One of these, dated 1598, is addressed "to Mr. Bowyer". The other, dated 1599, is addressed "to Mr. Stowe".[7] The written rescensions of oral reports delivered at meetings are collectively known as the "discourses". There is known to be some one hundred and ninety-six of these short tracts recording the transactions of the Society. The closest thing to a definitive edition is that of one hundred and fifty-five "discourses" in *A Collection of Curious Discourses*, originally edited by Thomas Hearne in 1720, and expanded by Sir Joseph Ayloffe in 1771. Hearne's original anthology contained forty-seven "discourses". Ayloffe reprinted Hearne's entire text and added one hundred and eight further papers. An additional forty-one "discourses" exist in

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4 Gough, R., "Introduction", *Archaeologia*, 1 (1770) i at xv; on which see Van Norden, "The Elizabethan College Of Antiquaries", pp.165-169.

5 Norfolk Record Office MS 7198, see Van Norden, "The Elizabethan College Of Antiquaries", p. 13 n. 39.

6 Bodley MS *Ashmole* 763. IV, 7, fol. 197a.

7 These manuscripts are combined as Bodley MS *Ashmole* 763. IV, 5, 6; fols. 195a-196b. Nb. they therefore precede Lailand's register, to which the earlier (in date) is attached: that is, the latter list (of 1599) comes first, then the earlier, then Lailand's list.

manuscript form alone.[8] Lastly, there are two references to the Society by its members in their other written works: one by William Camden in the fifth edition of *Britannia* (1600), where Camden states "Ad Collegium Antiquariorum qui statis temporibus conueniunt & de rebus antiquis conferunt, quorum plerique etiam in Genealogiis sunt exercitati"[9]; and the other by Richard Carew in his *A Survey of Cornwall* (1602), where Carew proudly declares his satisfaction with his membership of the Society.[10]

In addition to direct primary evidence, contemporary "secondary" evidence also exists, in the form of two further lists of members assembled by Edmund Bolton and William Burton. Both were contemporaries and friends of Sir Robert Cotton. Between 1618 and 1628 Bolton made at least ten attempts to reignite the Society which resulted in a number of documents, two of which contain a list of members. Known as "the West Manuscript", and "the Society of Antiquaries Manuscript" (otherwise known as "the Oldys paper"), these lists are now lost, but they are quoted by Gough.[11] Another list of members, in the handwriting of William Burton, was discovered on the fly-leaf of a copy of Weever's *Ancient Funeral Monuments* which

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8 See Van Norden, "The Elizabethan College Of Antiquaries", pp. 28-33. "Discourses" outside the Hearne/Ayloffe composite edition do not, it is worth noting, add to the list of possible candidates for membership. See, *infra*, Chapters 5 at 5.1 "Introduction", and 6 at 6.2 "Group Enterprise".

9 Camden, *Britannia*, 5th edition, 1600, "Ad Lectorem", p.30.

10 Carew, R., *A Survey of Cornwall*, London, 1602, p.61b.

11 Gough, *op. cit.*, pp. xvi-xx.

had belonged to Burton. The discovery was reported in *Notes and Queries* in 1852.[12]

The primary and other contemporary evidence for the existence of the Society is firm. It forms the basis of any serious explication of the group. How this evidence has been understood and interpreted over the ensuing centuries is no less important.

4.2 Historiography

Truly secondary accounts of the Society begin with Dr. Thomas Smith. Smith was the official cataloguer of the Cottonian Library, and as such he had free access to a wide range of documents. His catalogue, *Catalogus Librorum Manuscriptorum Bibliothecae Cottonianae*[13], is prefaced by a biography of Cotton entitled "Vita D. Roberti Cottoni, Equitis Aurati & Baronetti" which includes a short history of the Society. Smith's labours also included the transcription of many of the "discourses". Although this aspect of Smith's work was not published, his preparatory travails were utilised by Hearne as the basis of *A Collection of Curious Discourses* which was published in 1720.[14] It seems that neither Smith nor Hearne knew of Spelman's "The Occasion". This was not the case with John Strype who,

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12 See "Antiquaries of the Time of Queen Elizabeth", *Notes and Queries*, ser. 1, vol. 5, (17 April 1852), 365-366. Unfortunately the names of both the finder and the editor of this number of the famous journal remain unknown.

13 Oxford, 1696.

14 See Hearne, T., *A Collection Of Curious Discourses...*, London, 1720., "Preface", especially at pp.xxxvi, xxxvii, cxii and cxiii.

also in 1720, published *A Survey of the Cities of London and Westminster by John Stow brought down from the Year 1633 to the present time*. The *Survey* contained a brief history of the Society - basically a rewording of Spelman's account.

In 1736 Sir William Oldys wrote a short vignette on the Society within the preface to his edition of Raleigh's *History of the World*. Another preface, to the first issue of *Archaeologia* (produced in 1770 as the official publication of the Society of Antiquaries of London), contained a history of the earlier Society by Richard Gough.[15] Gough's sources included Spelman, Bolton, Smith and Hearne. Despite some manifest errors on Gough's part,[16] it is Gough's account which became the chief conduit of information on the Society to modern writers. In 1771 Sir Joseph Ayloffe re-edited Hearne's *Curious Discourses*, making specific references to Spelman's "The Occasion", to Smith and to Gough. In 1789 Gough corrected and expanded his account of the Society in the preface to his translation of Camden's *Britannia*, but thereafter we find nothing but a long silence disturbed only by the anonymous murmur of 1852.

In 1909 Flugel opened the twentieth-century discussion of the Elizabethan Society of Antiquaries in his article "Die Alteste Englische Akademie".[17] As his title

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15 Gough, *op. cit.*

16 Principally the calculation of the establishment date of the Society at 1572 (at p. iii) - by assuming that Spelman's "The Occasion" was written at the same time as the paper "The Original".

17 Flugel, E., "Die Alteste Englische Akademie", *Anglia*, 32 (1909) 261-268.

suggests, Flugel aimed to demonstrate the emergence of the idea of an "Academy" in England and his candidate was the Elizabethan Society of Antiquaries. In a footnote Flugel placed the establishment of the Society, by counting back Spelman's "about 42 years since" from the 1614 effort to reorganise, arriving, with Gough, at 1572 as the date for establishment.[18] Flugel's specific aim was to stress the hitherto unnoticed importance of the Cotton petition in articulating the goals of the Society.[19] His discovery should not, however, be overstated. Flugel asserted that the text of the petition was not known outside the narrow circle from which it sprang. His argument is based on the letter from Richard Carew to Sir Robert Cotton of the 8th of April, 1605 in order, *inter alia*, to thank him for his selection as a member of the Society.[20] Of special interest to Flugel was that section of the letter, which he quotes, as follows:

> "I hearde by my Brother, that in the late Queenes tyme it [ie. the Society] was lykelie to have received and establishment and

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18 *id.*, 261 n.2. There was, at this time, some academic discussion of the origins of the "Academy" as a concept, see also Monroe, B.S., "An English Academy", *Modern Philology*, 8 (1910-11) 107-122: Monroe relies on Flugel (and Gough) for the 1572 establishment of the Society of Antiquaries.

19 Flugel, *op. cit.*, 261: "Dieser ursprungliche zweck der akademie -die ubrigens nie zur tatsache - geht deutlich aus einem dokumente hervor, dessen inhalt zwar schon 1770 in dem ersten bande der Archælogia (I, p.III) gegeben wurde, welches aber meines wissens noch nicht vollstandig und diplomatisch genau bekannt gemacht worden ist." Flugel's collation of the two extant manuscript copies of the petition is reproduced in Appendix 4.

20 *id.*, p. 263. Flugel cites his source for the letter as Ellis's *Original Letters*, London, *Camden Society*, XXIII, 1843, pp.98-100 not the Cotton manuscript original.

extraordynarie favour from sundrie great personages; and me thinckes that under so learned a king this plant should rather grow to his full height, then quaille in the Springe...."[21]

Discounting only the anonymous finding of Burton's list in 1852, Flugel's 1909 account reignited interest in the Society, interest which had been dormant since 1789. Flugel's concise article therefore marks the threshold of modern interest in the Society.

The first noteworthy twentieth-century work in English touching upon the Society was Steeves' *Learned Societies And English Literary Scholarship in Great Britain and the United States*. Originally Steeves' doctoral dissertation, it was published in 1913.[22] Steeves refers to the Society as "the most ancient of all English learned societies"[23], and repeats the early-origin thesis of Hearne, Gough and (more recently) Flugel[24] stating that the group was "founded by Matthew Parker...in 1572"[25]. Steeves complains: "The restricted aims of the writers who have treated the activities of the society at greater or less length have tended, therefore, to confine our

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21 Flugel, *op. cit.*, p. 264.

22 Steeves, H.R., *Learned Societies And English Literary Scholarship in Great Britain and the United States*, New York, AMS, 1913.

23 *id.*, p. 5.

24 *id.*, pp. 5-6.

25 *ibid.*

impressions of its general importance."[26] It must be borne in mind that Steeves' overall focus was on literary scholarship, and thus the Society, for him, forms no more than a prologue to his larger project. As such, Steeves' initial judgement is that during the Society's early years its work was inspired by Parker's Anglo-Saxon interests, but in later years this influence faded.[27] Steeves outlined the evidence for the date of foundation and, like his predecessors, counts back "about 42 years since" (from the 1614 effort to reorganise) citing 1572 as the date for establishment.[28] As to the question of membership, he lists Hearne's thirty-seven (members) names, and also adds a few more of his own: (not surprisingly) Archbishop Parker and Archbishop Whitgift during the "early period", but also John Selden (who was not born until 1584).[29] Steeves made some further suggestions about when certain individuals may have been members (or, at least, active members) by looking at birth dates, contending that Hearne's thirty-seven are basically all later members and doubting that members from 1572 - 1588 are included in Hearne's list.[30] Steeves' final conclusion is that, even if one absents from consideration the earlier period (the period of greater Anglo-Saxon scholarship), the Society of Antiquaries is a significant body. But, Steeves continues, if it is true that the evidence understates this earlier period, then the Society was really a hugely significant Anglo-Saxon

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26 *id.*, p. 7.

27 *id.*, pp. 25-26.

28 *id.*, pp. 27-29.

29 *id.*, pp.29-30.

30 *id.*, pp. 31-33.

literary society.[31]

Published in 1917, Adams' *Old English Scholarship In England From 1566 To 1800* (originally her doctoral dissertation from Yale, in English literature) was, after Steeves, the second significant twentieth-century investigation in English of, *inter alia*, the Elizabethan Society of Antiquaries.[32] Adams' focus was on "Old English", but she says that the "Renaissance" almost destroyed scholarly learning and it was only with the "Reformation" that scholarship was resurrected, in her view because the Reformers sought to establish a foundation for their new institutions in the customs and laws of their Anglo-Saxon or "primitive" forebears.[33] Significantly, Adams also noted a letter dated the 7th of July, 1568, from various members of the Privy Council, which authorised Archbishop Matthew Parker to procure rare books. Adams cites no manuscript reference, but quotes the text:

> "[authorising the Archbishop to have] special Care and Oversight, in the Conservation of such ancient Records and Monuments as were written of the State and Affairs of the Realm of England and Ireland; which were heretofore preserved and recorded, by special Appointment of Certain of her Majesties Ancestors, in divers Abbies,

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31 *id.*, p. 35. In light of later work these conclusions are revealed as largely incorrect.

32 Adams, E.N., *Old English Scholarship In England From 1566 To 1800*, New Haven, Yale University Press, (*Yale Studies In English*, no.55), 1917.

33 *id.*, p. 11.

> to be Treasurehouses to keep and leave in Memory such Occurences, as fell in their Times. And because divers of such Writings were commen into the Hands of private Persons, and so partly remained Obscure and Unknown; They willed and required, that when the same Archbishop should send his Letters, or learned Deputies, requesting a sight of any such ancient Records, that they would...gently impart the same'. Not meaning to withdraw them from the Owners, but for a time to peruse the same, upon Promise, or Band given of making Restitution.".[34]

For Adams there was a clear and direct lineage, from the genesis with Parker, through the Elizabethan Society of Antiquities, into the post civil war period of scholarship:

> "The revival of Old English might have come to an end with the death of its great sixteenth-century patron [Parker], but for the Society of Antiquaries. This Society was a natural outgrowth of Parker's enthusiasm for national monuments; it began in 1572, and continued many years as a private organisation, under the patronage of Sir Robert Cotton. In 1589 the Society petitioned Queen Elizabeth

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34 Adams, *op. cit.*, pp. 18-19. The source may be Bruce, J., ed., *Correspondence of Matthew Parker*, The Parker Society, Cambridge, Cambridge University Press, 1853, p. 327 which states that the letter is preserved as *Parker MS,* cxiv, art. 12, p. 49. See also Bill, G., "Lambeth Palace Library", *The Library*, 5th ser., 21 (1966) 192-206.

for the use of some public building as a place of meeting, and for the housing of a library. The petition discloses the object of the Society to have been the preservation of manuscripts and rare books relating to English history and antiquities, and the study of modern languages. During the troubles of the civil wars, the Society of Antiquaries temporarily lapsed, but it had already acted as a lever to raise the study of English antiquities to something like the plane of the classics, which had so long monopolized the interest of the universities."[35]

The notion of the Society as having a long life and an evolving focus, a kind of micro-teleology, persisted. In 1938 Evans stated: "Representative antiquarian opinion may be discovered in the papers written for Archbishop Parker's Society of Antiquaries, which met from 1572 to 1604, and again, in a brief attempt at revival, in 1614."[36] In 1940 Johnson made a brief reference to the Society, consistent with this trend: "..the Society of Antiquaries supposedly founded in 1572 by Archbishop Parker and dissolved by James I in 1604. Its interests were antiquarian and philological, and its aims, though allied to the scientific movement, were not identical with it."[37]

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35 *id.*, pp. 42-43.

36 Evans, E., "Of the Antiquity of Parliaments in England: Some Elizabethan and Early Stuart Opinions", *History*, 23 (1938) 206-221 at 207.

37 Johnson, *op. cit.*, p. 423.

The great watershed in twentieth-century scholarship concerning the Elizabethan Society of Antiquaries came in 1946 with the completion by Van Norden of her doctoral thesis entitled "The Elizabethan College of Antiquaries". The work, totalling over six hundred pages, is an encyclopedic and exhaustive study but remains unpublished. Van Norden's second chapter[38], entitled "Chronology", considered the crucial questions of whether we can ascribe precise dates to the formation of the Society or its meetings and (therefore) whether we can say who its members could have been. The chapter provides a detailed analysis of "The Occasion of this Discourse" by Spelman. "The Occasion" was written as a preface to Spelman's own "The Original of the Four Terms of the Year".[39] "The Original" was reduced to a manuscript after the abortive attempt to revivify the Society of Antiquaries in 1614, where the tract would have been delivered orally (although not, of course, necessarily from memory). Its preface ("The Occasion") is therefore ostensibly an explanation of the circumstances under which the "The Original of the Four Terms of the Year" came to be written - but (much more importantly) is itself

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38 Van Norden, "The Elizabethan College Of Antiquaries", pp.71-118. This chapter, with some minor revision, was subsequently published as an article: Van Norden, L., "Sir Henry Spelman on the Chronology of the Elizabethan College of Antiquaries", *Huntington Library Quarterly*, 13 (1949-1950) 131-160. The following references cite both the chapter and article. This article, coupled with its predecessor ("Peiresc and the English Scholars") are the only published elements of the thesis.

39 "The Original" survives in three manuscripts, only one of which is prefixed by "The Occasion": Bodley MS *e Mus* 107, fols. 1-31 ("The Occasion" is fols. 1-2).

the only truly primary evidence of the Society's chronology.[40]

The greater part of Van Norden's second chapter is devoted to dating accurately when "The Occasion" was actually written. While Spelman dated "The Original", he assigned no date to "The Occasion". The question is crucial because one needs to know when to begin the twenty year count back. Van Norden challenges the accepted position that "The Occasion" can be taken to be contemporaneous with "The Original", and that it is possible to simply count back forty-two years from 1614. After an exhaustive study she concludes that "The Occasion" must have been completed some ten to twelve years after "The Original", estimating the date at sometime between February 1626 and July 1628.[41] Van Norden's contention is that if the reader takes Spelman's sentence, "grew for twenty years to be discontinued", and then from 1628 subtracts twenty years of idleness for the Society, one arrives at 1608, which is one year after the latest of the extant "discourses". If by his "twenty years" Spelman means the time which elapsed between the end of regular meetings and his time of writing, "a long slumber broken only by the unrealized dream of 1614"[42], then his account is corroborated by the existence of documents recording work of the Society up to 1607, and the

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40 "The Occasion" is fully reproduced in Appendix 5 *infra*.

41 Van Norden, "The Elizabethan College Of Antiquaries", pp. 75-76 and Van Norden, "Sir Henry Spelman on the Chronology of the Elizabethan College of Antiquaries", pp. 136-137.

42 Van Norden, "The Elizabethan College Of Antiquaries", p. 112 and Van Norden, "Sir Henry Spelman on the Chronology of the Elizabethan College of Antiquaries", p. 159.

nonexistence of such documents after that year. For Van Norden, the only twenty-year lapse Spelman can feasiblely mean is from 1607 or 1608 until 1627 or 1628. She discounts the simple arithmetical method in favour of a detailed analysis of the context of "The Occasion", and similarly suggests that: "[Spelman's] statement is blurred for modern readers by his use of the past tense "*grew* for twenty Years" where good modern usage would require the present perfect, and his use of "then" in the sense of "at - or during - that time" in a context where it could mean "after that time"". It is, on balance, a most convincing estimation.[43] It seems reasonable to interpret this discontinuance as referring to Carew's own attendance at meetings rather than the discontinuance of the group given that we have extant "discourses" as late as 1607. The fact the letter was written from Carew's Cornwall estate in Anthony lends credence to interpretation that the "discontynuance" refers to Carew's own absence. Van Norden concluded, therefore, that one can rely on Spelman to say that the Society of Antiquaries was established between 1584 and 1586; that it vanished between 1606 and 1608; and that some of its members (and perhaps some others) made a thwarted or unsuccessful attempt to resuscitate the group in 1614. Spelman's statements, interpreted in this way, are supported by the extant documents of the college and by other circumstantial evidence.

Van Norden's second chapter also considers the question of the dates of the

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43 Van Norden, "The Elizabethan College Of Antiquaries", p. 112 and Van Norden, "Sir Henry Spelman on the Chronology of the Elizabethan College of Antiquaries", p. 159. Van Norden's conclusion is, at face value, contrary to the statement of Carew in his letter to Cotton (Cotton MS *Julius C.* III fol. 30 b) where in 1605 Carew refers to "so long discontynuance".

meetings held by the Society. For this, too, Van Norden relies on the word of Spelman. She tests Spelman's "every Friday weekly in the term" by reference to the dated documents of the antiquaries and concludes that almost all meetings were held during the law term, and concludes that while Friday was the most common day on which meetings were held it by no means predominated, with a significant number of meetings having been held on every other day except Sunday.[44] Days of the week aside, the significance of holding meetings during the term periods points to the close association between the Society and the legal community. Van Norden's treatment, despite its only partial publication, remains the most authoritative secondary reference point regarding the Society.[45]

Despite its rather promising title: "The Elizabethan Society of Antiquaries and Men of Law" and its opening comment "To my knowledge, no one since Hearne has stressed the part that the professional men of law, the common lawyers, played in [the Society]"[46], Schoeck's brief note of 1954 was clearly written without reference to either the Van Norden doctoral thesis or her article on the Society's

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44 Van Norden, "The Elizabethan College Of Antiquaries", pp. 116-117, 492-541 and 547-553. See, *infra*, Chapter 6, Table "Meetings, Topics and Topicality".

45 See, for example, Wright, C.E., "The Elizabethan Society of Antiquaries and the Formation of the Cottonian Library" in Wormald, F. and Wright, C.E., *The English Library Before 1700*, London, Althone, 1958, pp. 179-189. Although lately discredited, Rowse's *The England of Elizabeth* (first published in 1950) also made reference to the Society - albeit without the citation of references, but also without any appreciable mishap. Rowse, A.L., *The England of Elizabeth*, Madison, University of Wisconsin Press, 1978, pp. 40-41.

46 Schoeck, R. J., "The Elizabethan Society of Antiquaries and men of Law", *Notes and Queries*, Vol. 199 (1954) 417.

chronology. He apologises for the utilisation of a limited number of sources, which seem to be merely Hearne, the *Dictionary of National Biography* and Steeves' *Learned Societies And English Literary Scholarship in Great Britain and the United States*. This would seemingly explain his unequivocal statement that the Society of Antiquaries began in about 1572 and disbanded in about 1604.[47] Schoeck's conclusion is that the Society of Antiquaries was heavily populated by lawyers. Notwithstanding Schoeck's brevity and lack of detailed consideration on the question of chronology (and its necessary consequence to the question of membership) his final inferences on the implication of the legal bias warrant reciting:

> "The dominance of the common lawyers....suggests that the activity of the members of the society in Anglo-Saxon, and later Anglo-Norman, language, history and literature was an outgrowth or by-product of their legal interests - or at least that these antiquarian interests were not incompatible with their education and work as lawyers, and that many of them no doubt were first inspired and continued to be sustained by the increasingly higher standards of scholarship and erudition in the law during the late sixteenth and

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47 Schoeck, "The Elizabethan Society of Antiquaries and men of Law" , p. 417. In fact Kendrick had made brief reference to the significance of the number of lawyers in the Society just a few years before: Kendrick, *op. cit.*, p. 114 - alas Kendrick, *ibid*, in stating that the Society was founded "somewhere about 1580", also demonstrates his unawareness of Van Norden's work. Kliger, in 1952, was similarly unconscious of the breakthrough: Kliger, S., *The Goths in England, A Study in 17th and 18th Century Thought*, Cambridge, (Massachusetts), Harvard University Press, 1952, p. 119.

early seventeenth centuries. ...the standards of scholarship among Renaissance lawyers were rather high, that they were among the first to be aware of comparative studies, and that the nature of their reverence for authority drove some of them farther and farther back into history."[48]

From all appearances, this brief note errs in its acceptance of the 1572 genesis theory, presumably through lack of thorough research. Curiously enough Schoeck, only two years later, published an article concerned with the emergence of Anglo-Saxon and legal scholarship which cites, with reference to both Van Norden's article and her doctoral thesis, 1584-1586 as the approximate dates for the establishment of the Society. Nevertheless, and quite contrary to the Van Norden position, in this second article Schoeck still speaks of a continuity, stretching as far back as Laurence Nowell and Archbishop Parker, which forms part of the history of the Society.[49] Notwithstanding these inaccuracies and anomalies, Schoeck's basic assessment of the significance of the correlation between the Society and the legal community is penetratingly accurate.

Fussner's *The Historical Revolution*, published in 1962, acknowledged the unpublished thesis of Van Norden. Fussner neatly summarises Van Norden's

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48 Schoeck, "The Elizabethan Society of Antiquaries and men of Law" , p. 421.

49 Schoeck, R.J., "Early Anglo-Saxon Studies and Legal Scholarship in the Renaissance", *Studies in the Renaissance*, 5 (1958) 102 - 110 at 103-104. See also Pearce, E.C., "Matthew Parker", *The Library*, 6 (1925) 209-228.

findings:

> "Founded about 1586, the organisation known as the Elizabethan College of Antiquaries was comprised almost exclusively of men of substance who, by education and rank in society, belonged to the upper privileged class. With the notable exception of John Stow, all of the forty known members were gentlemen; many were knights, and two were noblemen. The study of law had attracted at one time or another all but eight of the members; about thirty had pursued studies at one or another of the Inns of Court. Twelve of the antiquaries became Members of Parliament, while one, Robert Bowyer, became a Clerk of Parliament. Four members were heralds, six were active diplomats or statesmen. No fewer than six of the members held office as record keepers. The society was essentially secular - Launcelot Andrewes and Abraham Hartwell were the only representatives of the clergy. Common lawyers were in a majority; and meetings of the society were accordingly scheduled during term time."[50]

Fussner's work aims to examine historical writing and thought in England in the period 1580-1640, and as such his scope is much wider than any of his twentieth-century precursors. Given these extensive objectives, his treatment of the Society of Antiquaries places great significance on the organisation's role in promoting

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50 Fussner, *op. cit.*, pp. 92-93.

historical research and furthering standards of historical scholarship. Yet in an otherwise celebratory account of the activities of the Society, Fussner pauses to point out the members of the group "showed little or no concern with historical contexts", but merely amassed facts and details. He complains that the Society "never attempted to reconstruct a past age" and "failed to examine their methodological assumptions, and hence failed to develop an awareness of the importance of ideas of explanation".[51] Such failings, if they are to be considered failings, had already been contemplated by Cheney and had been held to be compensated for by the antiquarian's unique enthusiasm precisely because "the sultriness of professionalism had not yet descended upon the historical world." Cheney in fact repudiates any charge of aimlessness:

> "In one sense, the greatest achievement of the antiquaries was this accumulation of material for historical, linguistic, and archaeological study and the making of it available in printed texts and descriptions. But a total estimate of what these men did must mark the reason why they did it. They did not accumulate aimlessly. Although one motive was to salvage material that stood in danger of destruction, they were asking specific questions. They investigated origins: origins of institutions, and families, and places, often with an eye to the present." and "Since historians were asking new questions, they could not proceed, as so many medieval historians proceeded, by repeating

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51 *id.*, p. 98.

what somebody else had written and adding a little more.

Accumulation of material led inevitably to comparison, comparison to criticism. They were conscious and proud of tapping new sources."[52]

Fussner's observation is superficially accurate, at least given Fussner's notion of "historical", but the criticism is not strictly fair. The real question is whether the members ever intended to do or be what Fussner complains of as deficiency or failure. The criticism is unfair because it seeks to attribute a certain fundamental intentionality for the writing of "history" to the members of the Society, and then criticises the absence of the anachronism.[53] The more important point, which Fussner thankfully does pursue, is that for him the chief reason for such a "failure" was that the group's concept of evidence was primarily that of lawyers. Fussner's conclusion therefore, that "They were precedent-minded, not yet historical-minded scholars"[54] (even if it can be seen as superficial and perhaps teleological) describes to some reasonable degree the outlook and practice of the Society. Fussner held to his views in *Tudor History and the Historians*:

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52 Cheney, C.R., "Introduction" in Fox, L., ed., *English Historical Scholarship in Sixteenth and Seventeenth Centuries,* London, Oxford University Press, 1956, pp. 7 and 8 (respectively). This monograph is a series of essays, originally papers delivered at a conference of the Dugdale Society 18-20 July, 1956.

53 This is an historiographical "mythology", and has since been comprehensively debunked: see Skinner, Q., "Meaning and Understanding in the History of Ideas", *History and Theory*, 8 (1969) 3-53, *passim*.

54 Fussner, *op. cit.*, p. 99.

> "The Society...was characteristic of both the old and the new in historical scholarship. Most of the antiquaries were common lawyers, who brought with them their prejudices in favour of antiquity; they persistently antedated historical origins, but at least these men set great store by original research."[55]

In 1967 Levy, in his *Tudor Historical Thought*, and in 1971 McKisack, in her *Medieval History in the Tudor Age*, made a brief mention of the Society. Levy's few comments (in an otherwise detailed account) at least emphasise the connection of members of the Society with the French humanists.[56] McKisack devoted her succinct final chapter to the Elizabethan Society of Antiquaries.[57] With express acknowledgment of Van Norden, McKisack's account embraces the questions of membership of the Society and (if only fleetingly) the group's characteristics. In so doing McKisack also recognised the importance of the legal quality of the association, particularly in so far as this attribute might have provided guidance or inspiration for the directions of the group's activities.

Ferguson's 1979 monograph, *Clio Unbound*, contains a chapter embracing

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55 Fussner, F.S., *Tudor History and the Historians*, New York, Basic, 1970, p. 237.

56 Levy, *Tudor Historical Thought*, pp. 164-165.

57 McKisack, M., *Medieval History In The Tudor Age*, Oxford, Clarendon Press, 1971, pp. 155-169.

the subject of the Society.[58] Despite a small chronological slip, in citing 1614 as the date for the Society's disbanding, Ferguson's account concentrated upon the humanist connections of the legal antiquarians and the interplay between the legal and the historical methods. More importantly, or perhaps ominously, 1979 saw the publication of Sharpe's biography of Cotton entitled *Sir Robert Cotton, 1586-1631: History and Politics in Early Modern England*. In his examination of Cotton's importance within the English antiquarian movement Sharpe makes many unabashed claims about the political significance of the Society of Antiquaries, but it is not until his sixth chapter that Sharpe turns self consciously to the prosopographical method:

> "This information must be used with caution: we may dismiss a figure who was an important friend of Cotton because he has no other significance and hence but a small place in the records; we may dwell on those about whom there is more evidence. Friends who enjoy each other's company daily do not write letters: correspondence is the record of acquaintances or separated friends. But that which must be treated cautiously should not be disregarded... only from the evidence of [documented] connections will I argue a case."[59]

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58 Ferguson, A.B., *Clio Unbound: Perception of the Social and Cultural Past in Renaissance England*, Durham (North Carolina), Duke University Press, 1979, pp. 259-311.

59 Sharpe, K., *Sir Robert Cotton, 1586-1631: History and Politics in Early Modern England*, Oxford, Oxford University Press, 1979, p. 196.

In spite of this declaration, Sharpe's is a work of truly awe-inspiring political prosopography from beginning to end. His connections at times, and his extrapolations of individuals' motives and stimuli almost always, seem to go well beyond a "cautious" reading of the texts. Sharpe's opus could never be described as reserved or conservative in its assertions - it is conjectural, animate and beguilingly credible.

In 1985 Rodgers, under the rubric "the origins of historical study of the common law", has referred to the Society as part of a larger article concerned with the issues of humanism and history in the common law. Once again, the significance of this more recent work is to posit the Society in a context which is both legal and humanist and to some degree this excuses the author for reliance upon Fussner's monograph and Schoeck's "The Elizabethan Society of Antiquaries and Men of Law" for the details of membership. Rogers repeats some of the errors as to membership, although not the 1572 establishment mistake. The relevant passage warrants reciting in full:

> "The first signs of a *systematically* historical approach to English law are to be found in the activities of the Elizabethan Society of Antiquaries, founded in 1586. The Society's work was in part the culmination of the new interest in comparative studies but as many of its members were also common lawyers it also reflected the common lawyers' concern with the search for precedents and authority. The

Society was composed of men of substance, who by education and social rank belonged to the upper privileged class. Their connections with the law were close; thirty-eight out of forty-three known members were also members of Inns...Until about 1590 group research was their usual practice; common research problems were assigned to individual members, who exchanged 'discourses' on set topics at meetings. During the 1590s the more voluble experts appear to have taken over meetings and ignored projects of common research. The emphasis throughout was on the investigation of the antiquity of the laws, customs and institutions of England."[60]

Rodgers' historico-legal emphasis echoes much of the negative, and essentially teleological, complaint of Fussner.

More recently, Mendyk's *'Speculum Britanniae': Regional Study, Antiquarianism, and Science in Britain to 1700*, was published in 1989. Mendyk's fascinating accomplishment is, however, lacking in the emphasis which it accords the Society of Antiquaries. Apart from several peripheral comments, in a study which appears from its apparatus to be sourced largely from secondary material,

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60 Rodgers, *op. cit.*, pp. 146-147. Prior to this Terrill described the Society, which he notes (without reference) was established in 1586, as "interested in historical studies": Terrill, "Humanism And Rhetoric In Legal Education: The Contribution Of Sir John Dodderidge (1555-1628)", p. 36. Unfortunately Terrill later committed the 1572 error: Terrill, R.J., "William Lambarde: Elizabeth Humanist And Legal Historian", *Journal Of Legal History*, 6 (1985) 157-178 at 166.

Mendyk fails to make explicit the reasonably salvageable connections (via the Society) between so many of the subjects of his work.[61] Two other recent works, Piggott's *Ancient Britons and the Antiquarian Imagination* (published in 1989) and Helgerson's *Forms of Nationhood* (published in 1992), also give scant attention to the Society and confuse the chronology, although Piggott at least notes (without reference) the legal emphasis.[62] By contrast Parry's comments in *The Trophies of Time: English Antiquarians of the Seventeenth Century*, from as recently as 1995, and those of Ross in 1998, are much more factual and much less evaluative.[63]

4.3 Analysis

Our understanding of the Elizabethan Society of Antiquaries from the primary and other contemporary source materials is conditioned by the manner in which these materials have been preserved, lost, rediscovered, generally by how they have been transmitted to us, over the intervening centuries. During the extended period of "discovery", from about 1618 until 1789, textual compilations (and prologues to the same) were all that was annexed to the corpus of raw data, the "discourses", concerning the Society. The Society's lineage, up to this point, can

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61 Mendyk, S.A.E., *'Speculum Britanniae': Regional Study, Antiquarianism, and Science in Britain to 1700*, Toronto, University of Toronto Press,1989, see especially p.77.

62 Piggott, S., *Ancient Britons and the Antiquarian Imagination*, London, Thames and Hudson, 1989, p. 14 and Helgerson, *op. cit.*, pp. 15, 127-128 and 300.

63 Parry, *op. cit.*, pp. 43-44 and Ross, R.J., "The Memorial Culture of Early Modern English Lawyers: Memory as Keyword, Shelter, and Identity", *Yale Journal of Law and the Humanities*, 10 (1998) 229-326 at p.240 ff.

therefore be characterised by a number of false starts and errors. In 1852 the last "find" was made.

Not until the twentieth century is it really possible to identify any real attempt to analyse, criticise and interpret. After the promising starts made by Flugel and Monroe however, the first phase of modern attention to the Society can be seen to converge largely upon questions of the Society's role as a successor to earlier groups of Anglo-Saxonists and as a precursor to later, more literature-centred, groups. This is certainly the upshot of the emphases of Steeves and Adams. The focus induced a notion of the Society with somewhat ill-defined temporal parameters and membership. From Steeves and Adams, and enduring with (for example) Helgerson, the picture presented is of a blurred continuum from Parker to Selden covering a period of almost a century. It is submitted that this perspective overemphasises the importance of literary scholarship.

The Elizabethan Society of Antiquaries has clearly not lost its appeal in more recent times. Building upon the varied classes and qualities of evidence, early twentieth-century scholarship has (sometimes less than adequately) demonstrated its continuing interest. Van Norden rejected the theory of an early Elizabethan society of antiquaries, founded by Archbishop Parker. She was absolutely correct in pointing out that there is no primary evidence that such a society ever existed. For her, despite the demonstrable facts that Spelman wrote of his Society of Antiquaries years after it had discontinued, Spelman is nevertheless a trustworthy historian of the society and

his chronology in "The Occasion" is supported by the documentary records of the Society of Antiquaries.[64] The irony of Van Norden's legacy is that her thesis, a thesis conducted under the disciplinary certification of English literature, signals the effective termination of the literature based interpretation of the Society and the emergence of more consciously historical and legal studies.

The gradual recognition of Van Norden's findings has resulted in a marked shift in the representation of the Society. In the latter part of the twentieth century the dominant interpretation of the group has tended, with writers like Fussner, Cheney, Levy, McKisack, Ferguson and others, to be historically focussed. Behind this backdrop Sharpe posits a keen political scene. In a sense the Society has been claimed by historians for "history", and even by the political historians for their own specialisation. Legal scholars, on the other hand, have been somewhat less than captivated by the Society. The efforts of Schoeck and Rogers aside, the group's disciplinary crosscurrent of legal scholarship remains to be fully explored.

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64 Van Norden, "The Elizabethan College Of Antiquaries", pp. 113-114 and Van Norden, "Sir Henry Spelman on the Chronology of the Elizabethan College of Antiquaries", pp. 159-160.

5. Membership

5.1 Introduction

This chapter concerns the identification of the members of the Society of Antiquaries. The sources reveal a pool of a little more than one hundred candidates, all with certain degrees of common interests. The challenge faced here is that of determining focus. An expansive focus can ensure that no actual "member" is excluded from identification - but it risks the inclusion persons who were not truly participants. A narrow focus, while more capable of excluding the red herrings, necessarily risks the elimination of some legitimate members.

However, if we can be fairly precise about chronology of the Society, knowing (for example) the dates when group meetings took place, then some of the candidates for membership might be ruled out on the basis of age. Therefore, before turning to the documentary evidence, some attention should be paid to the initial question of defining `the group' in terms of its temporal boundaries, thus excluding candidates who either died before the group emerged, or who were too young to have been members when group activities ceased. An elementary method for determining membership of the Society is to accept the Van Norden position on chronology.[1] If her hypothesis is correct, then the names of a large number of potential candidates for membership of the Society must be rejected. These would

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[1] See Chapter 4, *supra*.

include any candidate who died before 1584 and any candidate who, in 1608, was too young for membership. This technique would, for example, certainly disqualify Archbishop Matthew Parker who died in 1575. Other candidates who must be ruled out on the basis of lifespan and age are: Gilbert Dethicke and Henry Fitzalan (Earl of Arundel). One might similarly question the membership of Robert Harrison (the schoolmaster), who died in about 1585, and Sir Philip Sidney, who died in 1586. This method probably, though not necessarily, also eliminates John Selden, whose birth coincides with the first meetings of the Society. He can therefore have been no more than twenty-two years of age at their cessation in 1607/8. It must be admitted that this would not be an absolute bar to his membership, if it is accepted that a brilliant young man like Selden might easily be accepted into such a group of writers and scholars. This approach is effective in marking out the possible boundaries of membership, but it is altogether too blunt an instrument for the fine detail.

It must be possible to collapse this "possible" field into a field of "proven", or at least "documented", candidates. For this one must analyse the extant documentary material. A close examination of the principal extant sources relating to the Society still reveals roughly one hundred candidates for membership. Of course there are some, like Camden, Cotton and Spelman, about whose membership we can be quite certain. Their names are well substantiated across the range of documentary evidence. But many other names, particularly those listed in non-primary sources only, are much more doubtful. For convenience, the ensuing examination divides the surviving sources into three categories: primary;

contemporary; and secondary (along lines following those set out in the previous chapter). Under the heading `primary' can be included the Cotton petition, the list of names in Spelman's *The Occasion*, a list from Spelman's Norfolk Record Office manuscripts, the marginal lists of names in Cotton MS *Faustina* E.V. and Stowe MS 1045, I, Lailand's list of names, names derived from correspondence between potential members and a composite list of names which can be identified from Hearne's and Ayloffe's compilations of the "discourses".[2] Collectively these documents form the rudimentary evidence for membership. Under the rubric `contemporary secondary' is to be found the remnants of Bolton's and Burton's lists. Lastly, Thomas Smith's list, from his *Catalogus Librorum Manuscriptorum Bibliothecae Cottonianae*, being nearly contemporary and apparently sourced from primary materials, is the only `secondary' evidence which merits inclusion in the consideration of documentary evidence for membership of the Society.

The evidence for membership of the group must therefore be assembled, compared and interpreted. The following tabular summary presents the extant evidentiary materials. The table is also a reference point for the discussion of the evidence which ensues. Finally, some findings are offered in answer to the question `who was a member ?'.

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[2] Manuscript "Discourses", outside the Hearne/Ayloffe composite, do not add to the list of possible candidates for membership.

Tabular Summary of Evidence for Membership	Primary Evidence							Contemporary Secondary Evidence			Secondary Evidence
Name	**C.P .**	**C.D.**	**Letters**	**Lailand**	**MSS**	**SpelmanO**	**Spelman N**	**Bolton West**	**Bolton Oldys**	**Burton**	**Smith**
Arthur Agard		✓		✓	✓		✓			✓	✔
Lancelot Andrewes			✓								✓
Atey										✓	
Benedict Barnham									✓		
Robert Beale							✓			✓	✔
Benefield								✓			
Sir Henry Billingsley									✓		
Bolton									✓		
Bonser					✓		✓?				
Henry Bourchier		✓			✓		✓?			✓	✓
Robert Bowyer			✓	✓			✓?			✓	
Brerewood									✓		
John Broke									✓		
Richard Broughton		✓		✓	✓		✓			✓	✓
Broughton the preacher										✓	
Sir Thomas Brudenel									✓		
Sir George Buc									✓		
William Camden		✓	✓	✓		✓	✓		✓	✓	✓
Richard Carew		probably	✓	✓							✓
Lord Carew									✓		
William Cecil, Lord Burghley									✓		
Bartholomew Clark									✓		

Tabular Summary of Evidence for Membership	Primary Evidence							Contemporary Secondary Evidence			Secondary Evidence
Name	**C.P .**	**C.D.**	**Letters**	**Lailand**	**MSS**	**SpelmanO**	**Spelman N**	**Bolton West**	**Bolton Oldys**	**Burton**	**Smith**
Anthony Cliffe					✓		✓			✓	
Sir Edward Coke									✓		
William Combes										✓	
William Compton					✓†						
Walter Cope		Mentioned C.D. 18			✓					✓	
Richard Cosens									✓		
Robert Cotton	✓	✓	✓	✓	✓	✓	✓			✓	✓
Dr Cowel									✓		
John Davies		✓				✓			✓		✓
Dee										✓	
Dent										✓	
Gilbert Dethicke								✓			
William Dethicke		✓		✓	✓		✓		✓		✓
John Dodderidge	✓	✓		✓		✓			✓		✓
Sir Daniel Donn									✓		
Thomas Sackville, Baron Buckhurst, Earl of Dorset									✓		
Thomas Doyley		✓		✓	✓						✓
Sampson Erdeswicke				✓				✓		✓	
Sir Henry Fanshawe								✓			
John Ferne										✓	
Henry of Ferrers									✓		

Tabular Summary of Evidence for Membership	Primary Evidence							Contemporary Secondary Evidence			Secondary Evidence
Name	**C.P .**	**C.D.**	**Letters**	**Lailand**	**MSS**	**SpelmanO**	**Spelman N**	**Bolton West**	**Bolton Oldys**	**Burton**	**Smith**
Henry Fitzalan Earl of Arundel									✓		
William Fleetwood					✓		✓			✓	✓
Glover									✓		
Arthur Goulding										✓	
Arthur Gregory										✓	
Sir Fulk Grevile									✓		
John Guillim										✓	
William Hakewill		✓				✓					✓
Robert Hare										✓	
Harrison the Schoolteacher										✓	
Harrison the Minister											
Abraham Hartwell		✓	✓								✓
John Hayward									✓		
Michael Heneage		✓		✓	✓		✓			✓	✓
The Herberts, Earls of Pembroke									✓		
Joseph Holland		✓		✓	✓		✓			✓	✓
Mr T Holland								✓			
Lord William Howard									✓		
Charles Howard, Earl of Northampton								✓			
Sir Henry James									✓		
William Jones		✓									

Tabular Summary of Evidence for Membership	Primary Evidence							Contemporary Secondary Evidence			Secondary Evidence
Name	**C.P .**	**C.D.**	**Letters**	**Lailand**	**MSS**	**SpelmanO**	**Spelman N**	**Bolton West**	**Bolton Oldys**	**Burton**	**Smith**
Martin Josseline										✓	
Roger Keymis										✓	
Thomas Lake		✓		✓							✓
William Lambarde					✓		✓	✓		✓	
Francis Leigh		✓		✓						✓	✓
Sir James Ley	✓	✓		✓	✓	✓	✓		✓		
William Lisle											✓
John Lloyd										✓	
Lord John Lumley									✓		
Sir Peter Manwood									✓		
William of Nettleton										✓	
Arnold Oldisworth		✓									✓
Roger Owen									✓		
William Patten		✓		✓	✓		✓			"Mere"	✓
Sir Edward Philips									✓		
Sir Walter Raleigh									✓		
Daniel Rogers										✓	
Henry Sacherevell										✓	
Sir Henry Savile									✓	✓	
John Savile					✓		✓			✓	
Thomas Savile										✓	
Richard Scarlet										✓	
Sir William Sedley									✓		
Sir William Segar									✓		

Tabular Summary of Evidence for Membership	Primary Evidence							Contemporary Secondary Evidence			Secondary Evidence
Name	**C.P .**	**C.D.**	**Letters**	**Lailand**	**MSS**	**SpelmanO**	**Spelman N**	**Bolton West**	**Bolton Oldys**	**Burton**	**Smith**
John Selden									✓		✓
Gilbert Talbot, Earl Shrewsbury								✓			
Sir Phillip Sidney									✓		
Sir Henry Spelman		Original		✓		✓	✓		✓	✓	✓
Sir Richard St George						✓			✓		
John Stow		✓	✓	✓	✓		✓	✓		✓	✓
James Strangeman					✓		✓			✓	
Gilbert Talbot, Earl Shrewsbury								✓			
Thomas Talbot		✓			✓		✓	✓		✓	✓
Francis Tate		✓		✓	✓		✓		✓		✓
Francis Thynne		✓		✓	✓		✓	✓		✓	✓
Hayward Townshend		✓									
Valence								✓			
Robert Weston					✓†						
James Whitelock		✓							✓		✓
Wiseman					✓		✓				
Wodhall										✓	

LEGEND		
C.P.	-	The Cotton Petition, Cotton MSS *Faustina* E.V. 12, fols. 89-90b and *Titus* B.V. 67, fol. 210
C.D.	-	"Curious" Discourses
Letters	-	exchanged by members, pertaining to the Society: Cotton MS *Julius* C. III, fol. 30b, the 'Andrews letter' quoted through Gough, R., "Introduction", *Archaeologia*, 1 (1770) i at xv and Bodley MS *Ashmole* 763, fol. 7
Lailand	-	Bodley MS *Ashmole* 763, fol. 7
MSS	-	Cotton MS *Faustina* E.V. and Stowe MS 1045. I.
Spelman-O	-	Spelman's list of members in "The Occasion", Bodley MS *e Mus* 107, fols. 1-2
Spelman-R	-	Spelman's list of members in the Norfolk Record Office MS 7198
Bolton	-	Society of Antiquaries MS, quoted by Gough, *Archaelogia* I, pp. xvi-xx.
Burton	-	William Burton's list, in Weever's *Ancient Funerall Monuments* (see *Notes and Queries*, Series I, Vol. V, p. 365)
Smith	-	Thomas Smith's list, in "Vita ... Cottoni," *Catalogum,* Oxford, 1698, p. viii

5.2 Primary evidence

The Cotton petition[3] bears just three names: "Mr Cotton", "Mr James Lee" and "Mr. Dodorug".

The list of names in Spelman's "the Occasion"[4] is as follows: "Sir James Ley Knight, then Attorney of the Court of Wards, since Earl of Marleborough and Lord Treasurer of England; Sir Robert Cotton Knight and Baronet; Sir John Davies his

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3 Cotton MSS *Faustina* E.V. 12, fols. 89-90b which contains the three names the *Titus* B.V. 67, fol. 210 appears to be a rough copy of the same document, without any names appended.

4 Bodley MS *e Mus* 107, fols. 1-2.

Majesty's Attorney for Ireland; Sir Richard St.George Kent then Norrey, Mr. Hackwell the Queen's Solicitor, Mr. Camden then Clarencieux, myself, and some others". The tract later names Sir John Dodderidge.

Spelman's Norfolk Record Office list enumerates the following names: "Will. Fletewood, serjeant and Recorder of London...Garter King of Armes...Mr. Broughis of ye Inner Temple...Mr. Heneage...Mr. Spilman...Mr. Ley of Lincolns Inne...Mr. Bonser/Bouser of the Inner Temple...Mr. Savill of ye Midle Temple...Francis Tate of ye Midle Temple...Mr. Patton...Mr. Holland of the inner Temple...Mr. Robert Cotton of the Midle Temple...Mr. Agard (Arthu' of ye Chequer)...Mr. Thinne...Mr. Stow...Mr. Talbot...Mr. Cliffe...Mr. Strangeman...Mr. Wiseman...Mr. Lambart (Willm that wrot the Perambulation of Kent) ...Mr. Beale (ye Clarke of the Cansell')...Mr. Camden (Will. Clarentieux)".[5]

The marginal lists in the Cotton MS *Faustina* E.V. and at the beginning of Stowe MS 1045, I, also provide primary evidence for membership. The former contains just three names: Cliffe; Cope; and "Master Doctor Doyeley". The latter document contains a number of lists of names. Stowe MS 1045 consists of a collection of Francis Tate's notes concerning the Society, mostly in autograph. The lists of names which are located across the first few pages of the collection, and which vary as to their make-up, contain annotations - some of which have been

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5 Norfolk Record Office MS 7198.

affixed subsequent to the applicable list. Many of the annotations, and at least some of the lists themselves, are clearly later additions by another person. The enumerated list of seventeen names: including William Fleetwood, William Dethicke, Richard Broughton, Michael Heneage, James Ley, Robert Bowyer, John Savile, Francis Tate, William Patten, Joseph Holland, Robert Cotton, Arthur Agarde, Francis Thynne, John Stow, Thomas Talbot, Mr Cliffe, James Strangeman; is followed in the same hand by an unnumbered listing of Mr Wiseman. This list (including Wiseman), although not its marginal annotations, are in the same hand, Tate's, as the first few pages of notes in Stowe MS 1045 which record a meeting of the Society to examine the subject of Dukes on the 25th and 26th of November 1590. It is this list, which appears on folios 4b and 5 of Stowe MS 1045, which should be regarded as our primary source from this collection regarding membership. The only other names listed at the beginning of this manuscript which may be included, as possibly in Tate's hand, are those of William Compton and Mr Weston.[6]

Lailand's list[7] is divided into two sections: "The names of all those w^{ch} were somoned att this tyme...Mr. Garter [Sir William Dethicke]...Mr. Doderidge...Mr. Tate...Mr. Clarentius [William Camden]...Mr. Cotton...Mr. Agard...Mr. Paton...Mr. Holland...Mr. Stowe...Mr. Thynn...Mr. Doc. Doyley...Mr. Carew...Mr. Bowyer...Mr.

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6 This approach varies slightly with that of Van Norden as regards the emphasis to be accorded to this list, cf. Van Norden, "The Elizabethan College Of Antiquaries", pp. 159-160.

7 Bodley MS *Ashmole* 763. IV, 7, fol. 197a.

Hennage...Mr. Leigh...Mr. James Ley and...Mr. Erswicke"; and "not somoned...Mr. Spilman...Mr. Broughton...Mr. Lake" and is endorsed "per me Ch. Lailand".

The Society was evidently the subject of two extant letters between potential members. One is from Richard Carew to Sir Robert Cotton[8], the other concerns the membership of the clergyman Lancelot Andrewes.[9] This second letter was apparently addressed to Abraham Hartwell and mentioned Camden and the addressee as members. Other "correspondents" include Bowyer and Stow, whose names appear as the addressees of summonses attached to Lailand's registers.

"Discourses" identified by their author's name in Hearne's and Ayloffe's *A Collection of Curious Discourses* provide further evidence of membership. From Hearne's original (1720) collection the names of Arthur Agard, Joseph Holland, William Camden, Robert Cotton, James Ley, Francis Thynne, Francis Tate, Francis Leigh, James Whitelock, Richard Broughton, John Dodderidge, Thomas Talbot, William Hakewill, William Jones, Thomas Lake and Arnold Oldisworth appear as authors. Walter Cope is also mentioned[10], not as an author but as the holder of one of Cotton's books (a book which had been in the possession of Agard and which was on

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8 Cotton MS *Julius* C. III, fol. 30b.

9 Gough, R., "Introduction", *Archaeologia*, 1 (1770) i at xv; on which see Van Norden, *op. cit.*, pp.165-169.

10 Hearne, T., *A Collection Of Curious Discourses...*, 1720, Discourse XVIII, p. 76.

the topic of the "discourse" in which this reference was made, namely about land). Ayloffe's additional discourses also include the names of Michael Heneage, Dr. Thomas D'Oyley, William Dethicke, John Davies, William Patten, Abraham Hartwell, Henry Bourchier, Henry Spelman[11] and John Stow as authors. Ayloffe's 1771 additions also include a paper each from Edward Cook and Robert Plott, but these papers, both detailed arguments about duels and the jurisdiction of the Earl Marshal, and grouped towards the end of Ayloffe's second volume together with another anonymous one on the same topic, seem to be either Ayloffe's (or one of his unnamed source's) interpolations. All of the other authors (with the exception of Townshend[12]) who are named by Ayloffe (but not also by Hearne) can lay claim to some alternative item, or items, of primary evidence. The "Ayloffe only" group, as a group, can be corroborated by alternative primary evidence in roughly the same proportion and depth as those mentioned by Hearne alone. There is, it is submitted, no reason therefore to differentiate within this category of evidence according to its editor.

5.3 Contemporary secondary evidence

Edmund Bolton sought to resurrect the Society between 1618 and 1628, and produced a number of documents, two of which contain a list of members. The lists

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11 Spelman's "Original", probably composed after the group disbanded, on which see *supra*, Chapter 4.

12 On whom see *infra*.

are now lost, but are known as "the West Manuscript" and the Society of Antiquaries MS ("the Oldys paper"), both of which are quoted by Gough.[13] Gough's consolidated list does distinguish between his two sources. From "the West Manuscript" he quotes:

> "...a few of the friends and persons dying, whose names nevertheless do live with honour; the late Earls of Shrewsbury and Northampton, Sir Gilbert Dethick,...Lambert, Esq., Valence, Esq., Erdeswick, Esq., Heneage, Esq., Keeper of the Tower Records, Francis Thynne, Esq., Lancaster Herald, Sir Henry Fanshaw, and _ Benefield, Esq., Mr. Talbot, Mr. T. Holland, and Mr. Stowe...".

From the Society of Antiquaries MS Gough quotes:

> ""...The Lord William Howard, the Lord Carew, profound Judge Doderich, Sir Thomas Brudenel, Sir William Sedley, Baronets; Sir James Leigh, Knight, Attorney for your Wards, Sir John Davies, Knight, your Majesty's Attorney for Ireland, whose reports of Law-cases have a great fame, incomparable Camden, and the other two Kings of Arms, Sir William Segar and Sir Richard St. George, Knights; Sir Henry James, Knight, Sir Foulke Grevile, Knight,

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13 Gough, *op. cit.*, pp. xvi-xx.

Chancellor of your Majesty's Exchequer, Sir George Buc, Master of the Revels, Sir Henry Spilman, Mr. John Hayward, Doctor of Laws, Henry Ferrars, of Badsley, Esq., Mr. Tate, Mr. Whitelock, Mr. Broke, York Herald, Mr. Selden, Mr. Bolton, Sir Edward Coke, Knight, Privy Counsellor Brerewood, of Gresham College, Sir Roger Owen, judge, Sir Edward Philips, Master of the Rolls..." To the deceased members the MS [the Society of Antiquaries MS] adds Sir Philip Sidney, Fitzalan, last Earl of Arundel of that name,...; Thomas Earl of Dorset, William Lord Burghley, the Herberts, Earls of Pembroke, the learned Lord Lumley, Sir Henry Billingsley, Sir William son of Sir Gilbert Dethick, Bartholomew Clark and _ Cosens, Doctors of Law, and Deans of the Arches, Sir Daniel Donn, Master of the Requests; Sir Walter Cope and Raleigh, Mr. Benedict Barnham, Alderman of London; Doctor Cowel, Master of Trinity Hall, Cambridge, Mr. Glover, Somerset; and to those living at the time, Sir Peter Manwood, Knight of the Bath, and Sir Henry Savile, Knight, Provost of Eton."

A further list of members, prefixed by the rubric "Antiquarii temp. Eliz. Reg." in the handwriting of the Society's contemporary William Burton, on the fly-leaf of a copy of Weever's *Ancient Funeral Monuments*[14], is preserved as follows:

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14 See "Antiquaries of the Time of Queen Elizabeth", *Notes and Queries*, ser. 1, vol. 5, (17 April 1852), 365-366.

"1. Recorder Fletewode, W^m^.
2. Mr. Atey.
3. Mr. Lambard, Willm.
4. Mr. Cope.
5. Mr. Broughton y^e^ Lawyer.
6. Mr. Leigh.
7. Mr. Bourgchier.
8. Mr. Broughton y^e^ Preacher.
9. Mr. Holland, Joseph.
10. Mr. Gartier.
11. Mr. Cotton, Rob^t^.
12. Mr. Thinne, Francis.
13. Jo. Stowe.
14. _ Combes.
15. _ Lloyd.
16. _ Strangman.
17. Hen. Spelman.
18. Arthur Gregory.
19. Anth. Cliffe.
20. Tho. Talbot.
21. Arthur Goulding.
22. Arthur Agard.
23. Willm Camden.
24. Mere. Patten.
25. Samson Erdeswike.
26. _ Josseline.
27. Hen. Sacheverell.
28. W^m^. Nettleton de Knocesborough.
29. John Ferne.
30. Robt. Bele.
31. John Savile de Templo.
32. Daniell Rogers.
33. Tho. Saville.
34. Henry Saville.
35. Rog. Keymis.
36. John Guillim.
37. _ Dee.
38. _ Heneage.
39. Rich. Scarlet.
40. _ Wodhall.
41. Dent de Baco Regis.
42. _ Bowyer.
43. Robt. Hare.
44. _ Harrison, schoolem^r^.
45. _ Harrison, minist^r^."

5.4 Secondary evidence

Smith's catalogue, *Catalogus Librorum Manuscriptorum Bibliothecae Cottonianae*[15], is prefaced by a biography of Cotton entitled "Vita D. Roberti

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15 Oxford, 1696.

Cottoni, Equitis Aurati & Baronetti" which contains a list of members gleaned from the Cotton petition and the remainder of Cotton MS *Faustina* E.V., the Andrewes-Hartwell and Carew-Cotton letters and the "discourses". His list is as follows:

> "Paucos tamen, de quibis mihi ex certissimis indiciis constat, cum illud illorum famae & meritis maxime debetur, ordine alphabetico memorabo. Ii autem erant Arthurus Agard, Lancelotus Andreas, Henricus Bourchier, Ricardus Broughton, Gulielmus Camdenus, Ricardus Carew, Robertus Cottonus, Joannes Davis, Gulielmus Dethick, Joannes Dodderidge...Doyley, Gulielmus Fleetwood, Gulielmus Hakewill, Abrahamus Hartwell, Michael Heneage, Josephus Holland, Thomas Lake; Franciscus Leigh, Jacobus Leigh...Oldsworth, Williemus Patten, Joannes Stow, Thomas Talbot, Franciscus Tate, Franciscus Thynne, & Jacobus Whitlock. De caeteris sociis, praecipue post annum hujus seculi quintum admissis, nondum constat; licet de Gulielmus Lisle, Henrico Spelmanno, & Joanne Seldeno non dubitandum videtur; nec de aliis hariolari libet."

5.5 Commentary

The safest way forward in the interpretation of membership evidence is to give primary weight to the primary documents. Then, where possible, one may attempt to bolster initial conclusions by reference to non-firsthand and other

secondary materials. At the same time one must also resist the temptation to be swayed by "attractive" candidates: candidates who may "look" like the "type" who we imagine members to resemble. Where the documentary evidence is, as it is here, reasonably detailed and meaningful - one should proceed from the evidence at hand, rather than from the identification of ideal types: a clear methodological point which is often the prosopographer's downfall.

Examination of the primary evidence indicates forty individuals who are referred to by at least one item of firsthand testimony for membership. This group of forty consists of Arthur Agard, Robert Beale, Henry Bourchier, Robert Bowyer, Richard Broughton, William Camden, Richard Carew, Anthony (or John) Cliffe, Sir William Compton, Walter Cope, Sir Robert Cotton, Sir John Davies, Sir William Dethicke, Sir John Dodderidge, Thomas D'Oyley, Sampson Erdeswicke, William Fleetwood, William Hakewill, Abraham Hartwell, Michael Heneage, Joseph Holland, William Jones, Sir Thomas Lake, William Lambarde, Sir Francis Leigh, Sir James Ley, Arnold Oldisworth, William Patten, Sir Richard St. George, Sir John Savile, Sir Henry Spelman, John Stow, James Strangeman, Thomas Talbot, Francis Tate, Francis Thynne, Hayward Townshend, Robert Weston, Sir James Whitelock and Thomas (or George) Wiseman. This is our "primary" group and Appendix 1 contains a brief biography of each of these candidates. To this tally a possible addition is Launcelot Andrewes whose claim rests upon the now lost letter to

Abraham Hartwell.[16]

Other justifiable inclusions relate to references to a person by a title. The references to "Garter King of Arms" in Spelman's Norfolk Record Office list, to "Mr Garter" in Lailand's list and to "Gartier" in Burton's list, are clearly references to Sir William Dethicke. Lailand's citation of "Mr Clarentius" can equally be accepted as a reference to Camden. The only name mentioned by a primary source which is not included in the foregoing headcount is the Mr "Bonser" (or perhaps it is "Bouser") mentioned in Spelman's Norfolk Record Office list. It is reasonable to suppose that this is a either a reference to Henry Bourchier, or (more likely) to the Mr Bowyer mentioned by Lailand and summoned in the attachment to Lailand's list. Along similar lines, there are three instances where it can be said (with a reasonable degree of assurance) that members identified by primary sources are misnamed or confused in a secondary source. First, Sir Gilbert Dethicke, who is mentioned only once, in Bolton's West Manuscript. This source does not include any reference to his son Sir William Dethicke. Sir William lays claim to numerous other primary and non-primary testimonies, and it is reasonable to suppose that the reference to the father should be to the son. Second, "Mr. T. Holland" (presumably Thomas Holland) is likewise mentioned only once, again in Bolton's West Manuscript, a source which

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16 The only actual "primary" evidence for Andrewes' membership is in fact secondary, from Thomas Smith's list, in Smith's latin paraphrase of Andrewes' letter to Hartwell and the translation of the same by Gough. See *supra*, Chapter 4.

does not include any reference to his cousin (Joseph Holland) - whose membership is well attested. Third, Burton's list refers to a "Mere. Patten" and it would seem reasonable to identify this designation with William Patten. Fourth, it is highly likely that the anonymous discourse dealing with land in Cornwall was written by Richard Carew.

Subject to the above, the candidate with the greatest number of references in primary materials is Cotton with seven. Ley appears in six primary sources, and Camden and Stow appear in five sources each. Broughton, Heneage, Holland, Agarde, Dethicke, Dodderidge, Patten, Thynne and Tate appear in four. Spelman, Bowyer, Carew, Doyley, Bourchier and Talbot appear in three primary sources each, and Cliffe, Cope, Davies, Hakewill, Hartwell, Strangeman, Lake, Lambarde, Fleetwood, Wiseman, Leigh and Savile appear in two. This leaves ten candidates who can lay claim to only one item of primary evidence: Andrewes, Beale, Compton, Erdeswicke, Jones, Oldisworth, St George, Townshend, Weston and Whitelock.

The primary evidence for most of these forty-one "primary candidates" is supplemented by various references from the non-primary sources. Whilst none of the candidates identified from the primary materials are mentioned by all of the four non-primary sources, thirty-six (or about 90%) are mentioned by at least one. Twenty-nine (or about 70%) are mentioned in at least two non-primary sources.

Seven candidates: Camden, Heneage, Holland, Spelman, Stow, Talbot and Thynne;

are mentioned by three of the four non-primary materials. Only five "primary candidates": Compton, Jones, Townshend, Weston and Wiseman; are not referred to by non-primary sources.

There is an important coincidence between the ten candidates referred to by only one primary source and the five candidates who are not mentioned by any non-primary source. Four of the five are included in the ten. These four, Compton, Jones, Townshend, and Weston (along with Andrewes) constitute a sub-group of "primary candidates" whose membership should be regarded with some suspicion. However, a further question arises: are there any more detectable patterns which emerge from non-primary source corroboration of the identified "primary candidates"? Such patterns might be discernable in either of two ways. They may emerge either in the way in which a certain non-primary source corroborates a certain primary source or sources, or in the way in which certain non-primary sources agree as to the membership of certain "primary candidates". As a straightforward example of the first type of pattern, is it possible to discern a significant similarity between Smith's list with a list of candidates who are known to have written discourses? Alternatively, is it possible to discern a significant similarity between those "primary candidates" who are identified by both Burton and Bolton (a potentially more complex example of the second type of pattern)? The mathematical possibilities of such cross-referential combinations are positively gigantic, but the questions are real. For example, there is actually a very high degree of correspondence between Smith's list

and a list of candidates who are known to have written discourses. This pattern could be said to be explained by our understanding that Smith had access to the discourses, or at least most of the ones we know of. It is equally possible to say that there is only a minimal degree of agreement between Burton and Bolton when they list candidates who are also mentioned in primary materials. This might suggest that they were working from different materials. Unfortunately the extremely large number of possible cross-referential combinations makes it unrealistic to thoroughly investigate such patterns. It can also be argued, justifiably, that the "knowledge" that might be revealed by the discernment of any pattern would ultimately be only speculative. All such patterns are speculative in the sense that the similarities which they may disclose are just that: they do not, of themselves, establish correspondence or conformity. So the project, while engrossing, has ultimately very little to add to the question of the identification of members.

The reckoning of forty-one, "primary members" obviously excludes from membership significant numbers of candidates recorded by non-primary sources only. The excluded candidates are: Atey; Barnham; Benefield; Billingsley; Bolton; Brerewood; Broke; Broughton; Brudenell; Buc; Lord Carew; Cecil; Clerke; Coke; Combes; Cosens; Cowel; Dee; Dent; Gilbert Dethicke; Donn; the Earl of Dorset, Baron Buckhurst (Thomas Sackville); Fanshawe; Ferne; Ferrers; the Earl of Arundel (Henry Fitzalan); Glover; Goulding; Gregory; Grevile; Guillim; Hare; John Harrison; Harrison ("the minister"); Hayward; the Herberts; the Howards (including Howard

earl of Northampton); James; Josseline; Keymis; Leigh; Lisle; Lloyd; Lord Lumley; Manwood; Nettleton; Owen; Philips; Raleigh; Rogers; Sacheverell; Sir Henry and Thomas Savile; Scarlet; Sedley; Segar; Selden; the Earl of Shrewsbury (Gilbert Talbot); Sidney; Valence and Wodhall.

Because there are only four items of non-primary evidence to consider it is actually feasible to undertake, speculative though the results may be, a cross-referential comparison of these sources. Of the forty-one "primary" names, Smith records twenty-six. Smith mentions only three names which are not corroborated by primary evidence: Jacobus Leigh, William Lisle and John Selden. It is almost beyond doubt that Smith's Jacobus Leigh is in fact Sir James Ley who is not otherwise referred to by Smith. William Lisle is not mentioned by any other source (primary or otherwise), and the only other reference to John Selden (whose age must raise a query) is in Bolton's Society of Antiquaries MS (which contains a large number of names not corroborated by primary evidence). Smith's list of twenty-nine candidates therefore clearly represents the most accurate contemporary (or nearly contemporary) description. More problematic are the diverse names contained in Bolton's and Burton's lists. From Bolton's West Manuscript, which contains a total of thirteen names, there are seven candidates whose membership can be supported by primary evidence, and a further six postulants. Not one of these six: "the late Earls of Shrewsbury and Northampton, Sir Gilbert Dethick, ...Valence, Esq ..., Sir Henry Fanshaw, and _ Benefield, Esq."; is mentioned by any other non-primary source, and

therefore this list is the only text where these names appear. From Bolton's Society of Antiquaries MS, which totals forty-three candidates, there are only ten names which can be validated by the primary materials. Of the remaining thirty-three names mentioned in the Society of Antiquaries MS only two, John Selden (recorded by Smith) and Henry Savile, are also mentioned by another non-primary source. For Henry Savile that source is Burton's list which, totalling forty-five names, contains twenty-two supplementary candidates whose membership cannot be confirmed by reference to either primary or non-primary evidence. This is not to say, of course, that Lisle, Henry Savile, Selden, the thirty-seven additional and distinct candidates registered by Bolton and the twenty-one additional and distinct candidates registered by Burton cannot possibly have been members. However the alleged membership of these supplementary nominees simply cannot be supported by primary evidence. It is also apparent from the foregoing (and admittedly experimental) comparison of the non-primary sources, that there is no meaningful degree of agreement between them concerning these extra candidates. In fact it is perhaps rather conspicuous that where the non-primary sources differ from the primary sources, they also differ from each other. The telling fact is that the vast majority (about 95%) of candidates whose claim to membership lies beyond the primary materials can only rely upon a single reference in one non-primary document. As such the according of membership to these candidates ought to be treated with considerable scepticism.

A less methodical approach to the sources, combined with an acceptance of

the 1572 error, has sometimes resulted in the inclusion of some candidates whose membership must be regarded as highly doubtful, if not impossible. For instance, of those mentioned by modern writers, from Schoeck's list[17] the membership of Sir William Cecil[18], Sir Henry Fanshawe, Archbishop Matthew Parker[19], Sir Walter Raleigh, Thomas Sackville[20], John Selden[21] and Archbishop John Whitgift[22] must be seriously doubted. To these apparently erroneous inclusions the names of Laurence Nowell[23] and William D'Isle[24] can be added as persons most probably designated with membership by mistake.

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17 Schoeck, "The Elizabethan Society Of Antiquities And Men Of Law".

18 Also listed by Greg, W.W., "Books and Bookmen in Archbishop Parker's Correspondence", *The Library*, December 1935, 243-279.

19 Also mentioned by Greg, *id.*, Adams, *op. cit.*, Steeves, *op. cit.* and Evans, E., "Of the Antiquity of Parliaments in England: Some Elizabethan and Early Stuart Opinions", *History*, 23 (1938) 206-221.

20 Also listed by Greg, *op. cit.*

21 Mentioned by Steeves, *op. cit.*

22 Also listed by Greg, *op. cit.*

23 Mentioned by Schoeck, "Early Anglo-Saxon Studies And Legal Scholarship In The Renaissance".

24 Mentioned by Steeves, *op. cit.*

6. "...this Society tendeth...": Group Cohesion and Enterprise

Having identified the existence of a group, and in so doing also identified (with a reasonable degree of certainty) its members, the prosopographical method[1] can be employed to provide that study with a sharper focus. This chapter firstly aims to ascertain and evaluate the most important experiences which the antiquaries had in common. The objective of this type of enquiry is to deepen our understanding of `who' the members of the Elizabethan Society of Antiquaries were. In terms of status, educational background, legal experience and office holding there was much to connect the members. As indicated, this approach involves the utilisation of the prosopographical method, and it must therefore be noted that the assayed 'factors', or 'experiences', can be often far from definite. For example, factors like a peerage or attendance at a particular University are more categorical than general factors like "class" or "education". The investigation will attempt, where feasible, to restrict itself to the more absolute variables. The study will also focus, heeding Stone's counsel, on the forty-one individuals identified by primary evidence. At some points, however, it will be possible to juxtapose, if only briefly, this group with the broader group of all potential candidates for membership. Some of the most interesting factors are then set out in a table for comparison. The chapter also seeks to examine a

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1 See *supra*, Chapter 2.

"group enterprise": involving regular meetings, and the presentation of agreed seminar topics. This type of investigation attempts to answer the questions of `why', `when' and 'how' the Society operated as a "group". These findings, also represented in part by a tabular summary, are necessarily a combination of the prosopographical method and textual interpretation. The chapter then returns to a less interpretative stance, with an examination of some absolute factors, age and death, which, it is submitted, offer an interesting explanation of the demise of the Society.

6.1 Group Characteristics

Prefacing Gough's list of names in his transcription of the "West Manuscript"[2] is an interesting description of the members:

> "certain choice gentlemen, fathers of families, or otherwise free masters, men of proof..."

There was a distinct class identity amongst members. Barring John Stow, who was a member of the London mercantile community, all the identified antiquaries appear to have been "gentlemen", or at least "esquires" in the sense that they possessed manors. They attended the Universities and, or, the Inns of Court, and they often occupied government positions. Fourteen of the identified members, of a maximum total of forty-one, achieved a higher status in the course of their careers. Compton,

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2 Gough, *op. cit.*, p. xvi.

Cotton, and Ley were created peers after the Society had discontinued its meetings. During the currency of the Society knighthoods were bestowed, either by Elizabeth I or James I, upon Compton, Cope, Cotton, Davies, Dethicke, Dodderidge, Lake, Leigh, Ley, Savile, Spelman and Whitelock; and Jones and St. George were dubbed following the cessation of meetings.

No significant motif emerges from the examination of members' counties of origin or provincial connections. While many can be associated with a county or region, usually because of landholdings (for instance, Carew with Cornwall, Spelman from Norfolk and the Saviles from Yorkshire), but sometimes also because of career directions (Jones, Davies and Ley each spent much time in Ireland and Beale held positions of importance in the `North'), there is a noticeable London axis for all members. The link is unexceptional. London, naturally, was the location of Parliament and the courts, the centre of business and trade and the scene the members' meetings. Some members, like Stow, can be considered as `Londoners' in the sense that they appear to been permanently domiciled there. For the majority, however, there appears to have been a characteristically "gentrified" oscillation between the capital and provincial responsibilities.[3]

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3 See, *infra*, '6.2 Group Enterprise'. A good example of this lifestyle is provided in Henry Spelman's routine: Cooper, C.H., "On An Early Autograph Of Sir Henry Spelman, With Some New Or Not Generally Known Facts Respecting Him", *Cambridge Antiquary Society Communications*, 2 (1860-64) 101-112.

As has been demonstrated[4], legal education of English gentlemen during the late sixteenth and early seventeenth centuries was quite routine. Given this, it is equally unremarkable that a large percentage of members of the Society can be shown to have had some degree of legal education. Thirty-four out of the maximum total of forty-one were definitely admitted to one of the Inns of Court, or had manifest experience in the civil law. This is about eighty-three percent of the membership identifiable by primary evidence, but the figure is slightly elastic. Some members' admissions to the Inns were surely honorary: coming late in life and after an already distinguished career outside the law, as was demonstrably the case with some of the heralds. On the other hand, the admissions records are not absolutely comprehensive, so it is more than likely that one or more members' admission records have been lost or misreported. Although this represents extrapolation, it is probably fair to say that the ratio of the Society's members with some legal background was uncommonly high.[5] It is unsurprising that there are only a few civil

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4 See, *supra*, '3.4 Legal Education in England'.

5 It is difficult to determine whether this proportion can be considered especially high without reference to comprehensive data concerning population, social stratification and educational achievements. Such data does not exist in enough detail to permit definitive analysis. However it is possible to make a speculative comparison with a body which drew its members from the same social level: Parliament. Stone finds that in the Long Parliament, which he considers an exceptionally well educated group, in 1640 the proportion of members who attended an Inn of Court peaked at fifty-five percent: Stone, "The Educational Revolution In England, 1560-1640", p. 79. See also Jones, W. J., *Politics And The Bench: The Judges and the Origins of the English Civil War*, London, Allen and Unwin, 1971, p. 46 and Finkelpearl, *op. cit.*, pp. 4-7. Throughout Elizabeth's reign the number and proportion of lawyers gaining membership of Parliament steadily increased: Neale, J.E.,*The Elizabethan House Of Commons*,

lawyers, there were only few *in toto*. What is nonetheless interesting is that it is not possible to discern any Inn which can claim either a preponderance, or even any comparatively significant proportion, of members. If there is any tendency towards Gray's Inn, then this should be discounted somewhat owing to what appears to be a disproportionate number of honorary admissions. There therefore appears to be a roughly even balance of members from all of the Inns, as well as a few civil lawyers.

Another distinguishing characteristic amongst those primary members with legal training was their occupation and success as lawyers. Many of the gentry alumni of the Inns returned to their rural estates to assume responsibilities as lords of manors, as Justices of the Peace, or in the management of the estate's properties. These alumni were not, of course, practising lawyers, but their training at the Inns was of some advantage in the execution of these duties. Amongst the membership of the Society such responsibilities certainly interrupted members' attendance at meetings to some frequency, but Bourchier, Bowyer, Broughton, Davies, Dodderidge, Fleetwood, Hakewill, Holland, Jones, Lambarde, Leigh, Ley, Oldisworth, Savile, Tate, Townshend and Whitelock all certainly practised law as a career or at least to some significant extent. This would mean the minimum proportion of practising lawyers in the Society was about forty-one percent. Broughton, Davies, Dodderidge, Jones, Ley, Savile, Tate and Whitelock were eventually appointed Judges, accounting for about twenty percent of the membership

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London, Cape, 1949, pp. 151-152.

and almost half of the practitioners, so amongst the members who were practising lawyers themselves there was obviously a conspicuously large number of Judges. Beyond traditional practice the practising lawyers, and other members, held positions as sheriffs, diplomats, clerks, keepers of records, members of specialist committees and appointees to other official posts, all of which demanded some legal experience.[6]

Broadening the focus to include the legal careers of candidates whose membership cannot be supported by primary evidence reveals a telling picture. Although many of these individuals were successful and even prominent lawyers, as a group they do not match the "primary" members in terms of legal experience and success. The following table (entitled "Candidates for Membership: Careers") indicates, *inter alia*, the candidates' degrees of legal experience, and where applicable, their Inns and their credentials as lawyers.

A very significant number of the members of the Society were Members of Parliament, often for more than one term and sometimes for different constituencies. The parliamentary careers of those members identifiable by primary evidence was extensive indeed. Beale was the Member of Parliament for Totnes in 1574, for Dorchester in 1584, 1586, and 1599 and for Lostwithiel in 1593. [7] Bourchier

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6 See *infra*, this section.

7 Hasler, *op. cit.*, volume I, p. 411, *Dictionary of National Biography*, pp. 3-7.

represented Stafford in the Parliaments of 1589, 1593 and 1597.[8] Bowyer was Clerk of Parliament from 1609/10 (having previously been returned for Evesham as one of its Members in 1601 and 1605).[9] Broughton was the Member for Stafford in 1572 and for Lichfield in 1585, 1589 and 1593.[10] Carew was Member for Saltash in 1584 and for Mitchell in 1597.[11] Cope was Member for St. Mawes in 1588/9, Weymouth in 1601, Westminster in 1604 and for Stockbridge in 1614.[12] Cotton had a lengthy career in Parliament, as Member for Newtown (on the Isle of Wight) in 1601, County Huntingdon in 1604, Old Sarum in 1624, Thetford in 1625 and Castle Rising in 1628.[13] Davies also had a parliamentary career, representing Shaftesbury in 1597, Corfe Castle in 1601 and Hindon in 1621.[14] Dodderidge was also a Member of Parliament, for Barnstable in 1588/9 and for Horsham in 1604.[15] Fleetwood, in fact, is principally known for his distinguished parliamentary career, sitting for Marlborough in 1558, for Lancaster in 1559 and 1563, for St. Mawes in 1571 and for

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8 Hasler, *op. cit.*, volume I, p. 460, Neale, *The Elizabethan House Of Commons*, pp. 237-238 and Neale, J.E., *Elizabeth I And Her Parliaments*, London, Cape, 1957, p. 363.

9 Willson, D.H., ed., *The Parliamentary Diary of Robert Bowyer, 1606-1607*, Minneapolis, University of Minnesota Press, 1931, p. viii.

10 Hasler, *op. cit.*, volume I, p. 498.

11 *Id.*, pp. 542-543.

12 *Id.*, p. 650.

13 *Id.*, p. 663.

14 Hasler, *op. cit.*, volume II, pp. 22-23.

15 *Id.*, pp. 42-43.

London in 1572, 1584, 1586 and 1588/9.[16] Hakewill sat for Boissiney in 1601, Mitchell in 1604, Tregony in 1614 and 1621/2 and Amersham in 1624 and 1628.[17] Hartwell sat for East Looe in 1586 and for Hindon in 1593.[18] Heneage represented Arundel in 1571, East Grinstead in 1572, Tavistock in 1588/9 and Wigan in 1592/3.[19] Jones was returned for Beaumaris in 1597, for Caernarvonshire in 1601 and for Beaumaris (again) in 1604 and 1614.[20] Lake represented Malmesbury in 1593, New Romney in 1601, Dunheved (Launceston) in 1604, Middlesex in 1614 and Wells in 1625/6.[21] Lambarde served in Parliament only once, sitting for Aldborough in 1563.[22] Leigh was the Member of Parliament for Weymouth and Melcombe Regis in 1597, for Oxford in 1601 and 1604, for Leicester in 1614 and for Warwickshire in 1621.[23] Ley sat for Westbury in 1597 and 1604, for Bath in 1614 and for Westbury (again) in

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16 *Id.*, pp. 133-138.

17 *Id.*, pp. 237-238 and *Dictionary of National Biography*, vol. 8, pp. 894-895.

18 *Id.*, pp. 265-266.

19 *Id.*, pp. 289-290, Gough, *op. cit.*, p. x, Van Norden, "The Elizabethan College Of Antiquaries", p. 567 and McKisack, *op. cit.*, pp. 77-78.

20 Hasler, *op. cit.*, volume II, pp. 386-387.

21 Hasler, *op. cit.*, volume II, pp. 428-429, Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771, vol. 2 pp.436-437,Van Norden, "The Elizabethan College Of Antiquaries", pp. 567-568, *Dictionary of National Biography*, vol. 11, pp. 417-419 and Prest, *The Diary Of Sir Richard Hutton*, pp. 16-17 and 20.

22 Hasler, *op. cit.*, volume II, pp. 429-432.

23 *Id.*, pp. 453-454.

1621.[24] Oldisworth was Member for Tregony in 1593 and for Cirencester in 1604.[25] John Savile sat for Newton in 1572.[26] Spelman represented Castle-Rising in 1593 and 1597 and Worcester in 1625.[27] Tate was Member for Northampton in 1601 and for Shrewsbury in 1604.[28] Townshend was also a Member of Parliament, for Bishops Castle in 1597 and again in 1601. He is well known as the great Elizabethan parliamentary journalist.[29] Whitelock was Member for Woodstock in 1609-10, 1614 and 1621-2.[30] Bowyer, although not a Member, was the Clerk of Parliament in 1609/10.[31] Of the forty-one primary candidates for membership some twenty-four (including Bowyer), accounting for fifty-nine percent, were Members of Parliament. Of those candidates whose claim to membership is more doubtful, a parliamentary career was also commonplace. The sixty-four "secondary" candidates include twenty-seven Members of Parliament (accounting for forty-two percent of their entire

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24 *Id.*, p. 476 and *Dictionary of National Biography*, vol. 11, pp. 1084-1085.

25 Hasler, *op. cit.*, volume III, p. 151.

26 *Id.*, pp. 350-351.

27 *Id.*, pp. 424-425.

28 *Id.*, p. 479.

29 *Id.*, pp. 516-517 and *Dictionary of National Biography*, vol. 19, pp. 1054-1055.

30 Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771, vol. 2 pp.447-448, Gough, *op. cit.*, p. xiii, Schoeck, "The Elizabethan Society Of Antiquities And Men Of Law", p. 420,Van Norden, "The Elizabethan College Of Antiquaries", p. 573, *Dictionary of National Biography*, vol. 21, pp. 117-119 and Prest, *The Diary Of Sir Richard Hutton*, pp. 25, 54 and 92.

31 Hasler, *op. cit.*, volume I, pp. 471-476.

group). However this calculation very likely under-represents the true levels of parliamentary membership as it accepts, for example, the separate identities of possible 'duplicates' such as "Mr Gartier". The true figure must be closer to about forty-four percent.[32] Making these allowances, and then combining the two groups, results in an overall ratio of almost exactly one in every two possible candidates possessing a parliamentary career. All of those members of the Society who were Members of Parliament can be demonstrated to have also had some legal background or experience.

There are some things which we can say do not characterise the Society. Given that the contemporaries of the antiquaries were William Shakespeare, Ben Jonson, Walter Raleigh, John Donne and Francis Bacon[33] it is clear that the Society was not an essentially literary organisation. The members of the Society were thinkers and writers in the sphere of English history, especially legal history, and only a few were what we might suitably call *literati*. Carew and Davies were distinguished poets, and Thynne was an amateur poet. Carew, Stow and Thynne were also literary scholars: Carew was a translator of Tasso, and Stow and Thynne were Chaucer scholars. There is evidence that Stow and Thynne assisted Holinshed with

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32 See *supra* at "5.5 Commentary" and the table entitled "Candidates for Membership: Careers", *infra*.

33 See Finkelpearl, *op. cit.*, pp. 19-31. Camden and Cotton were, apparently, quite close friends with Jonson: Worden B., "Ben Jonson Among the Historians", in Sharpe, K. and Lake, P., ed.s, *Culture and Politics in Early Stuart England*, Stanford, Stanford University Press, 1993, pp. 67-68.

his *Chronicles*.[34] But the "literary" members of the Society seem to have been members chiefly because they were scholars of English history and of English law, rather than for their literary expertise. The subject matter of extant "discourses" bear out this conclusion. This proposition is, nevertheless, at odds with the theses of Adams and Steeves.[35] Those authors' mistaken magnification of the membership and temporal boundaries of the Society leads to an over emphasising of the literary (particularly Anglo-Saxon and Old English) aspects of the Society's interests.

Meaningful connections between the group and the Church can also be eschewed. This is because of the manifestly scanty amount and quality of evidence for such a correlation. The "evidence", such as it is, includes the questionable early-origin thesis (with Archbishop Parker and Archbishop Whitgift)[36]; the inconclusive letter paraphrased in latin by Thomas Smith concerning the membership of the clergyman Lancelot Andrewes[37]; and the note made in Tate's manuscript concerning the membership of the clergyman "Hugh" Broughton.[38] In addition, according to Van Norden, the lack of representation of the clergy can be implied by reference to Agard

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34 Woolf, "Genre into Artifact", p.334.

35 Adams, *op. cit.* and Steeves, *op. cit.* A trap eschewed by Van Norden: Van Norden, "The Elizabethan College Of Antiquaries", pp. 276-280.

36 Bodley MS *Ashmole* 1157, No. 15, fols. 87, 89-102, on which see Van Norden, "The Elizabethan College Of Antiquaries", pp. 84-88.

37 Transcribed in Gough, *op. cit.*, p. xv.

38 Stowe MS 1045, I, fol. 4b.

who, in his "discourse" on the antiquity of the Christian religion in Britain, states "Although this proposition of itselfe be more proper to be dilated by dyvines than by any other....". Van Norden contends that if "dyvines" had been present at the meeting at which the paper was delivered, Agard would have said something like "by our learned dyvines here" as this was the demonstrated custom when discussing an issue on which other members had specific knowledge or in which they had a professional interest not shared by the speaker.[39] Van Norden also notes that of all the extant "discourses" there are only five on religion, four of them dated on November 29th, 1604, and all of those were, she suggests, presumably in answer to the question proposed for that particular meeting. She concludes that in comparison with the numerous accounts on heraldry and law this scarcity denotes that divinity was not the business of the antiquaries in general.[40] Although Spelman was later to develop a great interest in the study of religion, there is no reason to conclude that during the active period of the Society there were any discernable linkages between it (as a "group") and the Church.[41]

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39 Van Norden, "The Elizabethan College Of Antiquaries", p. 271.

40 *id.*, pp. 271-2 and 538-539. She also suggests that the fifth, undated, *Discourse* on religion (by William Camden) was delivered on the same day, on the basis of its prefatory words.

41 This is, of course, not to say that members were necessarily uninterested in ecclesiastical matters. The period was one where, comparatively speaking, disinterest would have been impossible - particularly for lawyers since the appointment of Hooker to the mastership of the Temple Church in 1585: see Finkelpearl, *op. cit.*, pp. 62-66.

Study at either Oxford or Cambridge was as much a part of the lives of these gentlemen as was their studies at the Inns. Certainly Camden and Carew knew each other at Magdalen College, Oxford, and this connection may be significant.[42] Erdeswicke was an Oxford university friend of Thomas Egerton.[43] Van Norden argues that there is no good reason to especially notice the university careers of the members of the group. She submits that there are three reasons for this conclusion.[44] The first is what Van Norden accurately describes as the "total detachment" of the group from the universities. Of the forty-one candidates, none occupied any official position at either Oxford or Cambridge, nor is there any evidence for any of the group's meetings ever having been held at either of the universities.[45] This is clear. The second reason is that while almost all the members she accepts were either graduates, or at least can be demonstrated to have been admitted as students, there is no apparent leaning (in terms of preferred institution) toward either Oxford or Cambridge. Of the forty-one "primary" candidates twenty attended Oxford and fifteen attended Cambridge, and so this is also agreed. Van Norden furthermore asserts that there no discernible bias towards particular colleges within either of those institutions. This is not so certain. While we cannot say for sure what this might

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42 *Dictionary of National Biography*, vol. 3, pp.729-737 and 969-971.

43 See Knafla, L.A., *Law and Politics in Jacobean England: The Tracts of Lord Chancellor Ellesmere*, Cambridge, Cambridge University Press, 1977, *passim*, and re Erdeswicke in particular at pp. 42 and 48.

44 For a summary of university connections see Van Norden, "The Elizabethan College Of Antiquaries", pp. 560-581.

45 *id.*, p. 269.

mean (because the numbers are too small for any semblance of statistical validity), there does appear to be a significant number of "primary" members who attended Magdalen College, Oxford.[46] Van Norden's third reason is derived from the express words of the Cotton petition:

> "This society will not be hurtfull to eyther of the vniversities for yt shall not medle with the artes, philosophy, or other fynall Studyes their professed, for this Society tendeth to the preservation of historye & Antiquity of which the vniversities being busyed in the Artes tak little care or regard."[47]

The petition certainly speaks clearly on this point. For these reasons it is fair to say, with Van Norden, that the group can be considered as independent of the universities and, as such, the members' individual university backgrounds should be regarded as interesting, but non-essential data. All the same, the tentative connections with Magdalen, Oxford represent a tantalizing morsel for the conjectural prosopographer.

A final factor of shared group characteristics and experiences falls under the broad description of government appointments. It includes (but is not limited to)

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46 I can identify five Magdalen, Oxford graduates: Oldisworth, Tate and Thynne as well as Camden and Carew.

47 Cotton MS *Faustina* E.V., fol. 90b as quoted by Flugel, *op. cit.*, p. 268.

diplomatic service, membership of specialist governmental or parliamentary committees, and appointments to provincial or municipal administrative positions. Nearly all of the candidates were prominent in public affairs at some level. Some members were very successful and powerful men. The brief biographies of the forty-one "primary" members contained in Appendix 1 record the most important positions held by these individuals. The group of "secondary" candidates is no less distinguished in this regard. Given this, the conventional prosopographical concern is to ask whether it is possible to determine if the existence of the group demonstrates something about contemporary politics. Is the group, for example, part of or in some way connected to a political faction? This kind of enquiry represents the penultimate boundaries of the prosopographical project - almost impelling one towards its most speculative, and yet sometimes also its most fascinating, edges.[48] Warily then, it can certainly be shown that some members were connected with great magnates like Essex, Whitgift and Cecil. Amongst the "primary" members Bourchier and Broughton were Essex men; Fleetwood, Hartwell, Heneage and Lake were connected with Burghley; Cope was connected with Burghley's son, Sir Robert Cecil; and Beale was Walsingham's sometime assistant. But Beale was also Walsingham's brother-in-law. In any society connections of consanguinity and affinity might also represent significant "alliances": is it important, for example that Whitelock's

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48 See, *supra*, Chapter 2 at 2.4 "Method". Even the micro-politics of groups and factions form of prosopography can be extended - when it is compounded with the equally speculative variables from the micro-politics of the relationships of marriage and other familial alliances form of prosopography. For a very close example see Hasler's "Introductory Survey": Hasler, *op. cit.*, volume I, pp. 1-66.

mother's family were tenants of the Bourchier family[49] or that Hakewill was married to the niece of Sir Francis Bacon. This type of inquiry can easily lose its initial focus. It needs to be remembered that one of our expressed aims was to utilise the prosopographical method in order to uncover important connections between, and where justifiable discern influences upon, individual actors. And to that end, one proviso was that the examination was capable of being pointed to the resolution of a specific issue. So, was the Elizabethan Society of Antiquaries a "political" group? In all, the evidence at this stage does not support more than supposition.[50]

Returning to the basal 'factor' of government appointments, of the many types of positions, employments and commissions held or undertaken by the members of the Society, offices which need not be characterised as exclusively "legal", the prominence of record keeping is significant. Agard, Bowyer, Heneage, Lake, Lambarde and Talbot were all professional record keepers. To this number we could easily add Cotton. From the "secondary" candidates we might consider Sir Henry James. The record keepers therefore form a kind of sub-group within the larger group. They all had more than a rudimentary legal education, and half practised the law. Two thirds were parliamentarians. The record keepers seem to possess, collectively, a routine selection of typical group characteristics. There is

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49 Whitelock, J., *Liber Famelicus of Sir James Whitelocke*, Bruce, J., ed., Camden Society, volume LXX, 1858, p. 7.

50 See *infra*, this Chapter.

another occupational group which stands out: the pursuit of heraldry as a profession marks out a number of candidates. From amongst the "primary" group Dethicke, Camden, St. George and Thynne were heralds. Dethicke's career was the most prominent, being appointed Rouge-Croix-Poursuivant in 1567 and York Herald in 1570. He held the position of Garter King-at Arms from 1586 until 1605. In 1597 Camden was made Richmond Herald (for one day) and then Clarencieux-King-at-Arms. St. George was appointed Windsor Herald in 1602 and Norroy-King-at-Arms in 1603. He succeeded Camden as Clarenceux-King-at-Arms upon the latter's death. Thynne was appointed Blanche-Lyon-Poursuivant in 1601 and Lancaster Herald in 1602. From amongst the "secondary" group the heralds were Broke, Glover, Guillim and Segar. It needs to be noted that the proportion of heralds to the overall membership of the Society, on any reckoning, is quite small (at not more than ten percent). On the other hand, because the total number of heralds (in England) was only about twelve, the membership of an association of perhaps as many as a quarter or a third of all of the heralds must be significant. How important were the heralds to the Society, and / or how important was the Society to the heralds? How did they fit in with the other members? Conspicuously, each of the four "primary" heralds underwent legal training at one of the Inns, or at least was an honorary member of (usually Gray's) Inn. [51] There was a good reason for this association of heraldry and

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51 The legal experiences of the four "secondary" heralds is demonstrably less certain: see the table entitled "Candidates for Membership: Careers", *infra*. See also Wright, C.E., *English Heraldic Manuscripts in the British Museum*, London, British Museum Publications, 1973.

law. During the period in question there was something of a mania for genealogy amongst the nobility, the gentry and those who yearned to be officially recognised as holding a certain status. Forgeries of charters and seals were common. The combined skills of lawyer and herald were required to establish the validity of such status claims.[52] But we should not leap to any conclusions from this provisional connection. Herendeen's thesis prioritises the parts of the heralds within the Society, particularly Camden.[53] Although his account is to a certain degree weakened by its lack of recognition of the role of the lawyers, the role of the heralds does emerge as a very interesting question. In other respects the heralds were different to the majority of the Society's membership. Although they had some connections with the Inns, the heralds were not practising lawyers nor can they be, as a group, characterised as Members of Parliament. As such the heralds form a special sub-group within the broader group of members. They seem to be important, and active, but they are not typical in terms of their attributes, experiences and careers when compared with the other members.

The following table sets out, grouping firstly those candidates whose claim to membership can be attested to by primary evidence, the career attributes of all potential candidates.

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52 See McKisack, *op. cit.*, p. 66 ff and Fussner, *op. cit.*, pp. 42-44.

53 Herendeen, *op. cit.*, pp. 206-209.

CANDIDATES FOR MEMBERSHIP: CAREERS

Name	Primary Candidate	Oxford	Cambridge	Legal Education	Inn	Practising Common Lawyer	Judge	Civil Law	MP	Herald	Government Appointment	Courtiers
Arthur Agard	✓		✓	✓	G						✓	
Lancelot Andrews	✓		✓									
Robert Beale	✓		✓	✓	G			✓	✓		✓	✓
Henry Bourchier	✓			✓	I	✓			✓			
Robert Bowyer	✓	✓		✓	M	✓			✓		✓	
Richard Broughton	✓			✓	I	✓	✓		✓		0	
William Camden	✓	✓			G					✓		
Richard Carew	✓	✓		✓					✓		✓	✓
Anthony Cliffe	✓			?✓								
William Compton	✓	✓	✓	✓	G						✓	✓
Walter Cope	✓			✓	M?				✓		✓	✓
Robert Cotton	✓		✓	✓	M				✓			

Name	Primary Candidate	Oxford	Cambridge	Legal Education	Inn	Practising Common Lawyer	Judge	Civil Law	MP	Herald	Government Appointment	Courtiers
John Davies	✓	✓		✓	M	✓	✓		✓			
William Dethicke	✓		✓		G					✓		
John Dodderidge	✓	✓		✓	M	✓	✓		✓			
Thomas D'Oyley	✓				G			✓				
Sampson Erdeswicke	✓	✓										
William Fleetwood	✓	✓		✓	M	✓			✓			
William Hakewill	✓	✓		✓	L	✓			✓			
Abraham Hartwell	✓		✓	✓	G				✓			
Michael Heneage	✓		✓	✓	G				✓		✓	
Joseph Holland	✓	✓		✓	I	✓						
William Jones	✓	✓		✓	L	✓	✓		✓		✓	
Thomas Lake	✓	✓	✓	✓	G				✓		✓	✓
William Lambarde	✓			✓	L	✓			✓		✓	

Name	Primary Candidate	Oxford	Cambridge	Legal Education	Inn	Practising Common Lawyer	Judge	Civil Law	MP	Herald	Government Appointment	Courtiers
Francis Leigh	✓			✓	M	✓			✓		✓	
James Ley	✓	✓		✓	L	✓	✓		✓		✓	
Arnold Oldisworth	✓	✓		✓	L	✓			✓		✓	
William Patten	✓										✓	
John Saville	✓	✓		✓	M	✓	✓		✓			
Henry Spelman	✓		✓	✓	L				✓		✓	
Richard St. George	✓		✓		G					✓		
John Stow	✓											
James Strangeman	✓		✓									
Thomas Talbot	✓		✓	✓	G						✓	
Francis Tate	✓	✓		✓	M	✓	✓		✓			
Francis Thynne	✓	✓		✓	L					✓		✓
Hayward Townshend	✓	✓		✓	L	✓			✓			

Name	Primary Candidate	Oxford	Cambridge	Legal Education	Inn	Practising Common Lawyer	Judge	Civil Law	MP	Herald	Government Appointment	Courtiers
Robert Weston	✓	✓						✓				
James Whitelock	✓	✓		✓		✓	✓		✓			
Thomas Wiseman	✓		✓		G?							
Atey				✓	M							
Benedict Barnham		✓							✓			
Benefield												
Henry Billingsley				✓	G				✓			
Edmund Bolton			✓	✓	I							
Brerewood											✓	
John Broke				✓	M	✓	✓		✓	✓		
Thomas Brudenell					G?							✓
George Buc				✓	M				✓		✓	✓
Lord Carew				✓	M or G		✓					✓

Name	Primary Candidate	Oxford	Cambridge	Legal Education	Inn	Practising Common Lawyer	Judge	Civil Law	MP	Herald	Government Appointment	Courtiers
William Cecil			✓	✓	G				✓		✓	✓
Bartholomew Clerke		✓	✓	✓				✓	✓		✓	
Edward Coke			✓	✓		✓			✓		✓	
William ? Combes				✓	M				✓			
Richard Cosens			✓	✓				✓	✓			
Dr.Cowel			✓	✓				✓				
Dee ?												
Dent ?												
Daniel Donn		✓						✓	✓		✓	
Henry Fanshawe			✓	✓	I				✓		✓	
John Ferne		✓		✓	I				✓		✓	
Henry Ferrers		✓		✓	M				✓			
Henry Fitzalan											✓	✓

Name	Primary Candidate	Oxford	Cambridge	Legal Education	Inn	Practising Common Lawyer	Judge	Civil Law	MP	Herald	Government Appointment	Courtiers
Robert Glover					G?					✓		
Arthur Goulding			✓	✓	I							✓
Arthur Gregory												✓
Fulke Grevile			✓		G and M				✓		✓	✓
John Guillim		✓								✓		
Robert Hare			✓	✓	I				✓		✓	
Robert Harrison												
Harrison												
John Hayward			✓	✓	G			✓				
Herberts ?												✓
William Howard					G				✓			✓
Charles Howard									✓		✓	✓
Henry James												

Name	Primary Candidate	Oxford	Cambridge	Legal Education	Inn	Practising Common Lawyer	Judge	Civil Law	MP	Herald	Government Appointment	Courtiers
Josseline												
Roger Keymis				✓	M							
William Lisle			✓									
John? Lloyd		✓		✓	I				✓			
John? Lumley			✓									
Peter Manwood				✓	I				✓			
William Nettleton												
Roger Owen				✓	L	✓			✓		✓	
Edward Phillips				✓	M	✓	✓		✓			
Walter Raleigh		✓		✓	M				✓		✓	✓
Daniel Rogers		✓							✓		✓	
Henry Sacheverell					G							
Thomas Sackville		✓	✓	✓	I	✓			✓		✓	
Henry Saville		✓			M				✓			✓

Name	Primary Candidate	Oxford	Cambridge	Legal Education	Inn	Practising Common Lawyer	Judge	Civil Law	MP	Herald	Government Appointment	Courtiers
Thomas Saville					G?							
Richard Scarlet												
William Sedley				✓	L	✓						
William Segar					G					✓		
John Selden		✓		✓	I	✓			✓			
Philip Sidney		✓		✓	G				✓		✓	✓
Gilbert Talbot		✓							✓			✓
Valence												
John? Wodhall					G?							

NOTES

1. Narrative form career information for 'primary members' - see appendix 1 "The Identifiable Members"

2. "Inns": G = Gray's Inn; I = Inner Temple; M = Middle Temple and L = Lincoln's Inn.

3. "Legal Education" - attendance at an Inn of Court, Chancery or Civil Legal education

4. In a few instances a "?" has been used to indicate a degree of doubt. Where this symbol accompanies a given name, details for the suggested or likely candidate are recorded. Where the symbol accompanies a 'factor' (of experience), it indicates that some doubt exists as to whether the information presented is accurate. In respect of 'primary members' this is explained in appendix 1 "The Identifiable Members"

The correspondence of so many characteristics and experiences amongst the individuals who constituted the members of the Society of Antiquaries at least bolsters the argument for the group's existence. If this was all the data which could be recovered about the group then the assertion of its actuality would be highly speculative indeed. However, independent documentary evidence for the association of particular individuals' names as members of the group is ample in this regard. Nevertheless, what the discernable coincidences in members' social standing, legal experience, membership of Parliament, government service, heraldry and record keeping do demonstrate is a high degree of group cohesion.

Comparison of the individual lives of the members of the Society of Antiquaries reveals many striking shared characteristics and experiences.[54] In terms of social standing there was virtual uniformity. That level of status-identity was almost matched by a shared legal experience. Another very common characteristic was membership of Parliament. Other significant coincidences were in the fields of government service. Although many of the members entertained literary interests, they were mostly amateurs or part-timers in this field. While almost all the members had attended either Oxford or Cambridge, their collective university connections cannot be considered as truly remarkable. Similarly there is essentially no reason to attempt to associate the membership of the Society with either ecclesiastical matters

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54 For a concise, and basically accurate, summary of group characteristics see Fussner, *The Historical Revolution*, pp. 92-93.

or regional affiliations. Last, it is possible to isolate a discrete sub-groups within the wider compass of membership: the heralds and the record keepers. To a degree, and somewhat tentatively, it can be demonstrated that the heralds (as a group) did not share some of the characteristics which other members commonly possessed, whilst it appears that the record keepers were more "typical" of the broader membership.

6.2 Group Enterprise

Hearne and Ayloffe both claim that their collected *Curious Discourses* represent the transactions of the Society. Hearne's initial declaration, in his 1720 edition, was that:

> "Notwithstanding the dissolution of that Society, yet many of their Discourses have been preserved, a collection of some of which is now at last published. ...But notwithstanding the Society was thus dissolved, yet great care was taken to preserve many of the little Dissertations that had been occasionally written by divers of the Members, Copies of some of which were at length procured by my late...friend Dr Thomas Smith, who designed to publish them himself, ... As soon as I saw the Collection, I could not but very much applaud my learned friend's design, and I presently began to think of printing

it my self; which, accordingly, I have at last done, ..."[55]

Ayloffe, in 1771, expanded Hearne's claim:

> "The editors ... offer to the public at one view, a complete collection of all the discourses written, or delivered by the founders of the society of English antiquaries, ..."[56]

The internal evidence in support of this claim is not particularly strong. Within the discourses themselves there are many references to the existence of the Society, but no references to any collection of transactions. Spelman, our only first hand commentator, speaks in "The Occasion" of the Society's proceedings being "enter'd in a Book", but no such register is referred to by any other primary source.[57] Either Spelman's account is incorrect, or, much less than an actual series of "authorised reports", evidence of the existence of organised record keeping by the Society has entirely vanished. Given the number of professional and amateur record keepers amongst the members, the second alternative seems implausible. It is also manifest that the *Curious Discourses* are an editor's anthology, not an authorised edition. This is not to say that Hearne's claim is entirely hollow. The connections between the

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55 Hearne, T., *A Collection Of Curious Discourses...*, London, 1720, pp. xxxv-xxxvi.

56 Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771, p. vii.

57 See *supra* Chapter 4 and *infra*, this chapter.

Curious Discourses and extrinsic evidence about meetings and topics is convincing. The summonses to Mr Bowyer and Mr Stow[58] connect discussion topics and meeting dates in a manner paralleling their connections in *Curious Discourses*.[59] Van Norden has demonstrated other extrinsic corroboration connecting discussion topics and meeting dates.[60]

There is a total of one hundred and fifty-five "discourses" collected by Hearne and Ayloffe, and roughly that number again of unpublished papers (although this latter figure includes some duplication where more than one manuscript version of the same paper exists).[61] My researches have revealed one further manuscript which appears to be a recension of the Society's discussions - Stowe MS 415, ff. 85-86.[62] Extant manuscripts of the "discourses", and the compiled (but now lost) "discourses" of the *Curious Discourses* (by Hearne and Ayloffe), may be classified into three distinct types: rough notes; polished lectures; and finished compositions.

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58 Bodley MS *Ashmole* 763, IV, 5 and 6.

59 Hearne, T., *A Collection Of Curious Discourses...*, London, 1720, pp. xxxix-xli.

60 Van Norden, "The Elizabethan College Of Antiquaries", pp. 295-296.

61 See *infra* Table "Meetings, Topics and Topicality", Appendix 3 and also Van Norden, "The Elizabethan College Of Antiquaries", Appendix 1.

62 The item, concerning the office of the Lord Chancellor, bears the characteristics of other "discourses": an etymological introduction and a reference to a "question". Furthermore the item is collated with other documents (mostly authored by Lambarde) about the Chancery, but unlike the balance of Stowe MS 415 is not of a highly technical or procedural nature. This newly discovered "discourse" is transcribed in Appendix 6.

The "rough notes" are simply that: very scratchy working notes. The best assortment is in Stowe MS 1045, the entire manuscript being Francis Tate's collection of "discourses" (his own and others'). There are one hundred and sixty-four folios, covering a couple of dozen topics. Some are fairly neatly copied and may represent a speaker's notes, others are so rough as to have been unquestionably taken down during the progress of an oral presentation. The "polished lectures" show a greater degree of refinement. However while evidence of some editing is apparent there is nevertheless an obvious quality of spoken transmission about this class of the "discourses". This type of "discourse" contains references to the vocalisation of the subject and an awareness of an assembly of listeners.[63] Last, the "finished compositions" clearly show a level of detail and comprehensiveness which could not have been appropriate for an oral presentation. Nearly half of the extant discourses would fall into this category.

There is a definite preference within the "discourses" for the utilisation of primary source materials. Time after time the antiquaries stressed those documents, or "monuments" in their vernacular, which they had uncovered as first-hand testimony to their subject matter. While many of the pieces contain elements of comment and appraisal, some of the tracts are little more than reports on evidence.

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63 See Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771 at: volume 1, numbers xxv (p. 66), lix (p. 195), lxiv (p. 199), lxv (p. 205), lxix (pp. 215-216), lxxiv (p. 238), lxxxv (p. 278), volume 2, numbers v (p. 27), vi (p. 30), xxxiii (p. 187) and xxxv (pp. 198-200).

This emphasis on direct evidence, often without initial critical analysis, and always without the incorporated critique of others, means that the "discourses" are frequently rather arid as scholarly texts.[64] They are often very dense with substance, but apparently lacking in deeper judgement.

The prevalent tone of the "discourses" is one of good natured and friendly exchange. There is ample evidence of humour and sometimes even of cajolery and semi-serious self-mockery.[65] It is this sense of collegiality which invests the "discourses" with a certain charm. However there is one quality, which twentieth century scholars might expect from learned dialogue, which is conspicuously absent from the "discourses": critique. Unlike modern practice, these discussions, or at least their written accounts, betray no real sign of critical disputation. Furthermore it appears that it is not just the written versions which lack critique, because it emerges from one of the comments of Agard that there was, at least for some time, a rule against criticism and evaluation during meetings.[66]

In terms of general content, the "discourses" encompass a multitude of topics including sterling money, epitaphs, law, government, heraldry, arms, towns and

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64 Fussner, *The Historical Revolution*, pp. 94-95.

65 See Van Norden, "The Elizabethan College Of Antiquaries", pp. 396-402 and 410-412.

66 Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771 at: volume 1, number lvii, pp.184-185. See also Fussner, *The Historical Revolution*, p. 94.

forests (to name just a small selection). The most remarkable attribute of the "discourses" as a whole is their unequivocal Englishness. The phrasing of the questions for discussion for the most part restricted the topics to English matters. Where the topic was not one which was intrinsically English, for example in the cases of sterling money or the Inns of Court, then in more than two thirds of cases the topic specified was expressly limited to English concerns. Moreover the antiquaries, in the majority, confined themselves to utilising exclusively English source materials in their researches.[67] One expression of this proto-nationalist theme of indigenous scholarship was overtly racial. The thesis of Kliger is very persuasive on this point. It involves the affiliation, by writers such as Bodin and Bacon, as well as Camden, Dodderidge, Spelman and Lambarde, of unique Englishness with a Germanic heritage. With this German, or in some versions Nordic, ancestry went attributes of innate tendencies towards liberty and a vigorous martial spirit, and it was juxtaposed to a characteristically Mediterranean torpor. In summary, the aim of these writers, in Kliger's account, was to rediscover a golden age of freedom in England's past.[68] How much of this is interpolation? Hirst posits the argument that

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67 For example in Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771 at: volume 1, p. 276 and volume 2, no. 56, p.376 the answers presuppose that questions were limited to England, and *id.* volume 2, no. 27, p.160 where Francis Leigh articulates a rule of the Society to limit itself to the use of English sources. See Van Norden, "The Elizabethan College Of Antiquaries", pp. 358-359 and Van Norden, L., "Celtic Antiquarianism in the `Curious Discourses'", *Essays Critical and Historical Dedicated to Lily B. Campbell*, New York, Russell, 1950, 65-70.

68 Kliger, *op. cit.*, pp. 16, 119-129 and 243-249. The thesis is echoed, expanded and reviewed in Piggott, *Ancient Britons and the Antiquarian Imagination*.

the dissolution of the Society of Antiquaries - effectively by James I's rebuff in 1607, had more to do with the Society's increasingly articulate arguments about an English identity which were at odds with James' plans of Union, than with their researches into English parliamentary and feudal liberties.[69] The suggestion is at best hypothetical, because while the subject of "Union" elicited treatises (which have never been suggested to be "discourses") from Spelman and Dodderidge, and despite the fact that a number of group members expressed opinions in their capacities as Members of Parliament on the question, there is no evidence of any organised group discussions on the topic.[70] However, at the very least the distinctive Englishness of the "discourses" demonstrates a peculiarity of the lawyers' professional orientation.

In more specific terms the content of the "discourses" demonstrates that the group was largely preoccupied with matters concerning English legal history. While a majority of the papers deal with subjects such as: peerages; towns, cities and parishes; sterling money; forests; the dimensions of land; funerals, tombs and

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69 Hirst, "The English Republic And The Meaning Of Britain", *The Journal Of Modern History*, 66 (1994) 451-486 at p. 471 and n. 94, Pocock, J.G.A., "British History: A Plea for a New Subject", *Journal of Modern History*, 47 (1975) 601-621 (and the comments appended thereto, especially the short item by A.J.P. Taylor at 622-623).

70 See *infra* (this chapter) "Table: Meetings, Topics and Topicality". See also Levack, B.P., "The Proposed Union Between English Law and Scots Law in the Seventeenth Century", *Juridical Review*, [1975] 97-115, Williamson, A.H., *Scottish National Consciousness in the Age of James VI: The Apocalypse, the Union and the Shaping of Scotland's Public Culture*, Edinburgh, Donald, 1979, pp. 81-82 and Galloway, B., *The Union of England and Scotland, 1603-1608*, Edinburgh, Donald, 1986, pp. 30-53, and particularly at 38-41.

epitaphs; heralds; and castles (all of which could nonetheless be said to be ancillary to the core of legal history), there are also many papers dealing with subjects such as the Inns of Court, sealing, tenures, serjeants at law, the courts, lawful combat, the law terms and constables. This latter array clearly represents a concerted effort to focus the group's thought squarely on the central questions of legal history.[71] This nucleus of the "discourses" reveals the fundamental interests of the group in the study of the history of law, government and institutions.[72] Was this preoccupation one of so-called disinterested scholarship? Or can these topics be regarded in some sense as politically sensitive or controversial? One topic, or group of topics, seems to justify this characterisation: those discourses which deal with the subject of duels and the jurisdiction of the Earl Marshal. The matter was naturally of great interest to the heralds, but it is also important to notice that the powers and functions of Earls Marshal were indeed issues of considerable debate during the Society's active years. It was a major concern of Essex. The controversy, it might appear from the dates of the relevant discourses, flared again - perhaps at about the time when James I "took a little Mislike" of the Society and when Dethicke and Segar were also in dispute. Sharpe's political thesis[73] can, if we choose, provide a discursive matrix around which the components of nationalism, legal precedent, historical scholarship can be

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71 See *infra* Appendix 3.

72 See McKisack, *op. cit.*, pp. 155-169.

73 Sharpe, K., *Sir Robert Cotton, 1586-1631: History and Politics in Early Modern England*, pp. 17-32.

arranged to arresting effect. As one of the inherent dangers associated with more abstruse forms of prosopography, there is here a risk of over-connecting. The approach can result, here for instance, in the conflation of scholarly discussion about contemporary issues with speculation about faction and personal and collective engagement. Peck has effectively detonated the imaginable connection between the Elizabethan Society of Antiquaries and the Essex campaign for the post of Earl Marshal.[74] Her argument is based precisely on the dates of the relevant discourses, which place the discussions of the antiquaries after the execution of the Earl. According to Peck, the interest of the group had more to do with a 1601 commission by the Queen to the heralds[75], not only to hold the office of the Earl Marshal (in commission), but also investigate and evaluate the duties and powers of the office. This they appear to have done, with their colleagues, intermittently over the next few years.[76] There was a small number of cases before the courts where the jurisdiction of the Court of Marshalsea was in dispute during the period of the Society's meetings, however the known dates of discourses dealing with heraldry belies any

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74 Peck, L.L., "Peers, Patronage and the Politics of History", in Guy, J., ed., *The Reign of Elizabeth: Court and Culture in the Last Decade*, Cambridge, Cambridge University Press, 1995, pp. 87-108, at pp. 101-106.

75 PRO, PSO 2/20, Privy Signet Bills 44 Elizabeth, no. 6, 10 December 1601.

76 See Capua, J.V., "The Early History of Martial Law in England from the Fourteenth Century to the Petition of Right", *Cambridge Law Journal*, 36 (1977) 152-173 at p. 157 and Ashman, P.M., "Heraldry and the Law of Arms in England", *Journal of Legal History*, 9 (1988) 50-86, particularly at p. 53 on the civil law emphasis of the legal aspects of the heralds' work.

effective nexus between these discourses and the relevant cases.[77] So while certainly topical, the interest of the group appears at least a little detached from the bearpit of factional politics.

Nevertheless, some overall estimation of the topicality of the group's discussions may be illuminating. Many of the discourses can be dated, hence some reasonable estimates can be made about the dates of meetings. The table below chronologically sets out known group meetings, and where the date is unknown a suggested or possible date is indicated by placing the undated paper(s) in a topical context and sequence. The table also provides some information about the day of the week on which meetings were held. In an attempt to contextualise the Society's meetings, and their "discourses", the table includes further information about the law term (if any) which subsisted during a meeting, and about whether Parliament was in session on or near that day. Additionally an attempt is made, perhaps somewhat speculatively, about whether it is possible to link the subject matter of the discourses with the discussion of that topic by Parliament or in the courts.

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77 See Greene, D.G., "The Court of the Marshalsea in Late Tudor and Early Stuart England", *American Journal of Legal History*, 20 (1976) 267-281.

TABLE

"Meetings, Topics and Topicality"

Meeting Date	Day of Week	Term	Topic	Number of Papers	Author (s)	Parliament in Session	Parliament Discusses Topic	Topic Before the Courts
27.11.1590	Friday	Michaelmas	Dukes	3	Tate (1), anon. (2)	No		
undated[78]			Dukes	2	D'oyle and Agard			
27.11.1590	Friday	Michaelmas	Sterling	1	Tate	No		
undated			Sterling	13	Thynne, Agard, Holland, Heneage, Bourchier, Stow, Broughton, Talbot, Patten, Ley, Lake[79] (1 ea.), anon. (2)			
11.02.1590/ 1591	Thursday	Hillary	Marquises	2	both anon.	No		

[78] The date may be either late November 1590, or possibly late November 1598, on which see the dated papers on the same topic below (in this table).

[79] Lake's sterling discourse is simply dated "1590".

Meeting Date	Day of Week	Term	Topic	Number of Papers	Author (s)	Parliament in Session	Parliament Discusses Topic	Topic Before the Courts
Easter 1591[80]		Easter	Inns of Court and Chancery	1	Agard	No (nor in 1601)		
Easter 1591		Easter	Shires	1	Agard	No (nor in 1601)		
undated			Shires	4	Talbot, Broughton, Ley and Thynne			
undated[81]			Earls	2	Tate (1), anon. (1)			*Dethick's Case*[82]
23.06.1591	Wednesday	Trinity	Sealing	2	Tate (1), Thynne (1)	No		

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80 It is possible that this date, "Paschae 33 Eliz.", may be misprinted for "Paschae 43" (ie. 1601) which would link this discourse (and its companion by Agard) with the one by Holland on the same topic (Inns of Court, dated 01.07.1601). The antiquity of the shires may have also been discussed, therefore, at or around Easter 1601.

81 A date early in 1591 appears to be most likely, evidenced from the positioning of the Tate paper in Stowe MS 1045. My inspection of this manuscript disclosed no reason to doubt this suggestion by Van Norden, *The Elizabethan College of Antiquaries*, p. 497.

82 (1591) 1 Leonard 248; 74 ER 227.

Meeting Date	Day of Week	Term	Topic	Number of Papers	Author (s)	Parliament in Session	Parliament Discusses Topic	Topic Before the Courts
23.06.1591	Wednesday	Trinity	Viscounts	3	Tate (1), Thynne (1), anon. (1)	No		
03.11.1591	Wednesday	Michaelmas	Forests	1	anon.	No		*Anonymous*[83]
undated			Forests	3	Agard (1), Broughton (1), "Lee" (1).			
25.11.1591	Thursday	Michaelmas	Barons	1	anon.	No		
25.11.1591	Thursday	Michaelmas	Tenures	1	anon.	No		*Ratcliff's Case*[84]
10.02.1591/ 1592	Thursday	Hillary	Barons	2	Both Thynne	No		
undated			Barons	2	Camden (1), Agard (1)			
10.02.1591/ 1592	Thursday	Hillary	Tenures	1	Thynne	No		*Ratcliff's Case*[85]

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[83] (1590) Croke & Elizabeth 200; 78 ER 456.

[84] (1592) 3 Coke's Reports 37a; 76 ER 713.

[85] *Ibid.*

Meeting Date	Day of Week	Term	Topic	Number of Papers	Author (s)	Parliament in Session	Parliament Discusses Topic	Topic Before the Courts
06.05.1592	Saturday	Easter	Knights	2	Both anon.	No		
12.02.1593[8]	Friday	Hillary	Sergeants at Law	2	Both anon.	Yes[87]	No[88]	
11.05.1594	Saturday	Easter	Esquires	3	Thynne (1), anon. (2)	No		
11.05.1594	Saturday	Easter	Yeoman	1	Thynne	No		
19.06.1594	Wednesday	Trinity	Privileges of Gentility	2	Thynne (1), anon. (1)	No		
27.11.1594	Wednesday	Michaelmas	County Palatines in England	1	anon.	No		
27.11.1594	Wednesday	Michaelmas	Antiquity of Honours and Manners	1	anon.	No		

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[86] Plague Years in London, during the group's meeting period, were 1593 and 1603: Slack, *op. cit.*, especially at p. 151.

[87] Writs issued, session commenced sittings on the following Friday (19 February).

[88] No mention of topic in Parliament, however Fleetwood was made a Sergeant in late 1592 (on which see Appendix 1).

Meeting Date	Day of Week	Term	Topic	Number of Papers	Author (s)	Parliament in Session	Parliament Discusses Topic	Topic Before the Courts
29.05.1595	Thursday	Easter	Most Ancient Court of the Realm	1	No paper, just one (dated) question			
02.11.1598	Thursday	Michaelmas	Arms	3	Heneage (1), Thynne (1), Tate (1)	No		*Clarencieux v Dethick*[89]
undated			Arms	2	Doyle (1), Ley (1)			
25.11.1598	Saturday	Michaelmas	Dukes	2	Holland (1), anon. (1)	No		
09.02.1598/ 1599	Friday	Hillary	Castles	1	Agard	No		
09.02.1598/ 1599	Friday	Hillary	Cities	1	Tate	No		*Case of Corporations*[90]
15/16.05.1599	Tuesday/ Wednesday	Easter	Castles	2	Tate (1), Holland (1)	No		
undated			Castles	2	Cotton (1), anon. (1)			

[89] (1597) Croke & Elizabeth 542; 78 ER 788.

[90] (1598) 4 Coke's Reports 776; 76 ER 1052.

Meeting Date	Day of Week	Term	Topic	Number of Papers	Author (s)	Parliament in Session	Parliament Discusses Topic	Topic Before the Courts
03.06.1599[9]		5 days before Trinity	Cities	2	Both Holland	No		*Case of Corporation s*[92]
22/23.06.1599	Friday/ Saturday	Trinity	Towns	3	Tate (1), Cotton (1), Holland (1)	No		*Case of Corporation s*[93]
02.11.1599	Friday	Michaelmas	Parishes	1	Tate	No		
undated			Parishes	1	Holland			
20.11.1599	Tuesday	Michaelmas	Measuring Land in Cornwall	1	Probably Carew	No		

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91 One paper is dated 1598, the other 1599. If 1599 is the correct date for both, and "1598" is misprinted, this positions these papers with other papers around the same date on similar topics such as 'Castles' and 'Towns'. However, the 3rd of June 1599 was a Sunday (a day on which no other dated meeting occurred, being the Sabbath). It is therefore possible (but far from certain) that the "3" (3rd of June) is also misprinted.

92 (1598) 4 Coke's Reports 776; 76 ER 1052.

93 *Ibid.*

Meeting Date	Day of Week	Term	Topic	Number of Papers	Author (s)	Parliament in Session	Parliament Discusses Topic	Topic Before the Courts
20/23/24.11. 1599	Tuesday/ Thursday/ Friday	Michaelmas	Dimensions of Land	3	Holland (1), Agard (1), Tate (1)	No		
undated			Dimensions of Land	3	Dodderidge (1), Cotton (1), anon. (1)			
09.02.1599/ 1600	Saturday	Hillary	Funerals	2	Dethicke (1), anon. (1)	No		
09.02.1599/ 1600	Saturday	Hillary	Knights' Fees	1	anon.	No		
30.04.1600	Wednesday	Easter	Funerals	3	Holland (1), Agard (1), Tate (1)	No		
undated			Funerals	1	Ley			
07.06.1600	Saturday	Trinity	Tombs	3	Tate (1), anon. (2)	No		
August 1600			Heralds	1	Dodderidge	No		
03.11.1600	Monday	Michaelmas	Epitaphs	7	Thynne, Dethicke, Holland, Hartwell, Camden (1 ea.), anon. (2)	No		

Meeting Date	Day of Week	Term	Topic	Number of Papers	Author (s)	Parliament in Session	Parliament Discusses Topic	Topic Before the Courts
undated			Epitaphs	3	Ley (1), Agard (1), anon. (1)			
03.11.1600	Monday	Michaelmas	Parliament	1	Camden	No		
undated			Parliament	7	Holland, Cotton, Agard, Camden, Tate, Dodderidge, anon. (1 ea.)			
28.11.1600	Friday	Michaelmas	Mottoes	4	Agard, Holland, Dethicke, anon. (1 ea.)	No		
undated			Mottoes	6	Ley, Cotton, Camden, Leigh, Hartwell, anon. (1 ea.)			
22.05.1601[9]	Friday	Easter	Lawful Combats	9	Agard, Tate, Cotton, Davies, anon. (2 ea.), Whitelock, Holland (1 ea.)	No		
01.07.1601	Wednesday	Trinity	Inns of Court	1	Holland	No		
undated			Inns of Court	2	Thynne and Whitelock			

[94] Meeting postponed from 13.02.1600/1601 (the day after the close of Hillary term) due to Essex Rebellion.

Meeting Date	Day of Week	Term	Topic	Number of Papers	Author (s)	Parliament in Session	Parliament Discusses Topic	Topic Before the Courts
02.11.1601	Monday	Michaelmas	Terms for the Administration of Justice	1	Holland	Yes	No[95]	
undated			Terms for the Administration of Justice	1	Thynne			
27.10.1601	Wednesday	Michaelmas	Constables	1	Holland	Yes		
28.11.1601	Thursday	Michaelmas	Heralds	2	Holland and Whitelock	Yes	No[96]	
undated			Heralds	4	Leigh, Camden, Agard, anon. (1 ea.)			
undated			Constables	6	Cotton, Agard, Leigh (1 ea.), anon. (3)			
05.11.1602	Friday	Michaelmas	The Earl Marshal	1	Cotton	No		

[95] No specific mention, but other speeches made concerning the law generally. Townshend speaks on "solicitors".

[96] No specific mention, but other speeches made concerning the law generally. Bill/Act reforming the Exchequer.

Meeting Date	Day of Week	Term	Topic	Number of Papers	Author (s)	Parliament in Session	Parliament Discusses Topic	Topic Before the Courts
12.02.1602/ 1603[97]	Friday	Hillary	The Earl Marshal	2	Agard, anon. (1 ea.)	No		
undated			The Earl Marshal	7	Camden, Cotton, Davies, Thynne, Holland (1 ea.), anon. (2)			
01/04.06.16 03	Wednesday /Saturday	Easter	The High Steward	10	Camden, Tate, Agard, Cotton, Davies, Thynne, Holland, Townshend (1 ea.), anon. (2)	No		
03.11.1603	Thursday	Michaelmas	The Earl Marshal	1	Camden	No		
29.06.1604	Friday	2 days after Trinity	The Diversity of Names in this Island	3	Oldisworth, Camden, Agard (1 ea.)	Yes	No	
undated			The Diversity of Names in this Island	1	Holland			

[97] Plague Years in London, during group meeting period, were 1593 and 1603: Slack, *loc. cit.*

Meeting Date	Day of Week	Term	Topic	Number of Papers	Author (s)	Parliament in Session	Parliament Discusses Topic	Topic Before the Courts
29.11.1604	Thursday	1 day after Michaelmas	Christian Religion	4	Cotton, Agard, Dethicke, Hakewill (1 ea.)	No	Yes[98]	
undated			Christian Religion	1	Camden			
03.03.1605	Tuesday	Not in term	Heralds	1	Thynne	No		
21.06.1607	Tuesday	Trinity	Knights made by Abbots	1	Tate	No		
undated			Knights made by Abbots	1	Leigh			
undated			The Chancellor	2	Ley and Tate[99]			
undated			British [Welsh] Antiquities	1	Jones (question proposed by Tate)			
undated			The Laws of England	2	Hakewill and anon.			

98 Recusancy debated in Parliament next February. Dodderidge participates.

99 Tate's paper (Stowe MS 415 fol.s 85-86) reproduced in Appendix 6.

LEGEND

1. For day of week, "Parliament Sitting" and Terms -Powicke, F. M.,ed., *Handbook of British Chronology*, London, Royal Historical Society, 1st edition, 1939, pp 420-422, Fryde, E.B., Greenway, D.E., Porter, S. and Roy, I., ed.s, *Handbook of British Chronology*, Cambridge, Cambridge University Press, 3rd edition, 1986, Cheney, C. R., ed., *Handbook of Dates for Students of English History,* London, Royal Historical Society, 1945 and Wallis, J. E. W., *English Regnal Years and Titles, Hand-Lists, Easter Dates, etc.*, London, Macmillan, 1921, pp. 84-85.;

2. For "Topic in Parliament" - Neale, J.E., *The Elizabethan House Of Commons*, London, Cape, 1949, Neale, J.E., *Elizabeth I And Her Parliaments*, London, Cape, 1957 and Notestein, W., *The House of Commons: 1604-1610*, New Haven, Yale University Press, 1971.

In terms of "topicality" the tabular analysis reveals that, despite the fact that the members of the group had extensive access to Parliament, there is little correspondence to be found between the topics discussed at meetings and issues before the Parliament. In fact there actually appears to be very scant correspondence between even group meeting dates and parliamentary sessions. Nor can it be said that there is a great deal of evidence to support an hypothesis which links "discourse" topics with matters before the courts. Here the evidence is, however, a little stronger and warrants some consideration.

The cases before the courts which can be experimentally synchronised, by time and topic, to the extant "discourses" are as follows: *Anonymous*[100];*Dethick's Case*[101];*Clarencieux v Dethick*[102];*Ratcliff's Case*[103]; and the *Case of Corporations*[104]. In *Anonymous*[105] the Court of Queen's Bench considered the question of the proper situs for the issue of process when an offence was committed in a forest. In terms of the timing, the case precedes the one dated (but anonymous) "discourse" on the topic

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100 (1590) Croke & Elizabeth 200; 78 ER 456.

101 (1591) 1 Leonard 248; 74 ER 227.

102 (1597) Croke & Elizabeth 542; 78 ER 788.

103 (1592) 3 Coke's Reports 37a; 76 ER 713.

104 (1598) 4 Coke's Reports 776; 76 ER 1052.

105 (1590) Croke & Elizabeth 200; 78 ER 456.

by about one year. There are an additional three "discourses" on "forests", by Agard, Broughton and "Lee", which may well have been delivered at the same time, or very nearly the same time, as the anonymous one which is dated 3 November 1591. However, despite the fact that there were always many cases where the law of the forest was required to be determined by the courts, there does not appear to be any other case (close in time to the specific "discourse"(s)) where the jurisdictional question was raised so directly. The topic of forests was certainly the subject of some debate in 1591 and 1592, and was in the process of being addressed by John Manwood in his treatise on forests.[106] In *Dethick's Case*[107] and *Clarencieux v Dethick*[108] the same questions were traversed: the issue was the proper use of a title in naming a defendant to a suit. Dethicke claimed that he could avoid a suit relating to the functions of his office where it was brought against him in the style "Dethick" rather than in the style "Garter". It is probably no wonder that litigation personally concerning one of the members of the Society (in his capacity as a herald) might engender some degree of interest amongst fellow members. If the two undated "discourses" on Earls, one by Tate and the other one anonymous, can be fixed with a

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106 Manwood, J., *A Treatise of the Lawes of the Forest*, facsimile of the 1615 edition, no. 814 *The English Experience*, Amsterdam, Da Capo, 1976. This work was first published in 1598, but it is noteworthy that early drafts were, circulated for comment amongst (in Manwood's words) "the best and learnest writers" and "some of the most reverend and learned judges of the common law", p. ij.

107 (1591) 1 Leonard 248; 74 ER 227.

108 (1597) Croke & Elizabeth 542; 78 ER 788.

date early in 1591[109] then this topic fits very neatly with the reported judicial pronouncements in *Dethick's Case*[110] later the same year (in Michaelmas). The court of Queen's Bench drew an express and extended analogy of the use of the styles "Earl" and "Earl Marshall" in reaching its decision in the Garter's favour. Similarly, *Clarencieux v Dethick*[111], a reprise of the same matter, might possibly be synchronised with the Society's "discourses" on Arms. There are extant three "discourses" dated 2 November 1598, one each by Heneage, Thynne and Tate, and to these we might add two undated "discourses" on the same topic by Doyle and Ley. The exact date of the decision by the Court of Queen's bench is uncertain, but it may reasonably be determined (from its position in the report) to have been in either Hilary 1597/8 or Trinity 1598. Again, if the connection is valid, the Society's discussions appear to precede judicial pronouncement. *Ratcliff's Case*[112], a lengthy and detailed matter involving the consideration of all aspects of tenures, was decided in Hilary of 1592. It appears from the "discourses" dated in November 1591 and February 1591/2 that the Society also discussed the topic of tenures. In the *Case of Corporations*[113] the constitution and powers of cities and towns was the subject

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109 On which see *supra* Table "Meetings, Topics and Topicality" (and notes thereto).

110 (1591) 1 Leonard 248; 74 ER 227.

111 (1597) Croke & Elizabeth 542; 78 ER 788.

112 (1592) 3 Coke's Reports 37a; 76 ER 713.

113 (1598) 4 Coke's Reports 776; 76 ER 1052.

matter of reported extrajudicial consideration by Coke and other senior law officers in Michaelmas 1598. These reported discussions may be synchronised with the series of "discourses" by Holland, Tate and Cotton on the same topic at around the same time. Our dating of some of these "discourses" is open to query[114], but (at least at a speculative level) the connection is conceivable.

In summary, recoverable associations between the discussion of topics in Parliament and the subject matter of extant "discourses" are tenuous to say the least. Associations between the "discourses" and matters before the courts are not much easier to discern. There are really only a few instances where it is possible to parallel group discussions with specific matters before the courts. If we exclude Dethicke's own litigation from the assessment, because of its personal nature, then any pattern of topical engagement is quite difficult to distinguish. The result appears to be that suggestions, which might be derived from Sharpe's thesis, that the Society was "engaged" in the "hot topics" of contemporary political life, are simply not borne out by the evidence. At the broadest level, it is possible to say that the common English orientation of the group was one which may have enkindled ideas about things like loyalty and geographical associations - topics which became public issues under James I.[115] At any more specific level however, one can only conclude that the

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114 On which see *supra* Table "Meetings, Topics and Topicality" (and notes thereto).

115 On which see *infra* Chapter 7.

purpose of group meetings was not one which was especially motivated by current events and topics save, perhaps, for the exceptional or personal legal matter which may have stimulated some associated antiquarian interest.

We know scarcely more about the Society in terms of its formal organisational structure. The Cotton Petition sets out an organisational design, but it must be remembered that proposals of this kind frequently differ from experience. The petition, it is submitted, is not evidence for the realities of practice: if there were actual rules or customs of a general organisational nature, beyond the proposal of topics and the presentation of "discourses", then they have not survived in the sources for our examination. The fragments of what is known about the conduct of the Society in formal terms vary in detail and consistency. How was the Society constituted? There may in fact have been no office bearers, beyond perhaps a secretary. Spelman's "The Original" simply designates Mr Hackwell "our Register, and the Convocator of our Assemblies for the present". However Spelman's account is at odds with Bolton's, which depicts a more complex administrative structure. Furthermore, where Spelman mentions that some of the "discourses" were "enter'd in a Book", Bolton describes a "Register".[116] Van Norden suggests that informality may have given way to "ossification" with the passage of time[117], but it is equally

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116 "The Occasion": Bodley MS *e Mus* 107, fols. 1-2 and Gough, R., "Introduction", *Archaeologia*, 1 (1770) i at xvi.

117 Van Norden, "The Elizabethan College Of Antiquaries", pp. 302-303.

possible that Bolton's version tends to embellish, in order to make the Society appear to have been more cohesive and permanent than perhaps it really was. There is nothing in the primary evidence to suggest anything like the level of formality of constitution recorded by Bolton.

The evidence is much firmer as regards the times, dates and places of the Society's meetings. Again it is Spelman's "Original" which provides a point of departure: "...a College or Society of Antiquaries, appointed to meet every Friday weekly in the Term...The place, after a meeting or two, became certain at Darby-house, where the Herald's Office is kept:...".[118]

From the thirty-four "discourses" which can be precisely dated to a certain day, nine can be attributed to meetings held on Fridays. Other meeting days were, in descending order of frequency: Thursday (eight meetings); Wednesday (seven meetings); Saturday (five meetings); Tuesday (three meetings); Monday (two meetings). There were no meetings held on a Sunday.[119] The result is that although Friday had the distinction of being the most habitual meeting day, the extant evidence suggests that there was far from any strict rule about regular weekly meeting days. Spelman's identification of Term time is much easier to demonstrate.

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118 "The Occasion": Bodley MS *e Mus* 107, fols. 1-2.

119 See Van Norden, "The Elizabethan College Of Antiquaries", Table 3, pp. 547-553.

There are thirty-six meeting dates which can be identified with sufficient certainty (that is to say within a day or two). Only three known meeting dates fall outside Term time, just.[120] The makeup of the group obviously meant that the Term was a convenient time to attend meetings in London. The significance of the Term periods for the lawyer-members is transparent, but it should not be inflated. When Parliament was in session during the Term the Westminster complex swarmed with both lawyers and Members.[121] Businessmen took advantage of the Terms to pursue connections who might at other times be occupied in the counties. The Terms were periods when public business, social and commercial pursuits of all kinds, were conducted in the capital. The location of meetings also seems fairly uncontroversial. According to Spelman the venue for meetings was Derby House, the former seat of the Earls of Derby, and since 1555 the headquarters of the heralds. William Dethicke, Garter King at Arms, had his apartments at Derby House, and the summonses to Mr Bowyer and Mr Stow[122] state that the meetings were to be held at "Mr Garter's house". It is possible, but unfortunately not verifiable, that in ensuing years the venue was shifted to Robert Cotton's house in Westminster. For this we are reliant solely upon the account of Smith.[123]

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120 *Id.*, pp. 544-546.

121 See Clendenin, *op. cit.*, pp. 13-15.

122 Bodley MS *Ashmole* 763, IV, 5 and 6.

123 Smith, "Vita D. Roberti Cottoni....", p. viii.

One matter of organisation remains largely unknown: the recruitment and induction of new members. The matter has an important bearing on the question of the character of the group in terms of its relative degrees of exclusivity and formality. The only clue we have is the letter written by Launcelot Andrewes to Abraham Hartwell. The letter, as recorded by Gough, is instructive:

> "To the right worfhipful my very good friend, Mr Hartwell, at his Houfe at Lambeth.
>
> SIR,
>
> I have received the inclofed (as it was fayd) by direction from you: but the partie I know not: it was not your hand: it had no mention of my name; and I talkt with Mr. Clarentieux, and he would not certify me that I was made of your number, and yet he was at your laft meeting, wher fuch things (as he fayd) ufed to be agreed on before any came in, wherby I thought it likely the partie might be miftaken that brought your note. But if I have notice from yourfelf or Mr. Clarentieux, that you have vouchfafed me the favor, then you fhall perceive well that I will not fail in obedyence, though unlefs it be that I dare not promife, becaufe I cannot perform ought ells, for I learn every day more and more gladly. But that this afternoon is our Tranflation time, and moft of our company are negligent, I would have feen you; but no Tranflation shall hinder me, if once I may

underftand I fhall committ no error in coming. And fo, commending me to you in myn ambition, and every way befide, I take my leave, this laft of November, 1604, your verie affured poor friend,

L. Andrewes ."[124]

If this letter does refer to the Society, then it appears that new members were elected at meetings by the extant membership. It is reasonable to assume that newly elected members were then advised of their election to the Society by a written summons to attend a meeting. What does this say about the character of the group? An election does not necessarily betoken openness or egalitarianism. Whether a summons to a new member was the same as one to an existing member will remain unknown, however it is important to note that the Ashmolean summonses do warn *existing* members not to bring with them to a meeting any person who does not possess a similar written invitation. The group therefore looks to be exclusive and selective rather than open or accessible.

On this question, the evidence of those commentators closest in time to the group is intriguing, and by no means unequivocal. According to Carew there was at least in some sense a formal introduction to the Society:

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124 Gough, R., "Introduction", *Archaeologia*, 1 (1770) i, at xv n. l.

"Sir, I praie you geeve me leave to impart unto you my greeff, that my so remote dwelling depriveth mee of your sweete and respected Antiquarum society, into which your kyndenesse towardes mee and grace with them made mee an Entrance, and unto which (notwithstanding so long discontynuance) my longing desire layeth a Contynuall clayme...."[125]

According to Spelman:

"Two Questions were propounded at every Meeting, to be handled at the next that followed; so that every Man had a Sennight's respite to advise upon them, and then to deliver his Opinion. That which seem'd most material, was by one of the Company (chosen for the Purpose) to be enter'd in a Book; that so it might remain unto Posterity." [126]

There is very little in either of these statements to indicate what degrees of formality or exclusivity might have prevailed at meetings. The idea of the group's character

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125 Cotton MS *Julius C.* III fol. 30 b. Reproduced in Ellis, Sir H., *Original Letters of Eminent Literary Men of the Sixteenth, Seventeenth, and Eighteenth Centuries*, London, Camden Society, 1843, pp. 98-100.

126 Spelman, Sir H., *Reliquiae*, 1698, p.69.

and function evolving over time into a more fixed, almost official form is advanced by Smith. He contends that from the impromptu discussions of the group's earlier years evolved specialization, exclusivity, and an enormous seriousness of purpose:

"...saepe prout ratio neotiorum sinebat, convenire consuevissent, de patriis antiquitatibus investigandis in commune consulturi, sermonibus de hisce rebus, prout in familiaribus amicorum congressibus solet fieri, ultro citroque habitis.... ...."Propositis vero gravissimis de re antiquaria sive questionibus sive articulis, non confestim de iis quai tumultario erat disceptandum; sed tres quartuorve, interdum plures, nominantur, ut quicquid ex vetustis libris hauserint, quod iis illustrandis inserviat, proximo congrssu scripta exhibeant coram operis veritas in profundo latens melius erueretur, resque a nostro seculo remotissimae quasi praesentes sisterentur, illarumque origines clarius patetierent.... Lemmata vero argumentorum, quae Viri illustres tractanda susceperint, hic apponere longe consltius videbitur, ut Lectori manifestum fiat, non de minutiis tricisque, nullam laudem, fructum nullumhabituris, sed de rebus gravissimi momenti, quae veteris aevi historiam illustrant, & quarum usus erit perpetuus in vita civlli apud omnes, qui paulo supra vulgus

sapiunt in commune consultum fuisse."[127]

Hearne reiterates two of Smith's themes, those of the great and serious project which the group apparently pursued, and the increasingly formal nature of the meetings:

> "Men that carry on such joint Labours should have their stated Meetings, and write Dissertations upon intricate Subjects, in the same manner as was done by the Society of Antiquaries in the time of Q. Elizabeth and K, James I."[128];

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127 [when the Society began] "Often, as the record of their activities set it forth, they were in the habit of meeting to combine their efforts toward the study of their ancestral antiquities, in discussions about these things, according to the wont of intimate gatherings of friends, held now here now there... [later] ...The most important topics on antiquarian matters having been proposed either in the form of questions or of issues, the discussion would be carried on not chaotically by all at once, but three or four (and sometimes many) were named, so that whatever they might glean from old books that could serve as illustrations they would produce in transcript at the next meeting, to be read and investigated communally, so that from that time the truth might be brought to light before one's eyes, and things very remote from our own century appear as if belonging to the present and their origins be revealed....[and later still] ...The topics of discussion which these famous men took upon themselves to handle will seem, quite obviously to the reader (at least from the point of view of all who know a little more than the common people), to attach no importance to mere trifles, to seek no delight but in things of the most tremendous moment, which exemplify the life of the past, and to discuss at meetings things in relation to which there will be a permanent use in the civil life of all the people,." , "Vita ... Cottoni," *Catalolgum.*, pp. vii-viii.

128 Hearne, *Curious Discourses.* Oxford, 1720, "Preface", p. xxxiv, Marginal Note.

"The members of the Society used to be summoned when their Opinions were desired."[129];

"For when Conferences were had upon such and such Topicks, the Members used to be summoned, and their Answers were desired either in writing or otherwise."[130]; and

"... they are to discuss the most intricate and obscure Points in our English History and Antiquities. They should have their stated meetings, and give their opinions, not only by word of mouth, but oftentimes in writing. This method will occasion many short curious Discourse, that will be proper to be printed, ... In the time of Q. Elizabeth and K James I. there was such a society made up of right learned Antiquaries, that there is no doubt, but by this time we had had a compleat account of the most material Things in our History and Antiquities."[131]

Although not mentioned by Hearne, Smith's other theme, of specialisation and exclusivity amongst the membership, is taken up by Gough who envisions an even

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129 *Id.*, p. xxxviii, Marginal Note.

130 *Id.*, p. xxxviii.

131 *Id.* pp. xxxiv - xxxv.

more rigid organisational structure:

> "It seems ... probable, that, as these papers were the result of deliberations previously proposed, the meetings were regulated by the time each member required to prepare his memoir, and by the law terms."[132]; and

> "More than one person wrote, or (as appears from the summons to Mr Stowe spoke, on each subject; ___ the only method of investigating the truth by various discussions. It appears from each summons, that none but Members were admitted to the meetings; and that the questions of such Members as were thought best qualified."[133]

Ayloffe, reminiscent of Spelman, states simply:

> "... Questions as they thought proper, upon which each member was expected at the subsequent meeting, either to deliver in, a dissertation on writing or to speak his opinion:.... The opinions spoken were carefully taken down in writing by the secretary, and, together with

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132 Gough, "Introduction," *Archaelogia* I, pp. v-vi.

133 *Id.*, p. vi.

the dissertations delivered in. After they had been read and considered, carefully deposited on their archives."[134]

All of these commentators see a certain formality as one of the features of the group. On the question of exclusivity Spelman and Hearne are effectively silent, but Smith and Gough see a restricted group of specialists.

The style of the extant summonses, together with Lailand's list of "those not somoned", provide stronger, but not really more conclusive evidence as to whether the group was exclusive in the sense that only certain experts or specialists were invited to attend particular meetings:

"...Your oppinioun in writinge or otherwyse is expected. The question is, 'Of the Antquitie, Etimologie and priviledges of parishes in Englande. Yt ys desyred, that you giue not notice hereof to any, but such as haue the like somons."[135]

"...Your opinioun either in writinge or otherwise is expected upon this question. 'Of the Antiquitie of Armes in England.' Yt is desired, that

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134 Ayloffe, Vol. I, p. vii.

135 Bodley MS 763. IV, 5, fol. 195a.

you bringe none other with you nor geve anie notice to anie, but to such as have the like somouns."[136]

There are two ways of reading these summonses. One valid interpretation is that only (specialist) members who were required to present analysis were summoned to attend a particular meeting. The alternative interpretation is that all members were required to present an analysis on the question proposed for the particular meeting, but that only recognised members of the "group" might attend a meeting and that strangers were forbidden. The latter interpretation, that each member, regardless of expertise, was obliged to communicate his findings on the question at meetings, points to an openness and inclusiveness about procedure. This latter interpretation is not, however, reinforced by the existence of Lailand's alternate roster of "those not somoned" which appears within the same Bodleian manuscript as the summonses. The suggestion to be derived from Lailand's two lists, that not all members were presumed to appear at all meetings,, apparently strengthens the former interpretation. Of course, the double list might also be explained away, simply as a record of who was known to be in London and thus *available* for the meeting. If this is the case then the evidentiary support for the latter interpretation is diminished and we are thrown back upon the elusive texts of the summonses.

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136 Bodley MS 763. IV, 6, fol. 196a.

Internal references within the "discourses" give the strongest indications about the relative exclusivity of the group's meetings and membership. Within the surviving "discourses" a number of the authors, from time to time, remark upon the practices adopted at meetings. These utterances tend to support the more open, non-specialist, theory of group dynamics. They also support, at the same time, a Society which (despite an inclusive collective attitude) was one which exhibited an organised structure with definite rules of procedure:

> "I woulde willinglie keape silence in this proposition, were it not that I am taxed there unto by a generall order designed to all, because it is quite besides the queshyon of my profession, reading, or observation."[137]

> "...And yet lest I should be deemed one that should begin to break order, I thought good to put myself to the censure of your wise judgements...."[138]

> "Were it not that the order of this learned Assembly doth forbid me to be allwayes silent, this question having been so judiciously handled

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137 Ayloffe, Vol. I, No. LXVIII, p. 212.

138 Arthur Agard, Hearne, No. XVIII, p. 71.

by others, and my self unable to say any thing to it...."[139]

"But forasmuch as I am, according to the laudable custom of this company, either to write or speak somewhat of the question propounded, I must first acknowledge my own ignorance therein, and wholly rely myself upon the knowledge and observation of the gentlemen here present...."[140]

"...Which question falling most properly into the learning of officers of armes, affordeth me little ability to speake of a matter so farre out of my province, more especially as it is confined to the limits of our country; in experience of which, wee are commonly most ignorant, as having therein less help from reading and history, then we have in regard to other countries."[141]

"...Whylst one treateth of one part of a question, and sume of another, there would be nothing left for mee to utter concerning the antiquity...of combatts. But because I would not seem to be silent,

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139 Francis Leigh, *id.*, No. XIX, p. 81.

140 Abraham Hartwell, Ayloffe, Vol. I, No. LXXXV, pp. 278.

141 Francis Leigh, *id.*, Vol. I, No. LXXXVI, p. 276.

beinge otherwise enjoyned by the Laws of this Assembly,..."[142]

"...In this learned assembly, there can be nothing ouerpassed,...but that will be deliuered by some one, and therefore I might be silent: but synce by order I must say something,..."[143]

"Although this proposition of itselfe be more proper to be dilated by dyvines than by any other, yet because I would bring some thynge to the encrease of our buildinge, I hope that it shal be taken in good parte..."[144]

Taken together, these editorial excerpts go a long way towards focussing our understanding of the group. They point to a group with certain fairly well understood rules and formalities, in line with the portrayals of group activities by Smith and Hearne. These internal references also support the theory of an "inclusive" (rather than an "exclusive") group spirit. This conclusion is at odds with one interpretation of the extant summonses: an interpretation possibly lent support, by inference, from Lailand's two lists, an interpretation nonetheless consistent with Smith's and Gough's representations of increasing specialisation. It appears, however, to be the

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142 John Davies, *id.*, Vol. II, No. XXXIII, pp. 187-188.

143 Arthur Agard, *id.*, Vol. II, No. XXVII, p. 160.

144 *Ibid.*

most sound postulate.

A final word, quite appropriately from Agard - the most loquacious of the recoverable authors, is quite telling:

> "...There are not in anye of our former propositions anye judyciall or fynall conclusion sett downe, wherby wee might say this is the...right opynyon that is to be gathered out of every man's speache...Therefore I wishe this abuse...might in our nowe meetings be reformed. And that uppon every poynt, men being heard, the soundest judgements might be thereuppon concluded."[145]

Perhaps it is too much to read into Agard's words "anye judyciall or fynall conclusion sett downe, wherby wee might say this is the...right opynyon" to say that herein we find some legal significance. On the other hand the comment is interesting because it betrays an authentic and lawyerly desire, not just to reach a consensus, but to furnish some kind of persuasive collective standpoint on the issue at hand.

Was the presentation of "discourses", at the regular meetings, the only activity of the Society? There is no direct evidence of any other operations. Although

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145 Agard, *id.*, Vol. I, No. LVII, pp. 184-185.

it represents conjecture, another possible object of the Society may have been to facilitate scholarly "borrowings", mostly of books but perhaps also of other easily transportable items. We know that the Cotton Petition included a proposal for a library. We also know that some of the members (particularly Cotton, Spelman and Camden) were certainly in the habit of borrowing and lending books and other items of scholarly interest. There are instances in the discourses where a particular bailment is mentioned in passing.[146] The suggestion is interesting, but will remain unsubstantiated.

6.3 Group Members: Other responsibilities, age and death

Spelman's *The Occasion* also allows some insight as to some of the more plain reasons for the cessation of group activities:

> "as all good Uses commonly decline; so many of the chief Supporters hereof either dying or withdrawing themselves from London into the Country"[147]

It is worth testing these reasons. We have already noted that, with the possible exception of John Stow, all of the antiquaries seem to have been "gentlemen", at least

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146 Hearne, *A Collection of Curious Discourses*, No. XVII.

147 Bodley MS *e Mus* 107, fols. 1-31 ("The Occasion" is fols. 1-2).

in the sense that they possessed manors. Van Norden considers, on the authority of Carew and Spelman, that it was this responsibility for land that eventually dispersed them.[148] This conclusion is thoroughly plausible, but it is not verifiable by reference to known facts about the movements of individual group members. There is simply not enough evidence to say whether or not this was the primary factor in the demise of the group. Age and death, on the other hand, are factors which can be tested. In 1607/8 (Van Norden's cessation date) at least thirteen of the forty-one identifiable members had already died. They were Beale, Bourchier, Broughton, Erdeswicke, Fleetwood, Hartwell, Heneage, Lambarde, Savile, Stow, Strangeman and Thynne and Townshend. In the five years prior to this census there had been a death of a member every year, and while there had been no deaths in 1602 there had been two in 1601. With (at least) almost a third of identifiable members dead the rupture of group ties must have been serious. There are a further nine members about whose date of birth or death there exists some uncertainty. Of the remaining nineteen living "primary" members the average age in 1607/8 was 55 years. Three of those nineteen were above sixty, and a further six were between fifty and sixty. With fewer than ten percent of the overall population at this time accounting for persons above sixty, it is

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148 Van Norden, "The Elizabethan College Of Antiquaries", p 265. It is worth noting that because both Spelman and Carew were personally as active in the affairs of their respective counties of Norfolk and Cornwall as in their London affairs it may be inferred that their views might over-represent the provincial factor. See Cooper, C.H., "On An Early Autograph Of Sir Henry Spelman, With Some New Or Not Generally Known Facts Respecting Him", *Cambridge Antiquary Society Communications*, 2 (1860-64) 101-112.

clear that the group was moving collectively into old age.[149]

Whilst the obligations to attend to duties associated with substantial land holdings appears to be a feasible explanation for the demise of the group it is ultimately a solution which is unverifiable on existing evidence. The fact that many members did continue active and successful careers in politics, law and civil service (all of which required at least seasonal residence in London) might well suggest that removal from the capital was not a significant consideration. The factors of the ages of and deaths amongst the membership tell a more accurate story. These factors can be, speculatively at least, added to another. The year 1607 was not a favourable one for writers such as the antiquaries. Around this time the example of Dr Cowell (unjustifiedly accorded membership of the Society by Bolton) would have made some of these mature men wary about pursuing investigations which might attract royal displeasure. It needs to be remembered that most of the membership had much to lose. Almost all held positions of eminence and sinecures which might be squandered by careless words. There is no direct evidence of such a tactical withdrawal from the world of affairs by members, and certainly some members continued to write as individuals, but the circumstances of the period coupled with age and the death of friends might reasonably have lead more than a few to opt for a peaceful retirement.

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149 Wrigley, and Schofield, *op. cit.*, pp. 215-219.

6.4 Summary

The significance of the brief flowering of legal and historical studies represented by the Society of Antiquaries is that glimpse which is afforded to the student, centuries later, of the emergence of what we now refer to as a discipline. The members of the Society, themselves now objects of our own historical inquiry, developed methods and approaches to secure and utilise source materials with a view to the writing of history.[150] Unlike the mediaeval historians, and in line with the continental humanist tradition (with which some of the members were in touch), it was not regarded as satisfactory to merely reiterate and augment the work of a predecessor. The dissolution of the monasteries, the dispersal of their libraries[151], and the invention of printing[152] had engulfed scholars with a volume of accessible information inconceivable only a generation or two before. More information led, successively, to two things: comparison and novel questions. The Society, as a group, gathered information and did so purposefully. They met as a group, they proposed questions, they scoured repositories and archives, took notes, compared documentation and reported back to participate in discussion from which further

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150 Herendeen suggests this had much to do with the changing definitions of the roles of `antiquaries' and `historians' in the period in question: Herendeen, *op. cit.*, pp. 194-197. See also Piggott, S., "Antiquarian Thought In The Sixteenth And Seventeenth Centuries", in Fox, *op. cit.*, p. 93 and Rodgers, *op. cit.*, pp. 146-147.

151 Wright, C.E, "The Dispersal of the Libraries in the Sixteenth Century" in Wormald, *op. cit.*, pp. 148-171.

152 Dunn, R.D., "Fragment Of An Unpublished Essay On Printing By William Camden", *British Library Journal*, 12 (1986) 145-149.

questions emerged. The historical method became linear and progressive rather than cyclical, and the results became purposive rather than mere records of God's work.[153]

In all of this the training of the members of the Society as lawyers, members of the most significant secular fraternity in Europe, stood them in good stead. As lawyers the members' skills in documentary research and analysis, balancing of evidence and supported argumentation in the face of disputed or uncertain assertions to a large degree moulded the new methodology to be applied to historical inquiry.[154] This is not to say that in the Society of Antiquaries we find all the elements of modern legal history in some embryonic state.[155] Fussner and Rodgers both point out that legal training had its disadvantages too, such as the rigid concept of the "legal record" and its *a priori* factual status being inappropriate to historical studies where facts may exist at differing levels of generality.[156] This was a methodological problem which the antiquaries never addressed.

Similarly it needs to be noted that the importance of the Society should not be

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153 Smuts, *loc. cit.* See also Terrill, "William Lambarde: Elizabeth Humanist And Legal Historian", p. 161 and Ginzburg, *op. cit.*, *passim*.

154 The significance of legal training appears to have been neglected by many: see, for example, Evans, *A History of the Society of Antiquaries*, pp. 11-12.

155 See Kendrick, *op. cit.*, p. 114.

156 Fussner, *The Historical Revolution*, pp. 98-99 and Rodgers, *op. cit.*, pp. 137-138 and 147.

exaggerated. Pivotal as they were, the endeavours of the antiquaries represented an isolated recognition and a limited employment of the humanist method of historico-legal scholarship. Rodgers reminds us:

> "The common law was a highly practical discipline, however, and the professional common lawyer found little interest in legal humanism, which he saw as largely abstract, antiquarian and irrelevant to legal practice. The insularity of the common law tradition ensured that even the modest `reception' of humanist ideas (represented in the work of the legal antiquaries) that did occur was effectively delayed until well into the seventeenth century. "[157]

The temptation to see the Society as a culmination of a much earlier lineage, stretching back to Leland, or for that matter as an origin of later scholarship, centred on Selden, must be resisted.[158] The human element of such lineages is indefinite. The significance of individuals' real and imagined connections defines the prosopographical enterprise, and is therefore a question to be approached with the

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157 Rodgers, *op. cit.*, pp. 152-153.

158 For example Levine's "The Antiquarian Enterprise, 1500-1800": Levine, *op. cit.*, pp. 73-106. Another example, concerning the role of Camden and the heralds: Herendeen, *op. cit.*, pp. 203-206. Cf. Carley, J.P., "Polydore Vergil and John Leland on King Arthur: The Battle of the Books", *Interpretations*, 15 (1984) 86-100.

utmost caution.

On the other hand it is worth recalling that, as Cheney has noted, "the sultriness of professionalism had not yet descended upon the historical world".[159] The milieu was one of awakening, of "discovery", so while the enthusiasm of these scholars cannot entirely counterbalance technical weaknesses in analyses which are obvious today, it is submitted that the group were genuinely great explorers in their field. Their work directed the path to a more sophisticated and profound access-way to the past. It was unique, but represented only a fleeting interval in the progression of English legal-historical scholarship. In the years immediately following the demise of the Elizabethan Society of Antiquaries there were a number of inconsequential successor organisations. These bodies, or proposed bodies, were: Prince Henry's "Academe"; the Chelsea College; Bolton's "Academe Roial"; Kynaston's "Museum Minervae"; Dugdale and Deering's "Antiquitas Rediviva"; Gerbier's "Academy"; an innominate association referred to by Ashmole and Cowley's planned foundation "for the advancement of learning". Although (to various degrees) the individual members or sponsors of these groups were notable antiquarians, none of these organisations made any significant or lasting mark on scholarship as an organisation per se.[160] They were, for the most part, futile attempts

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159 Cheney, C.R., "Introduction", in Fox, *op. cit.*, pp. 5-6. See also Ferguson, *Clio Unbound*, p. 88.

160 See Woolf, "Erudition and the Idea of History in Renaissance England", at p. 31.

to establish some kind of learned academy or society which never (or only barely) progressed beyond planning stages. It was not until the incorporation of the Society of Antiquaries of London in 1751 that such an organisation took firm root. Such evidence as exists in relation to the membership and interests of these bodies, including the Society founded in 1751, indicates none of the especially legal flavour of the antecedent organisation.[161] Nonetheless, the fleeting glimpse provided by the Elizabethan Society of Antiquaries allows us an invaluable perspective - towards both the antiquaries' distant past and their near future. As Kelley recognises:

> "The ideological conflicts of the seventeenth century made disinterested inquiry into the English past a luxury, a dangerous one at that, and clearly the triumph of Parliament did not provide a more congenial atmosphere for the kind of cosmopolitan-minded work exemplified..."[162]

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161 The comprehensive reference is: Evans, *A History of the Society of Antiquaries*. See Van Norden, "The Elizabethan College Of Antiquaries" pp. 440-487, Herendeen, *op. cit.*, pp. 209-210, Nurse, B., "The Library of the Society of Antiquaries of London: Acquiring Antiquaries' Books Over Three Centuries", in Myers and Harris, *op. cit.*, pp. 153-158, and, more generally, Southgate, *op. cit.* and Feingold, M., "John Selden and the Nature of Seventeenth Century Science", in Bienvenu, R.T. and Feingold, M., ed.s, *In the Presence of the Past: Essays in Honour of Frank Maunel*, Dordrecht, Kluwer, 1991, pp. 55-78.

162 Kelley, "History, English Law And The Renaissance", pp. 49-50.

7. The Early Stuart Half-Century

The first half of this period, basically the reign of James I, was characterised by increasing tensions between the King and a hybrid opposition of the emerging bourgeoisie, its economic claims in competition with the government, and of the godly revolutionaries, opposed to the government's religious policies. During the reign of Charles I, over the following quarter century, these tensions gradually, but steadily, resolved themselves into conflict and rebellion. This tumultuous time was not one which was conducive to the kind of activities with which the antiquaries had indulged themselves. The plan for Society's incorporation, embodied in the "Cotton petition" which was presented (or was at any rate drafted for presentation) to Queen Elizabeth, was never realised. There is no documentary or other evidence to witness the continuation of group meetings after June of 1607. Spelman's prologue to his *The Original*, "the Occasion", indicates that endeavours to revive the Society in 1614 were unsuccessful, the King having "took a little Mislike" to the group.[1] It has been demonstrated that the period was also one in which many of the members reached the age of retirement and death. Only one of the identifiable members can be

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[1] The King's "Mislike" of the group is confirmed by Carew: Cotton MS *Julius C.* III fol. 30 b. See also Van Norden, "The Elizabethan College Of Antiquaries", pp. 71-118, Van Norden, "Sir Henry Spelman on the Chronology of the Elizabethan College of Antiquaries", and Levy, *Tudor Historical Thought*, p. 165.

demonstrated to have lived long enough to witness the regicide.

7.1 Politics and Scholarship

Despite the ominous imprecations in the Star Chamber ordinance of 1586, the regime of the mature and then ageing Queen Elizabeth was not one which was strongly distinguished by censorship.[2] This comparatively broad-minded climate was to change. James I had his own assured and well developed ideas about the nature of politics and government. He was a published author on these areas, as well as on a number of related topics such as the law and religion. Wormald situates the theoretical writings of James I, in *The Trew Law Of Free Monarchies* and also in *Basilikon Doron*, in the context of Scottish political theory where, she contends, they signified an impressive digression from earlier Scots thought. She also advances the argument that James' writings, which represented his personal seasoning with the concepts and realities of kingship in Scotland, were originally composed for himself. Her thesis is that these tracts were not written for an English audience and that James did not, in allowing their publication, propose to assert the introduction of absolutism to England. According to Wormald the misinterpretation of these texts by the English intelligentsia, who bought James' works by the thousands, began a series of mutual

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2 *State Papers (Domestic)*, Elizabeth Exc., p. 48. See Miller, E.H., *The Professional Writer in Elizabethan England: A Study of Nondramatic Literature*, Cambridge (Massachusetts), Harvard University Press, 1959, p. 186 ff. and Stuckey, M., *The High Court of Star Chamber*, Gaunt, Holmes Beach, 1998 pp. 44-54.

misunderstandings between the king and the leaders of English society.[3] All the same, this misunderstanding provides the context for comprehending the relations between James and his new subjects, and according to Figgis, in James' *Trew Law of Free Monarchies*[4] (published five years before the death of Elizabeth), "is to be found the doctrine of Divine Right complete in every detail."[5] Its opening words could not be more clear:

> "As there is not a thing so necessarie to be knowne by the people of any land, next to the knowledge of their God, as the right knowledge of their alleageance, according to the forme of gouernement established among them, especially in a *Monarchie* which forme of gouernement, as resembling the Diuinitie, approacheth nearest to perfection..."[6]

Other writers on any of these themes needed to take care lest they displease

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3 Wormald, J., "James VI And I, *Basilikon Doron* And *The Trew Law Of Free Monarchies*: The Scottish Context And The English Translation" in Peck, L. Levy, ed., *The Mental World Of The Jacobean Court*, Cambridge, Cambridge University Press, 1991, pp. 36-54.

4 King James VI and I, *Political Writings*, Sommerville, J.P., ed., Cambridge, Cambridge University Press, 1994, pp. 62-84.

5 Figgis, J.N., *The Divine Right of Kings*, New York, Harper, 1965, p. 138.

6 King James, *op. cit.*, p. 63.

their erudite but suspicious King.[7] The case of Dr. Cowell exemplified how the indignant James might fall upon a wretched professor who had only meant to please his monarch.[8] In a brief legal dictionary called *The Interpreter*[9], published in 1607, the well-known civilian Dr. John Cowell promoted some routine political theories with which James I would have been in general agreement. However these theories were certainly at odds with claims made by the Parliament in relation to the questions of sovereignty and prerogative. Since *The Interpreter* excited the resentment of the Commons, on whom the King relied for a subsidy, James himself was obliged to censure Dr. Cowell's explication of certain sensitive words. In 1610 the book was burnt by the common hangman.[10] Perhaps the members of the Elizabethan Society of Antiquaries felt the danger of their English focus being similarly misunderstood. Tate and Cotton both sat on a Parliamentary delegation assembled in March 1610 to consider Cowell's *Interpreter*.[11]

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7 Worden, *op. cit.*, pp. 80-86.

8 Simon, Sir J., "Dr. Cowell", *Cambridge Law Journal*, 26 (1968), 260-272 at pp. 268-270, Chrimes, S. B., "The Constitutional Ideas of Dr. John Cowell", *English Historical Review*, 64 (1949) pp. 461-483 and Wright, N.E., "John Cowell and *The Interpreter*: Law, Authority, and Attribution in Seventeenth-Century England", *Australian Journal of Legal History*, 1 (1995) 11-35.

9 Cowell, J., *The Interpreter*, facsimile of 1607 edition, Amsterdam, Da Capo, 1970.

10 Notestein, W., *The House of Commons: 1604-1610*, New Haven, Yale University Press, 1971, p. 293 ff. See also Brinkley, R. F., *Arthurian Legend in the Seventeenth Century*, New York, Octagon, 1967, p. 32.

11 See Cotton's revised biography in the forthcoming edition of *The History Of Parliament: The House Of Commons 1604 - 1629*. The cited source in the draft

We should not really be shocked by these kinds of reactions. Kantorowicz reminds us that the concept of Absolutism, expressed through what he terms the "mysteries of state" had a mediaeval background. It was an instance of "spiritual-secular hybridism...a result of the infinite cross-relations between Church and State", and he notes that it may be found in every century of the "Middle Ages".[12] Kantorowicz also draws attention to the swapping of regalia between priestly and secular officials (such as titles, insignia, and prerogatives), from Roman times right through to the early thirteenth century.[13] The utilisation of the Church as an organisational model by the leaders of emerging states in Europe is easy to comprehend. It had been the preeminent success story in the exercise of power and influence for many centuries:

> "Under the pope as *princeps* and *verus imperator* the hierarchical apparatus of the Roman Church - notwithstanding some important features of Constitutionalism - showed a tendency to become the perfect prototype of an absolute and rational monarchy on a mystical basis, whereas simultaneously the state showed increasingly a

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is *Commons Journals* 407a.

12 Kantorowicz, E., "The Mysteries of State: An Absolutist Concept and its Late Medieval Origins", *Harvard Theological Review*, 48 (1955) 65-91 at 65. Also: Kern, F., *Kingship and Law in the Middle Ages*, Oxford, Blackwell, 1956, pp 27-33.

13 Kantorowicz, "The Mysteries of State: An Absolutist Concept and its Late Medieval Origins", pp. 65-66.

tendency to become a quasi-Church and, in other respects, a mystical monarchy on a rational basis. It is here in these waters - brackish waters, if you prefer - that the new state mysticism found its breeding and dwelling place."[14]

Kantorowicz suggests that the evidence for the transmission of the *arcana ecclesiae* to produce the new *arcana imperii* of absolutism is chiefly legal.[15] Upon examination of the derivation of this idea of "Mysteries of State" Kantorowicz concludes that its origins lie in pagan and Christian laws relating to sacrilege.[16] The adoption of the ecclesiastical model certainly did not fail to impress James I. In 1616, in a speech delivered in the Star Chamber he unquestionably referred to the divine analogy when he said:

> "Incroach not upon the Prerogative of the Crown: If there fall out a question that concerns my prerogative or mystery of state, deal not with it, till you consult with the King....Keep you therefore all in your own bounds, and for my part, I desire you to give me no more right in my private prerogative, than you give to any subject; and therein I will be acquiescent: As for the absolute prerogative of the Crown, that is

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14 *ibid.*

15 *id.*, pp. 66-67.

16 *id.*, pp. 69-72.

no subject for the tongue of a lawyer, nor is lawful to be disputed. It is Atheism and blasphemy to dispute what God can do...So it is presumption and high contempt in a subject, to dispute what a King can do."[17]

In his other writings James I had frequently spoken of "my Prerogative or mystery of State", of the "mysterie of the King's power," and of "the mysticall reverence, that belongs unto them that sit in the Throne of God". The function of the "mysteries" was to maintain the existing social and political hierarchies.[18] So even commentary about the sanctified institution of the monarchy risked condemnation - because the strength of the institution lay in that very mystery. Those who attempted to penetrate such secrets, like Dr Cowell, might expect severe treatment for their "atheism and

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17 King James, *op. cit.*, "A Speech in the Star Chamber, 20 June 1616", pp. 204-228 at pp. 212-214 and Tanner, J.R., *Constitutional Documents of the Reign of James 1: AD 1603-1625*, Cambridge, Cambridge University Press, 1930, pp. 17-22 at p. 19. See also Kantorowicz, "The Mysteries of State: An Absolutist Concept and its Late Medieval Origins", p. 70.

18 "In his writings he hoped that text would wield authority...James's writings, through representation and self-presentation, attempt to reaffirm and reauthorise paradigms that sustained his divine right; and to control the arena of interpretation and discourse.": Sharpe, K., "The King's Writ: Royal Authors And Royal Authority In Early Modern England" in Sharpe, K. and Lake, P., ed.s, *Culture And Politics In Early Stuart England*, Stanford, Stanford University Press, 1993, pp. 117-138, quote at p. 131. See Foucault, M., "What Is An Author", in Rabinow, P., ed., *The Foucault Reader*, Middlesex, Penguin, 1984, pp. 101-120.

blasphemie".[19] Either directly or indirectly this type of reaction tended to contribute to the failure rather than the nurturing of such a royal cult; the failure of James to establish himself as an effective national leader. In fact Smuts notes that there was actually a decline in ceremonialism and court ritual under James, and that the dominant theme, at least among historical writers generally, was an association of the Stuart Court with the corruption of traditional values, deceit and hypocrisy.[20] The members of the Society of Antiquaries certainly could not have been accused of this, but they did have positions and reputations to protect.

From the revisionist perspective, in all of this, James was merely expressing, albeit in quite explicit terms, the well accepted contemporary understanding of the nature of power. Russell, for example, asserts that rule by divine right was a postulate which was almost universally accepted, and certainly not one which was particularly contentious. Along with Russell, it is also important to remember that "absolutism" or "divine right" are merely theories of power, and that such ideas do

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19 See Ginzburg, *op. cit.*, p. 32. Brinkley includes the membership of the Society (as being under suspicion), but without direct evidence: Brinkley, *op. cit.*, p. 32. More generally, see Hughes, *op. cit.*, p. 82 and, in relation to the skillful preservation and representation of mystery: Kinney, A.F., "Scottish History, the Union of the Crowns and the Issue of Right Rule: The Case of Shakespeare's *Macbeth*" in Brink and Gentrup, *op. cit.*, pp. 18-53. More generally: Notestein, *op. cit.*, especially p. 242 ff.

20 Smuts, *op. cit.*, pp. 24-28, 72-78 and 200.

not necessarily offer anything in the way of a functional description of power.[21] Sommerville disputes this and disclaims the revisionist position that the 'ancient constitution' was based upon an intrinsic insularity which marked English political theory. For Sommerville, James I's philosophies must be grounded in an appreciation of the continental debates which deeply interested, which sometimes even preoccupied, the king and argues, as counterpoint, that in matters of political discourse the king was scarcely stimulated (and perhaps even bored) by the common law. Above all, Sommerville advances the proposition that James squarely understood the politically dangerous ramifications of the contractual theories of politics supported by many leaders of the Commons and some common lawyers.[22]

7.2 The `Whig Interpretation'

> "We owe it to this system [the Inns] that the common law was able to withstand the triumphal march of the Roman law in the period of the reception, when, as Maitland puts it, the three R's, Renaissance, Reformation, and Reception swept over western Europe. To it we owe

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21 Russell, C., *The Causes Of The English Civil War*, Oxford, Clarendon Press, 1990, p. 145 ff.

22 Sommerville, J.P., "James I And The Divine Right Of Kings: English Politics And Continental Theory" in Peck, L. Levy, *The Mental World Of The Jacobean Court*, pp. 55-70. Cf. Levack, B.P., "Law and Ideology: The Civil Law and Theories of Absolutism in Elizabethan and Jacobean England", in Dubrow and Strier, *op. cit.*, pp. 220-241. See also, more generally, Kenyon, J., "Revisionism and Post-Revisionism in Early Stuart History", *Journal of Modern History*, 64 (1992) 686-699.

nothing less than the common law."[23]

When Pound said this, in his eponymous lectures at Harvard in 1944, the present was certainly safer and the future looked somewhat brighter than it had to Rand who, just two years before, spoke of "the blackness of our days".[24] For Rand, writing in 1942, shortly before the Allied victories which turned the tide of the Second World War later in that year, there was a real threat to the survival of his cultural and intellectual heritage. But there was still hope in: "...the background of a Golden Age, now hidden by a strange mirage, but soon destined to shine forth with a new brightness."[25] Optimism and continuity are common features to that brand of history which Butterfield has called "the Whig interpretation".[26] In this version of

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23 Pound, R., "What is a profession? The Rise of the Legal Profession in Antiquity" and "The Legal Profession in the Middle Ages", *Notre Dame Lawyer*, 19 (1944) 203 - 244 at p. 244.

24 Rand, E.K., "Renaissance, why not?", *Renaissance*, 1 (1943) 29-42 at p. 39.

25 *id.*, p. 42. This kind of nostalgic exuberance reached its melodramatic climax with Rowse, *op. cit.*, particularly in his second chapter - entitled "The Elizabethan Discovery of England". Its traces are still perceptible, although expressed very differently, half a century later: see Helgerson, *op. cit.*, pp. 67-69.

26 Butterfield, H., *The Whig Interpretation of History*, New York, Norton, 1965. A good example is the approach of Dow: "Half a century has passed since Carlyle declared that puritanism was the last of our English heroisms. It is only at a time when the mind of a people is strung to higher tension by civil and social difficulties, so great as to threaten destruction, that isolated spirits among its individuals search more intently into the promise which the present contains, and consolidate their faith in that promise into an ideal. Then, however, thought can outstrip mechanical processes and leap to an invention. The normal activity of social thought is quickened to a degree that frequently renders a clear

history the law, or rather *the* common law, played a central role. The myth of the immutable law of the nation, through its unique process of judicial discovery, was at one and the same time an image of the gentle realisation of liberty and the guarantee of constant justice.[27] This is Hexter's eloquent rendering:

> "It fits well into a time-honored pattern of historical explanation. It may be but one more note in that running-down-the-scale of feudalism which, played contrapuntally with the ascent of the middle class, is taken to be the all-sufficient explanation of practically everything that happened in Europe for seven hundred years."[28]

The role of legal history was thus to trace the unfolding of freedom in England. The preferred method was that which had proven so successful for the natural scientists,

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judgment of the contents of the present equivalent to a prophetic forecast of the capacity of the future. If, in spite of this, progress moves slowly in sinuous courses, we have to bear in mind that every age, like every individual, while superior to its worst elements is inferior to its best. The aggregate of the practical forces which carry on the progressive movement is inferior to that right 'vision' of the world' which implies a more profound insight into the accomplished present. The age, therefore, continues its own doubling, twining, and frequently retrograde motion until finally, after a long interval, its serpentine movement in the 'upward trend of progress' brings it round into close proximity to a previous point of departure. At this hour we are close to the ideals of two centuries and a half ago." Dow, J.G., "The Political Ideal Of The English Commonwealth", *English Historical Review*, 6 (1891) 306-330 at 306.

27 Pocock, *op. cit.*, pp. 30-31.

28 Hexter, *op. cit.*, p.2.

namely positivism, as though the constitution was an organic phenomenon.[29]

The Whig interpretation is summarised by Burrow: "Whig history that earns the name is, by definition, a success story: the story of the triumph of constitutional liberty and representative institutions."[30] It is, of course, teleology and anachronism *par excellence*.[31] In this framework Archbishop Parker's Anglo-Saxon studies, for example, are to be understood as being aimed at establishing the "English" credentials of the Church in a time when, in Burrow's words, "England was in a sense withdrawing into a proud, defensive insularity". To linger on the example, this task was continued by Camden's association of the Saxon heritage with freedom, and the destruction of Geoffrey of Monmouth's Brutus myth.[32] In fact by the late eighteenth century the interest in the unique Englishness of Anglo-Saxon history had

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29 Merton, *op. cit.*, at p. 591 ff and Pocock, *op. cit.*, pp. 31-32. The writing of Pollock exemplifies this approach: Pollock, "The History of the Law of Nature: A Preliminary Study", "The Science of Case Law" and "Reason and Conscience in Sixteenth-Century Jurisprudence".

30 Burrow, J. W., *A Liberal Descent: Victorian Historians and the English Past*, Cambridge, Cambridge University Press, 1981, p. 3.

31 Blaas, *op. cit.*, pp. 196-236. A rather good example, and one not devoid of an emergent critical perspective, is to be found in the published form of Barbour's lecture notes: Barbour, W., "The Meaning of Legal History", *Columbia Law Review*, 22 (1922) 693-705.

32 *id.*, p. 109. Geoffrey of Monmouth, *The History of the Kings of Britain*, London, Penguin, 1966. See also Ferguson, *Utter Antiquity*, p. 136 and cf. Carley, *op. cit.*, at p. 94.

become to some degree "racialist . . . fanciful and ephemeral".[33] The extreme position, what we might call the Aryan or the Gothic interpretation, attributed solid Germanic antecedents to every English institution and thus traced the growth of liberty along a continuous and ever improving national path. Burrow notes that Freeman could even include the Normans with the `Aryans' (because of their Scandinavian origins).[34] This more radical interpretation has been scrutinised by Kliger who has concluded, persuasively, that the "Gothic" heritage argument is none other than the archetype of the sovereignty of Parliament argument.[35]

However, not all of the aspects of this more extreme version of Whig history should be dismissed at once. This interpretation, as we have seen, had its own precursors. For the members of the Society of Antiquaries the rediscovery of England's ancient folkmoot was, according to Kliger "a symbol and embodiment of ordered democratic life" and their own work the "legacy and the inspiration...measured in an anthology or primer of Gothic ideas" (the "Discourses") to be followed by future generations of scholars.[36] Is this an accurate connection? Dodderidge certainly appears to substantiate the interpretation where he states in one

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33 Burrow, *op. cit.*, p. 116.

34 *id.*, pp. 189-192. See also Butterfield, *op. cit.*, p. 32 and Pocock, *op. cit.*, pp. 56-58.

35 Kliger, *op. cit.*, pp. 112-119.

36 *id.*, pp. 119-121.

of the "Discourses" that the Saxons convened legislative assemblies which survived the Danish and Norman invasions:

> "Now that substance, and forme of Parliamentary Assemblies went all along the Saxon age, held during the incursion of the Danes, and was continued by the Conqueror in part."[37]

Tate's lineage was even more ancient: the idea of a British (pre-Saxon) "gemote":

> "But the Assembly of the three Estates to consult for the affairs of the Commonwealth is as ancient as the Britains, and continued here in the time of the Saxons, Danes, and Normans."[38]

Notwithstanding this apparent connection to the antiquaries, the Gothic interpretation must not be allowed too much latitude. Croft's interpretation of the political significance of Dodderidge's paper on the pre-Norman origins of Parliament is

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37 Ayloffe, *A Collection of Curious Discourses...,* (1773 ed), II, 10-11.

38 *id.,* II, 65. Cf. Spelman's later, but still opaque, view: "To Tell the Government of England under the old Saxon laws seemeth an Utopia to us at present; strange and uncouth: yet there can be no period assigned, wherein either the frame of those laws was abolished, or this of ours entertained; but as Night and Day creep insensibly, one upon the other, so also hath this Alteration grown upon us insensibly.": Spelman, Sir H., *Reliquiae*, 1698, "Of the Ancient Government of England", p.49. See Parry, *op. cit.*, pp. 177-179.

overstated. Her interpretation fails to account for the fact that the probable timing of the paper's delivery was at the meeting of the third of November, 1600 - some years before the more heated events which, it is claimed, contextualise the political importance of the piece.[39] The key lies in Kliger's words:

> "Repeated reference to the anthology [the "Discourses"] in the latter part of the century indicates its usefulness in disseminating knowledge of the golden age of freedom in England's past."[40]

The point is this: the ingenuous and unrefined work of the Society was later appropriated by others whose aims were to demonstrate a distinctive and immutable English constitution.

The mainstream of Whig history certainly sought to depict the constitution of the nation as ancient. The Saxon settlement was an historically credible 'national act'. But, as Burrow confirms, there were two difficulties with this account. There was the enduring problem of the possibility of an enormous discontinuity created by the Norman Conquest. There was also the disquiet in the acknowledgement that

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39 Croft, P., "Sir John Dodderidge, King James I, and the Antiquity of Parliament", *Parliaments, Estates and Representation*, 12 (1992) 95-107.

40 Kliger, *op. cit.*, p. 121. See also Orth, J.V., "Did Sir Edward Coke Mean What He Said?", *Constitutional Commentary*, 16 (1999) 33-38.

Saxon polity had become increasingly "feudal" even before the Conquest.[41] On this issue strictly legal opinion might be double-edged and not necessarily helpful:

> "Stubbs' and Freemans' disparagement of lawyers had two targets, closely related: their historic role and their allegedly characteristic and, in the study of history, incapacitating inclination to system and definition. As Stubbs put it, 'The essence of the historical study is in the working out the continuity of the subject, while the essence of the legal study is in the reducing of it all to certain theoretic principles.' Theoretic principles, once applied, prove to exhibit, moreover, their usual affinity with despotism. It seems to have been something like a tradition among English lawyers themselves to speak of 'the chicanes and subtleties of Norman Jurisprudence' - the phrase is Blackstone's - as the accomplice of tyranny.[42]

Be that as it may, the two real problems for the Whig interpretation were essentially questions of feudal law. Before the Society of Antiquaries, French humanist jurists had given much consideration to the enigma of feudalism and attributed to the

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41 Burrow, *op. cit.*, pp. 126-127 and Pocock, *op. cit.*, p. 42 ff. See also Blaas, *loc. cit.* and at pp. 51-110, Liebermann, F., *The National Assembly in the Anglo-Saxon Period*, New York, Franklin, 1913 and Hollister, C.W., "The Irony Of English Feudalism", *The Journal Of British Studies*, 2 (1963) 1-26.

42 Burrow, *op. cit.*, p. 133.

phenomenon classical foundations.[43] The members of the Society were also genuinely interested in this area and the correlative question of the heritage of Parliament. From the meeting of the Society concerning the topic "Of the Antiquity of Parliaments in England" seven manuscript records survive. The opinions, briefly summarised, basically held that the Parliament was an "ancient" institution, certainly pre-Norman.[44] Evans notes that these views were later taken up and exaggerated by Parliamentarian lawyers, especially Coke.[45] However, Evans also discerns a significant degree of caution and circumspection in the way the topic was dealt with by its antiquarian authors, who were fearful of royal irritation.[46] Verstegan was certainly somewhat equivocal:

> "King William having thus obtained the crown, did according to his promise reward [his followers]... dispossessing and thrusting out ... And had it not been that the Conqueror knew not else how gratify and reward his principal friends and followers, and so of necessity was

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43 See Kelley, D.R., "*De Origine Feudorum*: The Beginnings of an Historical Problem", *Speculum*, 39 (1964) 207-228.

44 Ayloffe, *A Collection of Curious Discourses...*, (1773 ed), I, 281-310.

45 Evans, "Of the Antiquity of Parliaments in England: Some Elizabethan and Early Stuart Opinions", *op. cit.*, pp. 209-210. See also Zagorin, P., "The Political Beliefs of John Pym to 1629", *English Historical Review*, 109 (1994) 867-890 at p. 882.

46 Evans, "Of the Antiquity of Parliaments in England: Some Elizabethan and Early Stuart Opinions", p. 207.

enforced unto this course..."[47]

Thus Evans finds the counterbalance, to later (parliamentary) embellishment, in the words of Spelman:

> "When States are departed from their original Constitutions and that original, by tract of time worn out of memory, the succeeding Ages viewing the past by the present, conceive the former to have been like to that they live in, and framing thereupon erroneous propositions do likewise make thereon erroneous inferences and conclusions".[48]

This estimate of Spelman is telling, and it effectively neutralises the temptation to directly associate these Elizabethan scholars with the political writers of latter periods who appropriated their work. An indirect association nevertheless, it is submitted, is both permissible and helpful. It was totally reasonable that the legal antiquarians should have been interested in the origins of Parliament and questions of feudal law. Contemporary political matters typically inspire the aims and make-up of

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47 Verstegen, R., *A Restitution of Decayed Intelligence: In Antiquites. Concerning The Most Noble And Renowned English Nation*, Antwerp, Bruney, 1605, pp. 178-179. See Parry, *op. cit.*, pp. 49-69. See also Sommerville, J.P., "History and Theory: The Norman Conquest in Early Stuart Political Thought", *Political Studies*, 34 (1986) 249-261.

48 Spelman, H., *Reliquiae* (1698), p 57. See Evans, "Of the Antiquity of Parliaments in England: Some Elizabethan and Early Stuart Opinions", p. 210.

legal research. It is also natural that the interpretations of the distinguished members of the Society should have been employed and perhaps distorted in their immediate future for political propaganda. The relationship between politics and research, especially in the human sciences, is symbiotic.[49]

Pocock's *The Ancient Constitution and the Feudal Law*, first published in 1957, explained the origins and extent of politically motivated retrospective legal historiography.[50] Taking Coke as an agent Pocock demonstrates that the magnetism for lawyers and politicians, of a theory which provided a basis for an `ancient constitution' without the need for the laws to be subject to a sovereign, was tantalising.[51] To admit the significance of the Conquest became, eventually, to admit that the King had once been (and must therefore still be, at least in theory) an absolute monarch - and this conclusion came to be resisted for clear-cut political reasons. As Pocock notes however, this interpretation of history was not unique to Coke, nor was it an immediate response to the stance of James I. It rested upon intellectual traditions which permeated the whole development of law and history in

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49 White, *op. cit.*

50 Pocock, *op. cit.*

51 *id.*, p. 51 ff. On this aspect of Coke see also Ferguson, *Clio Unbound*, pp. 266-276 and Woolf, D.R.,*The Idea of History in Early Stuart England: Erudition, Ideology and `The Light of Truth' from the Accession of James I to the Civil War*, Toronto, University of Toronto Press, 1990, pp. 24-29.

England.[52] This approach has more recently been the subject of further analysis by Hughes. She makes the important point that claims of traditionalism were not the preserve of any particular contemporary faction, but were commonplace.[53] A deconstruction of the Whig interpretation, if nothing else, explains to some degree why there has been dispute over the chronology and membership of the Society. The enticement to include Archbishop Parker (at one temporal extreme) and John Selden (at the other) as members, in a version of history which seeks to stress continuities and successful social evolution, is that they *should* have been members. In the long accomplishment which was the history of England such distinguished connections could enhance the prestige of the Society and demonstrate its part in the inexorable procession to the present.[54] There is perhaps a further advantage in Whig critique, in its revelation of a theoretical connection between Whig historiographical practice and the common law approach to history. Whig historiography has its own brand of the `immutability' doctrine of the common law. It is evident in the appropriation of pre-Whig scholars' writings into the Whig genealogy:

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52 Pocock, *op. cit.*, p. 68 and Woolf, *The Idea of History in Early Stuart England*, p. 19 ff. See also Brand, P., "`Time Out Of Mind': The Knowledge And Use Of The Eleventh- And Twelfth-Century Past In Thirteenth-Century Litigation", *Anglo-Norman Studies*, 16 (1993) 37-54 and cf. Ziskind M.A., "John Selden: criticism and affirmation of the common law tradition", *The American Journal Of Legal History*, 19 (1975) pp. 22-39.

53 Hughes, *op. cit.*, pp. 79-82.

54 Ferguson's legal antiquarian lineage is more fractured, less celebratory, but still a kind of sequence: Ferguson, *Clio Unbound*, pp. 259-311. It is, on balance, a good compromise between critique and narrative.

"When the history of English legal science comes to be written - as some day it will be - the 'legal antiquaries' of the earlier half of the seventeenth century will receive that attention which they merit. Too apt are we to-day to forget these earlier historians of law and to fancy that only in our own time have scholars seriously turned their attention to the tracing of English legal development. It was these earlier scholars - Camden, Cotton, Spelman, Hale, Selden, and others like them - who laboured at the founding of a school of English legal history; and upon their labours all subsequent centuries have built. Clear discernment of the value of legal historical studies and effective work in the sources themselves, so characteristic of the antiquaries of three hundred years ago, formed a scholarly tradition that has lasted from that day to this. Though the chiefest fruits of that tradition have come to us in our own age in the treasured works of such legal historians as Stubbs and Maitland and Ames, we do well to remember that the glory of inaugurating this tradition of sound and useful learning in the records of England's legal past belongs not to the later, but to the earlier scholars."[55]

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55 Hazeltine, *op. cit.*, pp. 218-219.

8. Conclusion

The intellectual environment of the Elizabethan Society of Antiquaries, "Renaissance humanism", if such a label is at all useful, was one which was underscored by what has, for the most part accurately, been described as a rebirth of critical thought. The period has also been noted for the novel application of systematic method to the undertakings of philological and historical research. It was found, however, that former examinations of the group highlighted its significance in the production of literary and historical knowledge. What has been overlooked, by many writers, is the significance of the fact that nearly all of the members of the Society were lawyers. It was this common legal experience which shaped the character and interests of the group as a whole.

In Chapter 2 some questions of method were considered in order to situate the study of legal history. It was noted that some disciplines, or sub-disciplines, within the humanities and social sciences maintained, or attempted to maintain, "traditional" scientific methods of enquiry. Other disciplines were much less attached to the "traditional" scientific premise and were shown to proceed, "qualitatively" or "interpretatively", by looking at self-consciously constructed relationships in society. Notwithstanding differences in specific methodologies, as a general proposition, the human and social sciences were found to aspire to institutional assurance by adopting

fundamental rules for the regulation of knowledge production. It was submitted that the disciplinisation of areas of study in the human and social fields was in no small part due to this productive necessity. As such it was observed that law and history essentially addressed the same objects of study and had many particular methodological similarities. Both disciplines, therefore, were characterised, by the subordination of an interpretative component of analysis to more rigid rules of "evidence". However, to a much greater degree than the discipline of history, the study of law was seen to closely model the positivist paradigm of the physical sciences. It was noted that this phenomenon was especially pronounced in England for a number of characteristically local reasons. It was also noted, for many of the same reasons, that the study of history developed in England along more overtly interpretative lines. This aspect of the cleavage between law and history was revisited and dealt with in more detail in Chapter 7. As a result the hybrid sub-discipline of legal history was demonstrated to have suffered a certain degree of institutional marginalisation. Like other kinds of interdisciplinary studies, legal history has been hampered by the lack of its own, unique, core methodology. To some extent, therefore, this thesis has attempted to combine elements of both historical and legal analysis.

In accordance with the abovementioned aims, the essence of the following (third) chapter was to furnish the reader with a contextual matrix in which some of the detailed and precise analyses contained in the subsequent chapters might be

positioned. The chapter was the most deliberately "historical" aspect of the work. An appraisal of the demographics, economics and technologies of late Elizabethan England attempted to situate particular events within a broad societal and historical framework. The resulting description of social structures assisted in establishing the background for the period of history with which the thesis was concerned. The historical practice of periodisation was nonetheless subjected to critique: in particular, in relation to the association between the significant labels "Renaissance" and "humanism". These descriptive terms were found to be of some utility in understanding historical events. The social landscape of late sixteenth century England was shown to be one which included an intellectual tradition derived from continental humanism. For English scholars there was much to extend upon. In particular, Bodin's historical evaluations of governmental and legal systems influenced certain English lawyers. Yet in the face of this new and discriminating tradition it would be fair to say that the majority of English lawyers were resistant to change. Factors such as the respect of practitioners for the conventions of the legal system and lawyers' social and economic status meant that the French model was often seen as inappropriate and possibly dangerous. The unique system of English legal education contributed to this climate. It was in the Inns of Court where much contemporary English academic enterprise encountered the more profound technological, social and economic phenomena of the "Renaissance".

Building upon the methodological and historical foundations of the preceding

chapters the thesis proceeded to an examination of the immediate object of enquiry: a "group" known as the Elizabethan Society of Antiquaries. The matters which required initial attention were: whether the Society "existed" at all and whether it was possible to assign precise dates to its formation and its meetings. A survey of materials, from direct or "primary" sources to the most recent commentaries, was conducted in order to provide some answers to these preliminary questions. The principal function of Chapter 4 was the classification, textual analysis and interpretation of the available documentary evidence relevant to the Society. A small, but significant, class of primary evidence attested conclusively to the existence of the Society, specifically the Cotton Petition, Spelman's *Occasion* and Norfolk Record Office List and miscellaneous autograph manuscripts of "discourses" presented at meetings. It was also found that the Elizabethan Society of Antiquaries met regularly, from about 1584-1586 until about 1607-1608. It was also acknowledged that while the Society attracted little attention for some centuries after its demise, that utilising the diverse categories and attributes of available evidence, twentieth-century research has (with varying degrees of success) manifested a renewed interest in the topic.

The question of whether it was possible to positively identify the members of the Society was one which could be answered, essentially, by that foregoing process of textual analysis. The forty identifiable members were Arthur Agard, Robert Beale, Henry Bourchier, Robert Bowyer, Richard Broughton, William Camden, Richard Carew, Anthony (or John) Cliffe, William Compton, Sir Walter Cope, Sir Robert

Cotton, Sir John Davies, Sir William Dethicke, Sir John Dodderidge, Thomas D'Oyley, Sampson Erdeswicke, William Fleetwood, William Hakewill, Abraham Hartwell, Michael Heneage, Joseph Holland, William Jones, Sir Thomas Lake, William Lambarde, Francis Leigh, Sir James Ley, Arnold Oldisworth, William Patten, Sir Richard St. George, Sir Henry Savile, Sir Henry Spelman, John Stow, James Strangeman, Thomas Talbot, Francis Tate, Francis Thynne, Hayward Townshend, Robert Weston, Sir James Whitelock and Thomas (or George) Wiseman.[1] However, in order to expand upon the resulting bare list of names, to say something meaningful about the group's membership, required a different approach. Because this specific object of study was the examination of a small group it was necessary to employ a method appropriate to that purpose. The prosopographical method was utilised in order to expose meaningful connections between, and (where verifiable) ascertain some of the influences upon, individual group members. After referring to the relevant documentary evidence for membership, each identifiable member's individual biography contained in Appendix 1 sought to make the one vital association, that of a legal vocation and historical curiosity, which (it was proposed) explained the group's essence. Naturally that connection was more readily demonstrated for some than for others. Contrary to some modern opinions, it was revealed that the Society's disposition was very much a legal one.

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[1] The only possible addition to this list was Launcelot Andrewes.

The prosopographical method was pursued in Chapter 6, albeit with a certain degree of apprehension, in order to attempt to consolidate upon the discernable legal propensity and to further describe the characteristics of the Society. It was noted that one of the defining features of a group, an element reinforcing a shared feeling of identity, is a cluster of characteristics common to all or most members. Chapter 6 scrutinised the most notable experiences which group members shared. The demonstrable correspondences in members' social status, membership of Parliament, public service and heraldry manifest significant levels of group cohesion. It was also noted that the "group enterprise", attendance at regular meetings and the presentation of research papers as part of an agreed system of investigation, also strengthened group cohesion. However, it was concluded that if there was to be a single trait which could be considered as the most significant common feature amongst members then it was legal experience.

In the "discourses" themselves there was a clear partiality for the exploitation of primary source materials. The antiquaries emphasised those "monuments" which they had unearthed as first-hand proofs concerning particular topics. The papers were also marked by a preference for exclusively English resources. Both of these features appear to have been the result of a conscious understanding amongst members. There are only a few examples of deviation from this plan. So while the "discourses" were dense in terms of detailed English material, they were frequently imperfect in terms of profound reflection and were limited, at least in part, by an almost prosaic English

parochialism.

The demise of the group was part of Spelman's brief account in his *Occasion*. Amongst other things he mentioned the members' removal to the counties in order to attend to duties connected with land holdings. This explanation was found to be unverifiable. It was noticed that many members did in fact continue vigorous and productive careers which required at least periodic domicile in London after 1608. It was proposed that considerations of the membership's collective age and death more accurately explained the cessation of the group. It was also speculated that political pressure may have contributed, either directly or indirectly, to a desire amongst the members to withdraw from activities which might be perceived as controversial. Those who sought to unravel the kind of "secrets" of State about which James I wrote and spoke, like Dr Cowell, might not unreasonably foresee magisterial retribution. In a period of growing strains between the King and the emerging bourgeoisie there was most probably much significance in Spelman's equivocal statement about the King's "little Mislike" of the group.

With the termination of the group as its starting point, Chapter 7, the final substantive chapter of the thesis, consisted in large of a return to methodology and historical contextualisation. While conscious of the pitfalls of teleology, the chapter attempted to recount some of the conflicts which, taken as a whole, may be said to take the reader from the date of the cessation of group meetings to the threshold of

the revolution. As such, the term "revolution" itself was subjected to some examination. Questions of teleology aside, the period was shown to be one in which the institution of the law and role of lawyers occupied pivotal yet precarious positions. It was a time when the law, and ultimately its history, became enmeshed with conventional politics. Beyond the 1640s, and thus after the death of even the youngest of the members of the Society, this approach to the aftermath of the Elizabethan Society of Antiquaries highlighted a great deal of the intellectual heritage which has infused the establishment of the disciplines of law and history in England. The critique of the "Whig interpretation", undertaken in the closing section of the chapter, makes intelligible an abstract alliance between "Whig" historiographical conventions and the common law understanding of history. In the demonstrable appropriation of some of the antiquaries' writings into the Whig descent many of the acute methodological weaknesses of English legal history were observed.

The qualifications of the members of the Elizabethan Society of Antiquaries as lawyers has been the nucleus of this thesis. As lawyers the members' abilities in the specialised techniques of textual research and interpretation, in the evaluation of evidence and in the presentation of opinions bolstered by study enabled the group, as a collective, to explore areas of legal and institutional history in a way which had not been undertaken previously (at least in England). The approach of the Society had much in common with the methods of humanist research which had quite recently

met with much success on the continent and particularly in France. The legal bias of the group also had its limiting factors on research, for instance an adherence to the fixed abstraction of the "legal record". There was similarly little appreciation by members of interpretative practices, such as a more critical handling of "facts", which might have lead to more profound levels of analysis and understanding in an historical sense. Those limiting factors though, it is fair to say, remain evident in much twentieth century legal historiography.

Appendices

1.	**The Identifiable Members**	**239**
2.	**Note on 'the Disciplines'**	**293**
3.	**The Curious Discourses**	**230**
4.	**The Cotton Petition**	**310**
5.	**Spelman's 'The Occasion'**	**315**
6.	**British Library Stowe MS 415, ff. 85-86**	**318**

Appendix 1 - The Identifiable Members

For the period in general, and for some of the members in particular, the biographer faces an embarrassment of riches in source material. While there is clearly little recoverable data concerning many of the members (so designated) of the Society for others, like Camden, Cotton, Dodderidge, Lambarde and Spelman, the problem for the biographer is one of legitimate exclusion. As an example of the methodological problems associated with any prosopographical undertaking there exists for the Society of Antiquaries the particular problem of abundance about which Powicke wisely cautioned in reference to Sir Henry Spelman.[1] After citing the

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[1] "Spelman's life has never been written, nor, if his biographer is to enter into it fully, has the time yet come to write it. Indeed, I doubt if any one would be adequate to the task who had not so far mastered the learning and intellectual interests of the age as to be able to deal alike with Spelman, Selden, Prynne, and a score of other scholars, from the great Camden onwards. Even if he were to confine himself to a study of these scholars as explorers of our history in what Selden calls 'the middle times', their biographer would have to cope with a bewildering and elusive series of aspects of his fascinating theme: the distribution of manuscripts, the state of the public records, the daily intercourse of men discussing and lending books and manuscripts to each other, the correspondence with foreign scholars and the helpful or distracting influence of foreign learning upon the Englishmen's minds; the perplexing interplay of political and ecclesiastical interests with historical inquiry, and the intercourse with the court, counsellors, lawyers, bishops, and a crowd of men, who, by their curiosity about the historical interpretation of the present, would have been remarkable in any age. Over and above all this, and still more difficult to recapture, was the intellectual atmosphere breathed by these men. The range of their reading is well-nigh incredible to us, who have been trained in a narrower discipline. An hour or so spent with a work

relevant evidence for membership, the following sections essentially attempt to make the one significant connection, that of legal career and historical interests, which defines the group's focus. Naturally that connection can be demonstrated more easily for some than for others, the normal result of the prosopographical method.

Arthur Agard[2] (1540 - 1615)

Aside from Gough's vague comment, that Agard was "bred to the law"[3], There is an admission entry for Arthur Agard to Gray's Inn on the 5th of August 1608 wherein he is described as one of the Knights of the Treasury Chamber.[4] Schoeck suggests that this entry may mean that Agard was educated at one of the Inns of

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like Raleigh's fragment 'A discourse on Tenures' is enough to show how exhilarating, and how dangerous, this reading was. It offered invitations to the comparative study of institutions and languages, but it held no thread of guidance in that vast labyrinth, and deluded men into the belief that they had mastered knowledge. It tempted them to an indiscriminate riot in learning or to that happy surrender to omniscience which, in the *Anatomy of Melancholy*, is so complete that the very surrender ends in triumph. Yet the critical spirit was born and bred in this nursery of learning; it was no untutored infant of the wild, neatly trapped by the Baconian method.": Powicke, F.M. "Sir Henry Spelman and the 'Concilia'", *Proceedings of the British Academy*, 16 (1930) 345-379 at 349-350.

2 Evidence for membership: Stowe MS 1045; Hearne, T., *A Collection of Curious Discourses Written by Eminent Antiquaries upon Several Heads in our English Antiquities*, Oxford, 1720; Bodley MS *Ashmole* 763, fol. 7; Spelman's list in the Norfolk Record Office MS 7198; William Burton's autograph list on fly-leaf of Weever's *Ancient Funerall Monuments*; and Thomas Smith's list, published in "Vita....Roberti Cottoni", *Catalogum*, Oxford, 1696, p. viii.

3 Gough, *op. cit.*, p. vii.

4 Foster, J., *The Register Of Admissions To Gray's Inn, 1521-1889*, London, Hansard, 1889, p. 117.

Chancery, which would accord with Van Norden's indication that Agard had a civil law background.[5] Agard also had a legal/bureaucratic career in the Exchequer as a Clerk of the Exchequer, Keeper of the Exchequer Records and, from the eleventh of July 1603, as a Deputy Chamberlain of the Exchequer.[6]

Lancelot Andrewes[7] (1555 - 1626)

The membership of Lancelot Andrewes, a distinguished clergyman, is relatively doubtful. The evidence is slender, being the dubious letter paraphrased in latin by Thomas Smith.[8] The only real circumstantial evidence lies in the fact that Andrewes taught Greek and Hebrew at the Westminster School where he cannot have failed to have been associated with Camden. He may, therefore, have lectured Cotton. Andrewes certainly consulted with James Whitelock's tutor in Greek and Hebrew (at St Paul's).[9] The *Dictionary of National Biography* provides lengthy details of Andrewes' distinguished career as a preacher, prelate and writer but does

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5 Schoeck, "The Elizabethan Society Of Antiquities And Men Of Law", p. 418 and Van Norden, "The Elizabethan College Of Antiquaries", p. 560.

6 Van Norden, "The Elizabethan College Of Antiquaries", p. 560, *Dictionary of National Biography*, London, Oxford University Press, 1917, vol. 1, pp.172-173, Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771, vol. 2 pp. 421-422. and McKisack, *op. cit.*, p. 85 ff.

7 Evidence for membership: Thomas Smith's list, published in "Vita....Roberti Cottoni", *Catalogum*, Oxford, 1696, p. viii.

8 See Van Norden, "The Elizabethan College Of Antiquaries", pp. 165-169.

9 *Liber Famelicus of Sir James Whitelocke*, p. 13.

not mention any connection with the Society.[10]

Robert Beale[11] (1541 - 1601)

Beale was Walsingham's brother-in-law and was, not surprisingly, a prominent Puritan.[12] He was an accomplished diplomat, having served the Crown in Paris in 1564, in the Netherlands from 1589 to 1591, at Boulogne in 1600 and on various other missions. He was also the elected Member of Parliament for Totnes in 1574, for Dorchester in 1584, 1586, and 1599 and for Lostwithiel in 1593. [13] Robert Beale was admitted to Gray's Inn on the 2nd of February 1586-7[14], however it

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10 *Dictionary of National Biography*, pp. 401-405. See also Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771, vol. 2, pp. 422-423 and Lake, P., "Lancelot Andrewes, John Buckeridge, And Avant-Garde Conformity At The Court Of James I", in Peck, L. Levy, *op. cit.*, pp. 113-133. He was apparently connected with Spelman, at least in regards to their mutual interests in ecclesiastical laws and policies: see Parry, *op. cit.*, pp. 168-169 and Powicke, *loc. cit.*

11 Evidence for membership: Spelman's list in the Norfolk Record Office MS 7198; William Burton's autograph list on fly-leaf of Weever's *Ancient Funerall Monuments*; and Thomas Smith's list, published in "Vita....Roberti Cottoni", *Catalogum*, Oxford, 1696, p. viii.

12 Neale,,*The Elizabethan House Of Commons*, p. 198 and Neale, *Elizabeth I And Her Parliaments*, *passim*. Beale was an actor in *Cawdrey's Case*, the ecclesiastical/constitutional controversy of the day, which began in the High Commission and through the courts raged for years: Guy, J., "The Elizabethan Establishment and the Ecclesiastical Polity", in Guy, ed., *The Reign of Elizabeth*, p. 131 ff.

13 Hasler, *op. cit.*, volume I, p. 411, *Dictionary of National Biography*, pp. 3-7 and Van Norden, "The Elizabethan College Of Antiquaries", p. 561.

14 Foster, *op. cit.*, p. 70.

appears that this admission was merely honorary.[15] Schoeck also notes that Beale was Secretary to the Queen's Council in the North,[16] to this may be added a number of other important offices: clerk of the Privy Council (from July 1572)[17]; acting secretary of state during the absences of Walsingham (in 1578, 1581 and 1583); deputy governor of the mines royal (1580-1595); and Justice of the Peace for Durham and Westmorland.[18] In 1592, two years after Walsingham's death, Beale was the author of a treatise about his patron's unique "office" entitled "A treatise of the office of a counsellor and principal secretary to her Majesty", apparently for the benefit of Sir Edward Wotton who expected at that time to succeed the master diplomatist.[19]

Beale's contact with Europe began early: as a young man Beale was a Marian exile and he studied logic, rhetoric and Greek at Zurich. If not shortly after his return to England on the accession of Elizabeth, it also seems that it was on the continent

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15 Schoeck, "The Elizabethan Society Of Antiquities And Men Of Law", p. 418, but see Hasler, *op. cit.*, volume I, p. 412.

16 Schoeck, "The Elizabethan Society Of Antiquities And Men Of Law", p. 418.

17 From which he was suspended for four years in 1593 owing to the Queen's displeasure towards his ultra-Puritan position: Guy, J., "The Elizabethan Establishment and the Ecclesiastical Polity", in Guy, ed., *The Reign of Elizabeth,* pp. 136-138 and 143-144.

18 Hasler, *op. cit.*, volume I, p. 412.

19 See Read, C., *Mr. Secretary Walsingham and the Policy of Queen Elizabeth*, 3 volumes, Oxford, Clarendon Press, 1925, volume 1, pp. 423-443.

that Beale studied civil law.[20]

Henry Bourchier[21] (? - 1598)

The legal career of Henry Bourchier is comparatively well documented, and yet recent treatments have given rise to some confusion. Van Norden records that Bourchier was admitted to the Inner Temple on the 24th of June 1576, became an utter barrister in 1592. Schoeck adopts this chronology and adds that Bourchier was called to the bench in 1596 and became Lent Reader in 1597.[22] Hasler's *History Of Parliament* gives different dates: admission to the Inner Temple in 1574; called to the bar in 1584; a Bencher in 1596 and Lent Reader in 1598.[23] The Inner Temple Records reveal no admission of any Bourchier in 1574 (or thereabouts), however he was certainly admitted not later than 1576 because on the date which Van Norden records as his admission his interest in certain rooms was recorded as being transferred to another.[24] The Records also note, on the 7th of May 1592, Bourchier as

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20 *Ibid.*

21 Evidence for membership: Ayloffe, J., ed., *A Collection Of Curious Discourses...*, 2 volumes, London,1771; William Burton's autograph list on fly-leaf of Weever's *Ancient Funerall Monuments*; and Thomas Smith's list, published in "Vita....Roberti Cottoni", *Catalogum*, Oxford, 1696, p. viii.

22 Van Norden, "The Elizabethan College Of Antiquaries", p. 561 and Schoeck, "The Elizabethan Society Of Antiquities And Men Of Law", p. 418.

23 Hasler, *op. cit.*, volume I, pp. 459-460

24 Inderwick, F.A., ed., *A Calendar Of The Inner Temple Records*, 3 volumes, London, Masters Of The Bench, 1896-1901, volume I, p. 284.

an utter barrister, having been called to the bar on the 9th of February 1584.[25] He was called to the bench on the 2nd of May 1596 and was nominated Lent Reader on the 3rd of November 1597.[26]

Bourchier was a close kinsman of Robert, second Earl of Essex, who assisted with his entry to Parliament. As a member Bourchier represented Stafford in the Parliaments of 1589, 1593 and 1597.[27]

Robert Bowyer[28]

There appears to have been longstanding confusion concerning the person Hearne calls "Mr. Bowyer".[29] Van Norden lists Robert Bowyer as a civilian and also as a member of the Inner Temple.[30] This does not accord with Schoeck's listing which focusses on William Bowyer who was admitted to the Middle Temple in 1553 and was later (in about 1564) Keeper of the Records of the Tower. Schoeck continues (somewhat equivocally), that William was the father of Robert Bowyer

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25 *Id.*, p. 382 and 329.

26 *Id.*, pp. 412 and 419.

27 Hasler, *op. cit.*, volume I, p. 460, Neale, *The Elizabethan House Of Commons*, pp. 237-238 and Neale, *Elizabeth I And Her Parliaments*, p. 363.

28 Evidence for membership: Stowe MS 1045; Bodley MS *Ashmole* 763, fol. 7; Spelman's list in the Norfolk Record Office MS 7198; and William Burton's autograph list on fly-leaf of Weever's *Ancient Funerall Monuments*.

29 Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771, vol. 2, p.424.

30 Van Norden, "The Elizabethan College Of Antiquaries", p. 562.

"also of the Middle Temple, who later (about 1604) shared the keeping of the records in the Tower".[31] This Robert is presumably Van Norden's Mr. Bowyer, who she records as being the Clerk of Parliament in 1609. [32] The confusion is understandable, with none of the primary or secondary evidence providing a first name for this candidate. There are numerous Bowyers listed in Hasler's *History Of Parliament*, most called either Robert or William, and most of these from the same family from Chichester. There was, to add to the confusion, another prominent family of Bowyers from Knypersley amongst whom there were also some Roberts and Williams.[33]

The most likely candidate is Robert Bowyer (died 1622) son of William (died 1569/70) of the Chichester Bowyers. Schoeck's nomination cannot be correct given the date of William's death. If this is the case then Van Norden's nomination is the most nearly correct, but she errs in attributing this Robert with membership of the Inner Temple[34]: He was admitted to the Middle Temple in 1580 after being at Clifford's Inn since the previous year and Oxford before that. Robert Bowyer was called to the bar on the 17th of October 1589.[35] He was Keeper of the Records in the

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31 Schoeck, "The Elizabethan Society Of Antiquities And Men Of Law", p. 418.

32 Van Norden, "The Elizabethan College Of Antiquaries", p. 562. Gough, *op. cit.*, p. vii is equally unsure of the precise identity of Mr. Bowyer.

33 Hasler, *op. cit.*, volume I, pp. 471-476.

34 There is no Bowyer recorded in the Inner Temple Records for this period, save one "Thomas Bowyer" who is briefly mentioned as a member of the Middle Temple: Inderwick, *op. cit.*, volume I, p. 389.

35 Martin, C.T., ed., *Middle Temple Records*, 4 volumes, London, Masters Of The Bench, 1904-1905, volume I, pp. 234 and 236-7 and Sturgess, H.A.C.,

Tower from 1604, and Clerk of Parliament from 1609/10 (having previously been returned as a Member for Steyning in 1601 and for Evesham in1605).[36]

Richard Broughton[37] (1542 - 1604)

The History Of Parliament and Van Norden record that Richard Broughton was admitted to the Inner Temple in 1567/8.[38] However in the *Calendar of Inner Temple Records* there is merely a record of him being readmitted to commons on the 28th of January 1581-2.[39] Schoeck notes that Hearne's collection describes him as a

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ed., *Register Of Admissions To The Honourable Society Of The Middle Temple*, 3 volumes, London, Butterworths, 1949, volume I, p. 47. Clendenin appears to err only in Bowyer's date of admission to Middle Temple, placing it in 1580: Clendenin, *op. cit.*, pp. 262-3 and 328.

36 Willson, D.H., ed., *The Parliamentary Diary of Robert Bowyer, 1606-1607*, Minneapolis, University of Minnesota Press, 1931, p. viii. Robert Bowyer is also the subject of a biography in the forthcoming edition of *The History Of Parliament: The House Of Commons 1604 - 1629*.

37 Evidence for membership: Stowe MS 1045; Hearne, T., *A Collection of Curious Discourses Written by Eminent Antiquaries upon Several Heads in our English Antiquities*, Oxford, 1720; Bodley MS *Ashmole* 763, fol. 7; Stowe MS 1045; Spelman's list in the Norfolk Record Office MS 7198; William Burton's autograph list on fly-leaf of Weever's *Ancient Funerall Monuments*; and Thomas Smith's list, published in "Vita....Roberti Cottoni", *Catalogum*, Oxford, 1696, p. viii. There is only very slim evidence for the additional (or alternative) membership of the clergyman Hugh Broughton (who was also from North Wales and, according to the *Dictionary of National Biography*, "had a brother a judge"): see "Antiquaries of the Time of Queen Elizabeth", *Notes and Queries*, ser. 1, vol. 5, (17 April 1852), 365-366, Van Norden, "The Elizabethan College Of Antiquaries", p. 197 and *Dictionary of National Biography*, pp.1367-1371.

38 Hasler, *op. cit.*, volume I, p.498 and Van Norden, "The Elizabethan College Of Antiquaries", p. 562.

39 Inderwick, *op. cit.*, volume I, p. 318. The Inner Temple connection is confirmed, according to Gough, in Tate's manuscript evidence: Gough, *op.*

student of the Inner Temple and a justice of North Wales, the latter description being close to Van Norden's representation of Broughton as the Second Justice of Chester in 1590. Gough corroborates the North Wales interpretation.[40] All of this is accurate, if not complete, with the Welsh connection having been paved by his position on the council in the marches from 1595. Broughton was Recorder at Tamworth by 1583, deputy Justice in Chester by 1588, second Justice of North Wales from 1594, Vice-Justice in Chester from 1599 and Justice of the Peace for a number of localities in the region over many years.[41]

Richard Broughton was also Member of Parliament for Stafford in 1572 and for Lichfield in 1585, 1589 and 1593. As with Bourchier, he enjoyed the patronage of the (second) Earl of Essex.[42] Broughton was well known as the Earl's attaché and consequently, upon the Earl's fall, he retired from many of his posts.[43]

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cit., p. viii.

40 *Ibid.* and Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771, vol. 2 p.424.

41 Hasler, *op. cit.*, volume I, p. 498.

42 *Ibid.* and Neale, *The Elizabethan House Of Commons* , pp. 237-238, Neale, *Elizabeth I And Her Parliaments*, pp. 295 and 312, Schoeck, "The Elizabethan Society Of Antiquities And Men Of Law", p. 418 and Van Norden, "The Elizabethan College Of Antiquaries", p. 562.

43 Hasler, *op. cit.*, volume I, p. 498.

William Camden[44] (1551 - 1623)

William Camden was admitted to Gray's Inn on the 3rd of August 1592, the register describing him as "qui Brittanniam nostram doctissime illustravit".[45] In 1596 Camden was offered a Mastership of Requests, but refused the post. Camden's other occupations were teaching and heraldry as well as historical and topographical writing. He was Second Master at Westminster School from 1575 and Headmaster from 1593 until 1597. His heraldic career was no less distinguished: Camden was appointed Richmond Herald in 1597 for a single day as a formal step to his appointment as Clarencieux King-at-Arms.[46]

Much of Camden's writing would not live up to the standards required from twentieth century scholars. Some of his material, especially in the *Britannia*, was lifted (at times verbatim) from the notes of John Leland which had passed to him

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44 Evidence for membership:Hearne, T., *A Collection of Curious Discourses Written by Eminent Antiquaries upon Several Heads in our English Antiquities*, Oxford, 1720; Bodley MS *Ashmole* 763, fol. 7; Spelman's list in "The Occasion"; Spelman's list in the Norfolk Record Office MS 7198; William Burton's autograph list on fly-leaf of Weever's *Ancient Funerall Monuments*; Society of Antiquaries MS (the Oldys paper), quoted through Gough, *Archaeologia*, 1, pp. xvi-xx; and Thomas Smith's list, published in "Vita....Roberti Cottoni", *Catalogum*, Oxford, 1696, p. viii. See also Smith, Sir T., (ed.), *V.CL. Gulielmi Camdeni, et Illustrium Virorum....*, London, Chiswell, 1691.

45 Foster, *op. cit.*, p. 81.

46 Van Norden, "The Elizabethan College Of Antiquaries", p. 562, *Dictionary of National Biography*, pp. 729-737,Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771, vol. 2 p.425, McKisack, *op. cit.*, pp. 150-154 and Kendrick, *op. cit.*, pp. 143-156.

through Lambarde.[47] Nevertheless, as Piggott notes, Camden's treatment was so systematic and thorough that it can be considered an original work.[48] There were frequent contemporary criticisms about Camden's use of source material, many tantamount to allegations of plagiarism. However, one particular extant Camden manuscript reveals a rare insight into Camden's research methodology. The Cotton MS *Iulius* F.VI., is chiefly "a miscellaneous mass of historical and antiquarian papers, notes, and extracts".[49] It appears to be almost entirely the work of Camden (with some interpolations) and it may be assumed the piece passed to Cotton under Camden's will. These papers allow us to see Camden's sources for his larger works, but more importantly also clearly show that he got help from local correspondents.[50] Haverfield notes the extreme difficulty of travel in the period, and thus the practical necessity for reliance upon others' observations.[51] It should be noted that Camden himself did make numerous and extensive excursions for the purpose of research,

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47 Levy, F.J., "The Making of Camden's *Britannia*", *Bibliothèque d'humanisme et renaissance*, 26 (1964) 70-97 at 77-79 and Herendeen, W.H., "William Camden: Historian, Herald, and Antiquary", *Studies in Philology*, 85 (1988) 192-210 at 197-200.

48 Piggott, S., "William Camden and the Britannia", *Proceedings of the British Academy*, 37, (1951), pp. 199-217 at 199-200 and 207-208.

49 Haverfield, F., "Cotton Iulius F.VI. Notes on Reginald Bainbrigg of Appleby, on William Camden and on some Roman Inscriptions", *Transactions of the Cumberland and Westmorland Archeology Society*, New Series 11 (1911), 343-378 at 343.

50 Levy seeks to demonstrate much wider circles of connections, always the temptation in prosopographical studies: Levy, "The Making of Camden's *Britannia*", especially at p. 89 ff.

51 Haverfield, *op. cit.*, pp. 344-345. See also Herendeen, *op. cit.*, pp. 202-203.

accompanied sometimes by his friend Cotton.[52] The comparison with modern standards is, of course, both unfair and unnecessary. A more appropriate gauge may be popular sentiment, and the large number of editions (including translations into English) and spin-offs of *Britannia* attest to the significance of the work.[53] From a more subjective perspective, Camden's frequent useage of "middle ages" terminology for the past (both distant and comparatively recent) indicates a certain self-awareness of the perceived newness of his own period.[54]

William Camden also corresponded with a number of leading European humanists, including Ortelius, Lipsius, Hondius Puteanus, Gruter, Isaac Casaubon, Peiresc, Hotman and de Thou. According to Parry, Camden acquainted other members like Cotton and Spelman with his European connections.[55]

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52 Kendrick, *op. cit.*, p. 144 and Parry, *op. cit.*, pp. 38-42.

53 Piggott, "William Camden and the Britannia", pp. 208-209.

54 See Edelman, *op. cit., passim*, especially at pp. 19-20, Gordon, "Medium Aevum and the Middle Ages", *loc cit.* and cf. Ferguson, "Humanist Views of the Renaissance", p. 2. See also Kendrick, *op. cit.*, p. 152.

55 Parry, *op. cit.*, p. 26.

Richard Carew[56] (1555 - 1620)

In respect of Carew's legal training, the *History Of Parliament* records only a Middle Temple admission, which was preceded by an admission to Clement's Inn.[57] But while Schoeck[58] correctly notes that Carew was admitted to the Middle Temple in 1574[59], Van Norden records an earlier admission to the Inner Temple in 1570 which appears to be incorrect. She also adds Carew's appointments as a Justice of the Peace in 1581 and (also noted by Schoeck) as High Sheriff of Cornwall in 1586.[60] Carew's other official positions included diplomatic service abroad in 1581, and he was the King's Deputy for the Militia in 1586.[61] Carew was Member of Parliament for Saltash in 1584 and for Mitchell in 1597.[62]

His best known work was *A Survey of Cornwall*, which was published in 1602, but must have existed in at least in inchoate form, since the 1580s. Carew

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56 Evidence for membership: Bodley MS *Ashmole* 763, fol. 7; Society of Antiquaries MS (the Oldys paper), quoted through Gough, *Archaeologia*, 1, pp. xvi-xx; and Thomas Smith's list, published in "Vita....Roberti Cottoni", *Catalogum*, Oxford, 1696, p. viii. It is also highly likely that Carew was the author of the detailed discourse on land in Cornwall in Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771, vol 1, No 62, pp. 195-197.

57 Hasler, *op. cit.*, volume I, pp. 542-543.

58 Schoeck, "The Elizabethan Society Of Antiquities And Men Of Law", p. 418.

59 Martin, *op. cit.*, volume I, p. 197 and Sturgess, *op. cit.*, volume I, p. 38.

60 Van Norden, "The Elizabethan College Of Antiquaries", p. 563.

61 Van Norden, "The Elizabethan College Of Antiquaries", p. 563.

62 Hasler, *op. cit.*, volume I, pp. 542-543.

certainly requested some assistance from Camden with the updating process for the second edition of the *Survey* as, undoubtedly, Camden was reliant upon Carew for the Cornwall section of the *Britannia*. The two had been friends since their early teens, when they lodged together at Oxford. [63]

Mr (Anthony ?) Cliffe[64]

Burton is the sole source which gives a first name, Anthony, for the person otherwise referred to as simply Mr. Cliffe. There is no trace of an Anthony Cliffe who might be considered a candidate for membership amongst the records of Parliament or the Inns' registers. A Mr. John Cliffe, was admitted to the Middle Temple on the 9th of November 1583.[65] Schoeck, in addition to this Cliffe, notes that a Richard Cliffe was admitted to Gray's Inn in 1548, but this Cliffe surely cannot be a member of the Society.[66] Mr, Cliffe's identity remains uncertain.

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63 *Dictionary of National Biography*, vol. 3, pp.969-971, Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771, vol. 2 pp.425-426, McKisack, *op. cit.*, pp. 140-142, Smith, Sir T., (ed.), *V.CL. Gulielmi Camdeni, et Illustrium Virorum....*, London, Chiswell, 1691, pp. 72-73 (letter 53, dated 13/5/1606) and Kendrick, *op. cit.*, pp. 160-161.

64 Evidence for membership: Cotton MS *Faustina* E.V. and Stowe MS 1045; Spelman's list in the Norfolk Record Office MS 7198; and William Burton's autograph list on fly-leaf of Weever's *Ancient Funerall Monuments*.

65 Martin, *op. cit.*, volume I, p. 263 and Sturgess, *op. cit.*, volume I, p. 52.

66 Schoeck, "The Elizabethan Society Of Antiquities And Men Of Law", p. 418. Confirmed by Foster, *op. cit.*, p. 20.

Sir William Compton[67] (? - 1630)

William Compton was admitted to Gray's Inn on the 10th of March 1593.[68] His appointments symbolise his membership of the Stuart Court.[69] He was dubbed a Knight of Bath in 1605, created Earl of Northampton in 1618, and later admitted to the order of the Garter by Charles I in 1628.[70] His other official positions included the presidency of the Council for the Marches of Wales and the lord lieutenancy of the counties of Worcester, Hereford, Salop and Warwick.[71]

Sir Walter Cope[72] (c.1555 - 1614)

It is not possible to detect any evidence of Sir Walter Cope's admission to any

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67 Evidence for membership: possibly Stowe MS 1045; and William Burton's autograph list on fly-leaf of Weever's *Ancient Funerall Monuments*.

68 Foster, *op. cit.*, p. 82.

69 As his father Henry, created Lord Compton for life in 1572, had similarly served Queen Elizabeth: Hasler, *op. cit.*, volume I, pp. 635-636.

70 Van Norden, "The Elizabethan College Of Antiquaries", p. 267 n. 461 and p. 563, Van Norden incorrectly states that Compton was a Member of Parliament in 1592. Compton assisted Charles I at his coronation (by carrying the train) and was a member of his Privy Council: Prest, W.R., *The Diary Of Sir Richard Hutton*, London, Selden Society (Supplementary Series, vol. 9), 1991, pp. 58 and 79.

71 Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771, vol. 2 p.427.

72 Evidence for membership: Cotton MS *Faustina* E.V.; William Burton's autograph list on fly-leaf of Weever's *Ancient Funerall Monuments*; and Society of Antiquaries MS (the Oldys paper), quoted through Gough, *Archaeologia*, 1, pp. xvi-xx. Cope is also mentioned in Agard's discourse on land: Hearne, T., *A Collection of Curious Discourses Written by Eminent Antiquaries upon Several Heads in our English Antiquities*, Oxford, 1720, No. XVII.

of the Inns of Court, however it is known that he shared chambers in the Middle Temple with Sir Arthur Gorge so he may have been a member there.[73] Cope was a Justice of the Peace for Middlesex from about 1598, feodary for the Court of Wards and the duchy of Lancaster, Oxfordshire and Berkshire from about the same time. He was also feodary of London and Middlesex from 1601. Cope held the office of auditor for the duchy of Cornwall from about 1603 and was one of the two Chamberlains of the Exchequer in 1608/9. He was elevated to the position of Master of the Court of Wards in 1613. Cope was Member of Parliament for St. Mawes in 1588/9, Weymouth and Malcombe Regis in 1601, Westminster in 1604 and for Stockbridge in 1614.[74] The *Dictionary of National Biography* wrongly records that Cope was knighted in 1604, presumably confusing him with his brother (Sir) Anthony.[75] Walter Cope was knighted in 1603.[76] He was connected, although it is hard to say how closely, with Burghley's son, Sir Robert Cecil.[77]

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73 Martin, *op. cit.*, volume II, p. 542. See also Schoeck, "The Elizabethan Society Of Antiquities And Men Of Law", p. 419.

74 Hasler, *op. cit.*, volume I, p. 650.

75 *Dictionary of National Biography*, vol. 4, p. 1093. See Hasler, *op. cit.*, volume I, p. 650.

76 Cope's biography is updated and correceted in the forthcoming edition of *The History Of Parliament: The House Of Commons 1604 - 1629*.

77 See Mears, N., "*Regnum Cecilianum*? A Cecilian Perspective of the Court", in Guy, ed., *The Reign of Elizabeth*, p. 62.

Sir Robert Cotton[78] (1570/1 - 1631)

Cotton was schooled at Westminster under Camden, who later became his close friend.[79] He matriculated to Jesus College Cambridge in 1581. In 1585, four years later, Cotton graduated therefrom with a degree of Bachelor of Arts. From the University to the Inns of Court in London, Robert Cotton's life followed a pattern familiar to all of his group. Cotton was a studied the law at the Middle Temple, being admitted a member on the 3rd of February 1587/8.[80] Cotton eventually had a long career in Parliament, as Member for Newtown (on the Isle of Wight) in 1601, County Huntingdon in 1604, Old Sarum in 1624, Thetford in 1625 and Castle Rising in 1628.[81] He was knighted in 1603 and became Baronet in 1611.[82]

Much has been written, since Smith's *Catalogus Librorum Manuscriptorum Bibliothecae Cottonianae*, of 1696, of the life of Sir Robert Cotton. The

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78 Evidence for membership: the Cotton petition; Stowe MS 1045; Hearne, T., *A Collection of Curious Discourses Written by Eminent Antiquaries upon Several Heads in our English Antiquities*, Oxford, 1720; Bodley MS *Ashmole* 763, fol. 7; Spelman's list in "The Occasion"; Spelman's list in the Norfolk Record Office MS 7198; William Burton's autograph list on fly-leaf of Weever's *Ancient Funerall Monuments*; and Thomas Smith's list, published in "Vita....Roberti Cottoni", *Catalogum*, Oxford, 1696, p. viii, sig. a4v.

79 *Dictionary of National Biography*, vol. 4, pp. 1233-1240. The tone of the letters between the two is very friendly: See Smith, Sir T., (ed.), *V.CL. Gulielmi Camdeni, et Illustrium Virorum....,*. See also Kendrick, *op. cit.*, pp. 165-166.

80 Martin, *op. cit.*, volume I, p. 295 and Sturgess, *op. cit.*, volume I, p. 58.

81 Hasler, *op. cit.*, volume I, p. 663.

82 Van Norden, "The Elizabethan College Of Antiquaries", p. 564.

comprehensive reference point on the life of Cotton is Sharpe's *Sir Robert Cotton, 1586-1631: History and Politics in Early Modern England.*[83] But for most of this century it has been assumed that the importance of Cotton to the Society was as its librarian.[84] It was true that, from time to time, Cotton's massive collection was viewed with some suspicion and jealousy representing, as it did, a private cache of knowledge. In 1616 Cotton was actually imprisoned, without trial, for eight months - apparently for the use of his library and his paleographic skills to protect his patron, Somerset, who was involved in a conspiracy charge concerning the Spanish ambassador.[85] Nevertheless, it was often through Cotton's agency that other members, and other scholars generally, accessed documents to furnish their studies, and it was of course his private library which was the forerunner to the national collection.[86] Of course Cotton was not just a librarian, and Sharpe is correct to point out that to his contemporaries Cotton was equally valued as "a collector, writer and historian always engaged with is seventeenth century present - and with its political

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83 *Op. cit.* Sharpe's free-wheeling prosopography is fascinating, on which see my comments *supra* chapter 6.

84 Wright, "The Elizabethan Society of Antiquaries and the Formation of the Cottonian Library", pp. 176-208. This importance was noticed by Flugel: "...denn Cotton war es, der, was die konigin zu tun versaumte, schuf und erheilt und dessen privatsammlungen von anfang an den zweck hatten, eine fundegrube und ein repositorium darzustellen fur alles, was sich auf englisches altertum bezog." Flugel, *op. cit.*, 263.

85 *Dictionary of National Biography*, vol. 4, pp. 1233-1240. See also Prest, *The Diary Of Sir Richard Hutton*, pp. 50 and 78-79.

86 See Tite, C.G., *The Manuscript Library of Sir Robert Cotton*, London, British Library, 1994.

values, problems and disputes."[87]

Sir John Davies[88] (1569 - 1626)

Van Norden records the 3rd of February, 1587/8 as the date of Sir John Davies' admission to the Middle Temple, which is incorrect. The date of admission disclosed in the Records is one week later on the 10th.[89] He was admitted as an utter barrister in 1595.[90] In addition, Van Norden notes that he was barred in 1595 and reinstated in 1601.[91] The *Dictionary of National Biography* gives a slightly different, and more detailed version, with 1597/8 as the date for Davies' being struck off - for brawling in the Inn hall.[92] The full story is even more engaging. It appears that Davies was actually punished thrice for disorderly conduct by the Inn ! While a student at the Middle Temple he was first fined for dicing and rambunctious behaviour in 1591, and then in 1592 he was expelled in similar circumstances. He

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87 Sharpe, K., "Introduction: Rewriting Sir Robert Cotton" in Wright, C.J., *Sir Robert Cotton As Collector: Essays on an Early Stuart Courtier and His Legacy*, London, The British Library, 1997, pp. 1 - 39 at 32. Cotton's biography is revised in the forthcoming edition of *The History Of Parliament: The House Of Commons 1604 - 1629*.

88 Evidence for membership: Ayloffe, J., ed., *A Collection Of Curious Discourses...*, 2 volumes, London,1771; Bodley MS *Ashmole* 763, fol. 7; and Society of Antiquaries MS (the Oldys paper), quoted through Gough, *Archaeologia*, 1, pp. xvi-xx; Thomas Smith's list, published in "Vita....Roberti Cottoni", *Catalogum*, Oxford, 1696, p. viii.

89 Martin, *op. cit.*, volume I, p. 297 and Sturgess, *op. cit.*, volume I, p. 58. Van Norden's error actually cites Cotton's admission date.

90 Martin, *op. cit.*, volume I, p. 354.

91 Van Norden, "The Elizabethan College Of Antiquaries", p. 564.

92 *Dictionary of National Biography*, vol. 5, pp. 590-594.

was re-admitted and called to the bar, but in 1598 disbarred "permanently" after the brawl, which was with his friend Richard Martin. The "perpetual" disbarment lasted until 1601.[93]

Davies was appointed by King James to the position of Solicitor-General of Ireland and knighted in 1603, then was elevated to the Irish Attorney-Generalship in 1607.[94] Davies had a long career in the administration of the law in Ireland[95], making numerous trips to and around the territory, often in the company of fellow Society member Sir James Ley.[96] Of particular interest is Davies' report of *The Tanistry*.[97] This was a case heard by the King's Bench over a period of three or four years, but which was eventually settled by leave of the Court. The report of the Judges' opinions reveals some arresting messages regarding the survival and/or extinguishment of traditional Irish proprietary rights upon the introduction of English law into Ireland. In the concluding sections Davies relates the plaintiff's last-ditch

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93 Martin, *op. cit.*, volume I, pp. 318-328, 379-381 and 416, Hasler, *op. cit.*, volume II, pp. 22-23 and Finkelpearl, *op. cit.*, pp. 47-53. See, on discipline at the Inns, Prest, *The Inns of Court under Elizabeth I and the Early Stuarts: 1590-1640*, pp. 91-114.

94 Hasler, *op. cit.*, volume II, pp. 22-23 and Van Norden, "The Elizabethan College Of Antiquaries", p. 564.

95 He retained the position of Attorney-General until 1619 and was also (briefly) Speaker of the Irish House of Commons in 1613. See Pawlisch, H.S., *Sir John Davies and the Conquest of Ireland: A Study in Legal Imperialism*, Cambridge, Cambridge University Press, 1985.

96 *Dictionary of National Biography*, vol. 5, pp. 590-594.

97 (1608) Davis 28.

argument concerning the factual possession of land by conquest. Whether these remarks are those of the Court or a direct summary of the plaintiff's argument cannot be readily ascertained for Davies does not here, as he does elsewhere in the report of this 'decision', use a qualification such as 'and [it was] resolved by the Court' after his initial preface 'where it was objected by one of the council for the plaintiff'. This last, equivocal, section provides critical intelligence into the contemporary mystery of `feudalism' and includes, significantly, a reference to Jean Bodin.[98]

Upon his eventual return to England, after 1619, Davies published numerous legal works and finally reached the pinnacle of his career - but in vain. In late 1626 Davies was appointed Chief Justice on Crew's refusal to agree to King Charles I's

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98 "Car revera le Norman Conquerour, coment que il fesoit plus absolute & entire Conquest Dengleterre que Henr. 2. fesoit de Ireland, uncore il ne seisist tout, ne avoit le actual possession de touts les terres deins le realme Dengleterre vest en luy per le Conquest; mes le contrarie appiert per le Livre de Domesday, que est exact description de tout le realme, fait en temps de cest Roy. Car per cest record est manifest, que le Conquerour avoit certaine terres en demesne, viz. les terres queux fueront en la maine de Saint Edward, & sont la entitle terræ Edwardi Regis, & auts trs queux il m ad seise sur le Conqst, & sont entitle terræ Regis, sans pluis, come e note en 49 E. 3. 23. a. Et ceux tres sont ore appel les antient demesnes del Roy, on les antient demesnes de la Corone Dengletre, F. N. B. 14. Mes en cest livre les possessions des auts surs sont expres & mise eu certain, cybieu que les possessions del Roy. Et ceux terres qux sont desouth auters titles, come terræ episcopi de Excester, &c. & touts auts terres queux fueront en auter maine, & nosmes en cest livre, sont frank-fee, 40 Ed. 3. 45. F. N. B. 16. D.
Et pur ceo Bodin ne fuit bien informe, quaunt il excrit, Libr. 6. de Republ. cap. 2. que Guilliaume le Conquerant, apres avoir conqueste la roialme de Augleterre, declaira tout le pais en general, & les heritages de chescun en particulier, a luy acquis & confisques per droit de guerre, traitant les Anglois come ses fermiers, &c."
See Pocock, *op. cit.*, pp. 59-60.

scheme of forced loans, but he died before taking up the post.[99] Davies also had a parliamentary career, being returned for Shaftesbury in 1597, for Corfe Castle in 1601 and for Hindon in 1621.[100] As well as being a highly accomplished lawyer, Davies was also a well known poet.[101]

Sir William Dethicke[102] (1543 - 1612)

While Van Norden and Schoeck agree that Sir William Dethicke was a member of Gray's Inn, they differ considerably as to the date of his admission. Schoeck states a firm date of 1588, while Van Norden prefers a much earlier date, around 1564.[103] Foster's *Register* actually records two dates: the 22nd of November 1586 ("William Dethick, of London, gent.") and the 7th of January 1587/8 ("William Dethick, alts Garter, Principal King-of-Arms of England").[104] Dethicke was

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99 Hasler, *op. cit.*, volume II, pp. 22-23. See also Prest, *The Diary Of Sir Richard Hutton*, pp. 68-69.

100 Hasler, *op. cit.*, volume II, pp. 22-23.

101 Knafla, *op. cit.*, pp. 106-107, n. 217 and n. 274 and Neale, *Elizabeth I And Her Parliaments*, pp. 381, 383 and 387. On his poetry see: Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771, vol.2, pp. 430-431 and Finkelpearl, *op. cit.*, pp. 74-78.

102 Evidence for membership: Stowe Ms 1045; Ayloffe, J., ed., *A Collection Of Curious Discourses...*, 2 volumes, London,1771; Bodley MS *Ashmole* 763, fol. 7; Spelman's list in "The Occasion"; Spelman's list in the Norfolk Record Office MS 7198; William Burton's autograph list on fly-leaf of Weever's *Ancient Funerall Monuments*; and Thomas Smith's list, published in "Vita....Roberti Cottoni", *Catalogum*, Oxford, 1696, p. viii.

103 Schoeck, "The Elizabethan Society Of Antiquities And Men Of Law", p. 419 and Van Norden, "The Elizabethan College Of Antiquaries", p. 565.

104 Foster, *op. cit.*, pp. 70 and 72, respectively.

renowned for his specialty in heraldry, being appointed Rouge Croix Poursuivant in 1566/7, York Herald in 1569/70 and he held the position of Garter King-at Arms from 1586 until 1605. Dethicke was knighted by James I on the 13th of May, 1603.[105]

Sir John Dodderidge[106] (1555 - 1628)

Sir John Dodderidge was admitted to the Middle Temple on the 29th of November1577 the same year as he graduated Arts at Oxford. Having spent the middle part of the year at New Inn, Dodderidge was not called to the bar until the 10th of February 1585. His career at Middle Temple was long and distinguished. At his Inn Dodderidge was a Bencher in 1602 and Lent Reader in 1603.[107] He was appointed Serjeant on the twentieth of January 1603/4, Solicitor General on the twenty-ninth of October 1604, King's Serjeant in 1606, was knighted in 1607 and

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105 Van Norden, "The Elizabethan College Of Antiquaries", p. 565, *Dictionary of National Biography*, vol. 5, pp. 869-870 and Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771, vol. 2, pp. 431-432.

106 Evidence for membership: the Cotton petition; Hearne, T., *A Collection of Curious Discourses...*, Oxford, 1720; Bodley MS *Ashmole* 763, fol. 7; Spelman's list in "The Occasion"; Society of Antiquaries MS (the Oldys paper), quoted through Gough, *Archaeologia*, 1, pp. xvi-xx; and Thomas Smith's list, published in "Vita....Roberti Cottoni", *Catalogum*, Oxford, 1696, p. viii.

107 Martin, *op. cit.*, volume I, pp. 217, 274 and 426, Sturgess, *op. cit.*, volume I, p. 42, *Dictionary of National Biography*, vol. 5, pp. 1062-1063 and Hasler, *op. cit.*, volume II, pp. 42-43.Dodderidge's biography is updated and corrected in the forthcoming edition of *The History Of Parliament: The House Of Commons 1604 - 1629*.

appointed Justice of the King's Bench on the fifteenth of November 1612.[108] These later two appointments came as the recompense for Dodderidge's vacation of the post of Solicitor General in favour of the King's cherished Bacon. The knighthood came immediately, however the judicial office required a vacancy and this did not occur until Dodderidge succeeded Sir Christopher Yelverton five years later. Dodderidge was also a Member of Parliament, representing Barnstable in 1588/9 and Horsham in 1604.[109]

Dodderidge is best known for two things: his career as a Justice during the politically heated period of the latter part of James' reign and his text *The English Lawyer*[110]. As a judge Dodderidge accepted the orthodox position that the judges held their positions *durante bene placito* rather than the *quamdiu se bene gesserit* tenure favoured by the parliamentary opposition to the King and personified by Coke who joined Dodderidge on the King's Bench as its Chief Justice in 1613.[111] His

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108 Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771, vol. 2 pp.432-433, Gough, *op. cit.*, p. ix, Schoeck, "The Elizabethan Society Of Antiquities And Men Of Law", p. 419 and Van Norden, "The Elizabethan College Of Antiquaries", p. 565.

109 Notestein, *op. cit.*, pp. 64 and 155-164, Van Norden, "The Elizabethan College Of Antiquaries", p. 565, Terrill, "Humanism And Rhetoric In Legal Education: The Contribution Of Sir John Dodderidge (1555-1628)", p. 36-37 and Hasler, *op. cit.*, volume II, pp. 42-43. Nb. Van Norden and Terrill both (wrongly) cite the dates 1603 and 1611 for Dodderidge's representation of Horsham:

110 Facsimile of the 1631 edition, no. 503 *The English Experience*, Amsterdam. Da Capo, 1973. See also McKisack, *op. cit.*, pp. 145-147.

111 Terrill, "Humanism And Rhetoric In Legal Education: The Contribution Of Sir John Dodderidge (1555-1628)", pp. 37-38.

support for the royal view was clearly demonstrated by his actions in the *Commendams Case*,[112] *Peacham's Case*[113] and *Darnel's Case*[114].

Dodderidge's *The English Lawyer*, probably written during the 1620s, was published posthumously in 1631. Its second half, entitled "Methodus studenti", had already been anonymously published in 1629 under the title *The Lawyer's Light*. The work is arguably the greatest of the English "method books", combining humanist inspired theory and antiquarian scholarship of etymology with indigenous legal precedent and practice. It is a work which importance shows few signs of ageing even today. Terrill points out that Dodderidge attended university when humanism was in its ascendancy, and his book illustrates an author with wider interests than a mere practitioner, yet with still a wealth of practical experience.[115] As an illustration of this capacity, in one indicative section Dodderidge endorses the civilian and Baconian definition of the legal maxim quoting "Regula juris est multorum specialium per generalem conclusionem brevis comprehensio".[116]

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112 *Colt & Glover* v. *Bishop of Coventry* (1616) Hobart 140. See also Tanner, *op. cit.*, pp. 192-198 and Prest, *The Diary Of Sir Richard Hutton*, p. 11.

113 (1615) 2 *State Trials* 869-880. See Tanner, *op. cit.*, pp. 188-192.

114 *Five Knights' Case: R. v Warden of the Fleet, ex parte Darnel* (1627) 3 *State Trials* 1. See also Prest, *The Diary Of Sir Richard Hutton*, p. 72.

115 Terrill, "Humanism And Rhetoric In Legal Education: The Contribution Of Sir John Dodderidge (1555-1628)", pp. 39-42.

116 Sir John Dodderidge, *The English Lawyer*, facsimile of the 1631 edition, no. 503 *The English Experience*, Amsterdam, Da Capo, 1973, p.153. See Kocher, *op. cit.*, p. 9. See also Knafla, *op. cit.*, p.184.

Thomas D'Oyley[117] (c.1530 - ?)

Van Norden, along with Gough, conflates the lawyer Thomas D'Oyley with the contemporary medical practitioner, also named Thomas D'Oyley.[118] The *Dictionary of National Biography* clearly distinguishes between the two.[119] Schoeck notes the lawyer was admitted to Gray's Inn in 1555.[120]

Sampson Erdeswicke[121] (? - 1603)

Rather little of present relevance is known about Erdeswicke, save that he was the author of *A Survey of Staffordshire* which he commenced in about 1593 and continued until his death.[122] He was a university friend of Thomas Egerton.[123] McKisack records, without reference, that Erdeswicke was a member of the Inner

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117 Evidence for membership: Ayloffe, J., ed., *A Collection Of Curious Discourses...*, 2 volumes, London,1771; Bodley MS *Ashmole* 763, fol. 7; Cotton MS *Faustina* E.V.; and Thomas Smith's list, published in "Vita....Roberti Cottoni", *Catalogum*, Oxford, 1696, p. viii.

118 Van Norden, "The Elizabethan College Of Antiquaries", p. 565. and Gough, *op. cit.*, p. ix.

119 *Dictionary of National Biography*, vol. 5, p. 1326.

120 Schoeck, "The Elizabethan Society Of Antiquities And Men Of Law", p. 419. This is confirmed by Foster, *op. cit.*, p. 25.

121 Evidence for membership: Bodley MS *Ashmole* 763, fol. 7; William Burton's autograph list on fly-leaf of Weever's *Ancient Funerall Monuments*; and Society of Antiquaries MS (the Oldys paper), quoted through Gough, *Archaeologia*, 1, pp. xvi-xx.

122 *Dictionary of National Biography*, vol. 6, pp. 806-808. See also Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771, vol.2 p.434.

123 As were many of the members of the Society: Knafla, *op. cit.*, *passim*, re Erdeswicke in particular at pp. 42 and 48.

Temple.[124]

William Fleetwood[125] (c.1525 - 1594)

William Fleetwood was a member of the Middle Temple, however some doubt exists as to the date of his admission. It was in 1551 according to *The History Of Parliament*, but as late as 1564 according to Van Norden. The true date appears to be the 14th of March 1556/7. He was Autumn Reader at his Inn in 1563 or 1564 and (Lent) "Double Reader" in 1568.[126] His mainstream legal appointments included that of Recorder of London in 1570, Serjeant-at-Law in 1580, Queen's Serjeant in 1592. Fleetwood served as a Justice of the Peace from 1562, in London, Middlesex, Surrey, Buckinghamshire and Lancashire.[127] He also held numerous other offices of administrative and quasi-legal character, such as duchy feodary and bailiff of Bedfordshire and of Buckinghamshire from 1577 until 1582.

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124 McKisack, *op. cit.*, pp. 137-140. See also Kendrick, *op. cit.*, p. 158. Inderwick, *op. cit.*, makes no reference.

125 Evidence for membership: Stowe Ms 1045; Spelman's list in the Norfolk Record Office MS 7198; William Burton's autograph list on fly-leaf of Weever's *Ancient Funerall Monuments*; and Thomas Smith's list, published in "Vita....Roberti Cottoni", *Catalogum*, Oxford, 1696, p. viii.

126 Martin, *op. cit.*, volume I, pp. 105 and 109.

127 Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771, vol. 2 pp. 434-435, Gough, *op. cit.*, p. ix, Schoeck, "The Elizabethan Society Of Antiquities And Men Of Law", p. 419, Van Norden, "The Elizabethan College Of Antiquaries", p. 566, *Dictionary of National Biography*, vol. 7, pp. 268-269, Martin, *loc. cit.* and Hasler, *op. cit.*, volume II, pp. 133-138. See also Neale, *The Elizabethan House Of Commons*, *passim* and Neale, *Elizabeth I And Her Parliaments*, *passim*.

Fleetwood is chiefly known for his long, active and distinguished parliamentary career, sitting for Marlborough in 1558, for Lancaster in 1559 and 1563, for St. Mawes in 1571 and for London in 1572, 1584, 1586 and 1588/9.[128] As a client of Burghley, and a prominent Puritan, Fleetwood took some part in virtually all the parliamentary business of the Elizabethan administration.

William Hakewill[129] (1574 - 1655)

Van Norden records that William Hakewill was admitted to Lincoln's Inn in 1598, and was later, in 1617, appointed the Queen's Solicitor.[130] This is partially borne out by Baildon's edition of *The Black Books*, which does not appear to include any admission date but mentions that Hakewill was called to the Bench on the 12th of November 1618 and was, at that time, already the Queen's Solicitor, having been called to the Bar on the 26th of November 1606.[131] The brief biography appended to Hearne's collection mentions that Hakewill was the Lent Reader at the Inn in 1624,

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128 Hasler, *op. cit.*, volume II, pp. 133-138.

129 Evidence for membership: Hearne, T., *A Collection of Curious Discourses Written by Eminent Antiquaries upon Several Heads in our English Antiquities*, Oxford, 1720; Spelman's list in "The Occasion"; and Thomas Smith's list, published in "Vita....Roberti Cottoni", *Catalogum*, Oxford, 1696, p. viii.

130 Van Norden, "The Elizabethan College Of Antiquaries", p. 566 and Gough, *op. cit.*, ix.

131 Baildon, W.P., ed., *The Records Of The Honorable Society Of Lincoln's Inn: The Black Books*, 4 volumes, London, Lincoln's Inn,1897-1902,volume II, pp. 209 and 102 (respectively).

which is confirmed by Baildon.[132] A Puritan, and eventually a strong supporter of the parliamentary cause, Hakewill sat for Bossiney in 1601, Mitchell in 1604, Tregony in 1614 and 1621/2 and Amersham in 1624 and 1628.[133]

Abraham Hartwell[134] (1553 - 1606)

Abraham Hartwell was admitted to Gray's Inn on the 10th of August, 1592.[135] In Parliament Hartwell sat for East Looe in 1586 and for Hindon in 1593.[136] He was secretary to Archbishop Whitgift by 1584, and it was presumably in this capacity that his (honorary) membership of Gray's Inn was secured with the assistance of Burghley.[137]

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132 Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771, vol. 2 p.435 and Baildon, *op. cit.*, volume II, p. 253. See also Schoeck, "The Elizabethan Society Of Antiquities And Men Of Law", *op. cit.*, p. 419

133 Hasler, *op. cit.*, volume II, pp. 237-238, Notestein, *op. cit.*, p. 366 ff. and *Dictionary of National Biography*, vol. 8, pp. 894-895.

134 Evidence for membership: Ayloffe, J., ed., *A Collection Of Curious Discourses...*, 2 volumes, London,1771; and Thomas Smith's list, published in "Vita....Roberti Cottoni", *Catalogum*, Oxford, 1696, p. viii.

135 Foster, *op. cit.*, p. 81 and *Dictionary of National Biography*, vol. 9, pp. 76-77.

136 Hasler, *op. cit.*, volume II, pp. 265-266.

137 *Ibid.*

Michael Heneage[138] (1540 - 1600)

Van Norden and Schoeck agree that Michael Heneage was admitted to Gray's Inn in 1567.[139] From 1578 until 1600 Heneage was Keeper of Records in the Tower, and as a Member of Parliament he represented Arundel in 1571, East Grinstead in 1572, Tavistock in 1588/9 and Wigan in 1592/3.[140] No doubt the patronage of his elder brother, Sir Thomas who was Chancellor of the Duchy of Lancaster, was of great value.[141]

Joseph Holland[142]

Spelman's Norfolk Record Office list refers to a "Mr. Holland of the inner Temple". Gough and Van Norden also record that Joseph Holland was admitted to

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138 Evidence for membership; Ayloffe, J., ed., *A Collection Of Curious Discourses...*, 2 volumes, London,1771; Stowe MS 1045; Spelman's list in the Norfolk Record Office MS 7198; William Burton's autograph list on fly-leaf of Weever's *Ancient Funerall Monuments*; Society of Antiquaries MS (the Oldys paper), quoted through Gough, *Archaeologia*, 1, pp. xvi-xx; and Thomas Smith's list, published in "Vita....Roberti Cottoni", *Catalogum*, Oxford, 1696, p. viii.

139 Foster, *op. cit.*, p. 36.

140 Hasler, *op. cit.*, volume II, pp. 289-290, Gough, *op. cit.*, p. x, Van Norden, "The Elizabethan College Of Antiquaries", p. 567 and McKisack, *op. cit.*, pp. 77-78.

141 Hasler, *op. cit.*, volume II, pp. 289-290 and Neale, *The Elizabethan House Of Commons*, p. 225.

142 Evidence for membership: Hearne, T., *A Collection of Curious Discourses...*, Oxford, 1720; Bodley MS *Ashmole* 763, fol. 7; Stowe MS 1045 (incorrectly annotated "Hugh"); William Burton's autograph list on fly-leaf of Weever's *Ancient Funerall Monuments*; and Thomas Smith's list, published in "Vita....Roberti Cottoni", *Catalogum*, Oxford, 1696, p. viii.

the Inner Temple in 1571, but Schoeck is prudent to be less certain, simply noting that he studied common law at one of the temples and is described in the *Calendar of Inner Temple Records* in 1601.[143] The Records refer, on the 24th of May 1601, to Holland as a gentleman of the Society (of the Inner Temple).[144]

William Jones[145] (1566 - 1640)

Jones entered St. Edmund Hall Oxford in 1580 and proceeded to Furnivall's Inn in 1585. The Welshman was admitted to Lincoln's Inn on the fifth of July, 1587 and called to the bar on the 28th of January, 1595/6. He was a Lent Reader in 1615/6 and appointed a Serjeant, and called to the King's Bench in Ireland as its Chief Justice one year later in 1617.[146] In 1620 Jones resigned his commission and returned to practice at the bar, but in 1621 he again accepted judicial office, as a Justice of Common Pleas. He was transferred to the Court of King's Bench in Michaelmas Term of 1624.[147] Jones sat in both *Darnel's Case* and *Hampden's Case*.[148] As a Member of Parliament he was returned for Beaumaris in 1597, for Caernarvonshire

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143 Schoeck, "The Elizabethan Society Of Antiquities And Men Of Law", p. 419, Gough, *op. cit.*, p. x and Van Norden, "The Elizabethan College Of Antiquaries", p. 567.

144 Inderwick, *op. cit.*, volume I, p. 441.

145 Evidence for membership: Hearne, T., *A Collection of Curious Discourses...*, Oxford, 1720.

146 Baildon, *op. cit.*, volume II, pp. 35, 120,176 and 192-197 and Hasler, *op. cit.*, volume II, pp. 386-387.

147 Prest, *The Diary Of Sir Richard Hutton*, pp. 40-41 and 54.

148 (1627) 3 State Tr. 1 and (1637) 3 State Tr. 825 respectively. See also Prest, *The Diary Of Sir Richard Hutton*, pp. 72 and 111 (respectively).

in 1601 and for Beaumaris (again) in 1604 and 1614.[149] In addition to this Jones received numerous legal and administrative commissions from the Crown, especially relating to settlements in Ireland.[150]

Sir Thomas Lake[151] (1561 - 1630)

Sir Thomas Lake was admitted to Gray's Inn on the 10th of August 1592.[152] Lake's career in public service and his connection to the Stuart Court is well documented.[153] In about 1600 he was appointed Clerk of the Signet, in 1603 he was Latin Secretary to James I and in 1604 was made Keeper of the Records at Whitehall. From 1614 Lake served as a Privy Councillor and from 1616 until 1619 was a Secretary of State. In Parliament Lake represented Malmesbury in 1593, New Romney in 1601, Dunheved (Launceston) in 1604, Middlesex in 1614 and Wells in

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149 Hasler, *op. cit.*, volume II, pp. 386-387 and Notestein, *op. cit.*, p. 363. Jones' biography is revised, and his membership of the Elizabethan Society of Antiquaries questioned, in the forthcoming edition of *The History Of Parliament: The House Of Commons 1604 - 1629.*

150 Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771, vol. 2 pp.448-449, Hasler, *op. cit.*, volume II, pp. 386-387 and *Dictionary of National Biography*, vol. 10, pp. 1059-1060. Prest, *The Diary Of Sir Richard Hutton*, pp. 45 (commissioner to Ireland) and 91 (member of the Court of Marshalsea). There is no trace in Van Norden's thesis concerning Jones' legal background - a very rare instance of inattentiveness.

151 Evidence for membership: Hearne, T., *A Collection of Curious Discourses...*, Oxford, 1720; Bodley MS *Ashmole* 763, fol. 7; and Thomas Smith's list, published in "Vita....Roberti Cottoni", *Catalogum*, Oxford, 1696, p. viii.

152 Foster, *op. cit.*, p. 81.

153 Lake was first associated with Walsingham, then with Burghley: Hasler, *op. cit.*, volume II, pp. 428-429.

1625/6.[154] Lake was knighted on the 20th of May, 1603.[155]

William Lambarde[156] (1536 - 1601)

The legal and administrative career of William Lambarde is well documented.[157] He was admitted to Lincoln's Inn on the twelfth of April, 1556 and was appointed Bencher on the ninth of February, 1578-9. His other appointments included: Justice of the Peace for Kent (6 August, 1569); Master in Chancery (22 June, 1592)[158], Keeper of the Records at the Rolls Chapel and in 1601, shortly before

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154 Hasler, *op. cit.*, volume II, pp. 428-429, Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771, vol. 2 pp.436-437,Van Norden, "The Elizabethan College Of Antiquaries", pp. 567-568, *Dictionary of National Biography*, vol. 11, pp. 417-419 and Prest, *The Diary Of Sir Richard Hutton*, pp. 16-17 and 20.

155 Van Norden, "The Elizabethan College Of Antiquaries", pp. 567-568.

156 Evidence for membership: Stowe MS 1045; Spelman's list in the Norfolk Record Office MS 7198; William Burton's autograph list on fly-leaf of Weever's *Ancient Funerall Monuments*; and Society of Antiquaries MS (the Oldys paper), quoted through Gough, *Archaeologia*, 1, pp. xvi-xx.

157 Lambarde's private and family history is equally well documented: Anonymous, "The Lambarde Diary", *Miscellanea Genealogica et Heraldica*, 2 (1876) 98-115 and Lambarde, F., "William Lambarde's Pedigree Notes" and "The Lambarde Cup", *Archaeologia Cantiana*, 39 (1927) 130-138. For a thorough treatment of Lambarde's life see Warnicke, R.M., *William Lambarde, Elizabethan Antiquary 1538-1601*, London, 1973, especially at pp. 23-35 and 84-102 and Dunkel, W., *William Lambarde, Elizabethan Jurist 1536-1601*, New Brunswick, Rutgers University Press, 1965. See also (more briefly) Kendrick, *op. cit.*, pp. 139-140 and McKisack, *op. cit.*, pp. 78-82.

158 On which see Ward, P.L., "William Lambarde's Collections on Chancery", *Harvard Library Bulletin*, 7 (1953) 271-298.

his death, he succeeded Heneage as Keeper of the Tower Records.[159] He served in Parliament but once, sitting for Aldborough in 1563.[160]

Lambarde's career as a writer was no less impressive. His most important works were *Archaionomia*[161], *A Perambulation Of Kent*[162], *Eirenarcha*[163] and *Archeion*[164]. *Archaionomia*, completed in 1568, was the translation into latin of a collection of Anglo-Saxon and ecclesiastical laws first assembled by Laurence Nowell. According to Adams this work, with its textual notes, was the first printed edition of Old English vocabulary.[165] *A Perambulation Of Kent* is probably the best

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159 Baildon, *op. cit.*, volume I, pp. 325, 356, and 412 and volume II, p. 51, Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771, vol. 2 p.436, Gough, *op. cit.*, p. x, Schoeck, "The Elizabethan Society Of Antiquities And Men Of Law", p. 419, Van Norden, "The Elizabethan College Of Antiquaries", p. 568, Anonymous, "The Lambarde Diary", *loc. cit.*, Heltzel, V.B., "Sir Thomas Egerton and William Lambard", *Huntington Library Quarterly*, 11 (1947-1948) 201-203 and *Dictionary of National Biography*, vol. 11, pp. 438-439.

160 Hasler, *op. cit.*, volume II, pp. 429-432.

161 London, 1568.

162 London, 1576.

163 Facsimile of the 1581 edition, no. 273 *The English Experience*, Amsterdam, Da Capo, 1970.

164 McIlwain, C.H. and Ward, P.L. ed.s, Cambridge (Massachusetts), Harvard University Press, 1957.

165 Adams, *op. cit.*, p. 28 and Terrill, "William Lambarde: Elizabethan Humanist and Legal Historian", pp. 160 and 164-165. See also Sisam, K., "The Authenticity Of Certain Texts In Lambard's *Archaionomia* 1568", in his *Studies In The History Of Old English Literature*, Oxford, Clarendon Press, 1953, pp. 232-258, Sisam notes that some of Lambarde's "translations" seem to be Elizabethanised and claims the translation was done by Nowell (p.234 f.). Cf. Flower, R., "Laurence Nowell And The Discovery Of England In

known of Lambarde's works.[166] The manuscript was completed in 1570 and was published in 1576. The work represents the first English county history and employs the study of history, archaeology, geography, custom and law to an antiquarian and topographical framework. Lambarde abandoned his plans for a larger, national, work on learning of Camden's treatise *Britannia* and offered the younger scholar his assistance.[167] *Eirenarcha*, subtitled "of the Office of the Justices of Peace", was a practical handbook for county justices. According to the 1581/2 edition the work was first assembled in 1579 and was then revised for publication in 1581/2. However there is strong evidence that Lambarde had sketched out some sections of the work as early as 1563.[168] *Eirenarcha* was certainly not the only work to demonstrate Lambarde's especial interest in the legal education of local officials: his *Ephemeris*, an official diary, details his duties as Justice of the Peace for Kent[169] and amongst his

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Tudor Times", *Proceedings Of The British Academy*, 21 (1935) 47-73 at n.16.

166 The work still generates interest in this century: Box, E.G., "Lambarde's `Carde of the Shyre', Third Issue, With Roads Added", *Archaeologia Cantiana*, 39 (1927), 141-148.

167 Smith, Sir T., (ed.), *V.CL. Gulielmi Camdeni, et Illustrium Virorum....*, pp. 28-30 (letter 22, dated 29/7/1585). See also Terrill, "William Lambarde: Elizabeth Humanist And Legal Historian", p. 166 and McKisack, *op. cit.*, pp. 133-137

168 See Putnam, B., "The Earliest Form Of Lambard's `Eirenarcha' And A Kent Wage Assessment Of 1563", *English Historical Review*, 41 (1926) 260-273.

169 See Read, C., "William Lambarde's "Ephemeris," 1580-1588", *Huntington Library Quarterly*, 15 (1952) 123-158 and Read, C., ed., *William Lambarde and Local Government*, Ithaca (New York), Cornell University Press, 1962. The latter includes the texts of some further instructions of Lambarde to justices regarding Quarter Sessions, Special Sessions and Commissions.

other writings he gave instruction to constables and other local officers.[170] *Archeion*, subtitled "a Discourse upon the High Courts of Justice in England", was finished by Lambarde in 1591 and although it was not published until 1635 it appears that manuscript copies were widely available to the legal profession.[171] The treatise was essentially a major exposition of the predominant legal and political institutions of late Elizabethan England. Terrill contends *Archeion* symbolises an important justification for royal government and a rebuttal of the common lawyers' objections to the prerogative system.[172] The emphasis in the work on the Court of Star Chamber illustrates this strategy. Beyond this immediate significance Terrill argues that *Archeion* exemplifies the humanist programme of applying critical standards of documentation to contemporary as well as historical issues and as such that the work represents an eloquent and innovative analysis of the law which was methodologically at the nucleus of the current intellectual milieu.[173] Kelley's

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170 In 1582 Lambarde wrote "The Duties of Constables, Borsholders, Tythingmen, and such other lowe ministers of the peace" and in 1583 he added to this collection the "Office of Churchwardens, of Surveyors for amending the Highways". Arguably Lambarde's "Some notes on the Orders, Proceedings, Punishments, and Privileges of the Lower House of Parliament" can also be classified within this type, that is as instructive material for (local) members. The work was produced in 1584 and is contained in *House of Commons Library Document No.10* "William Lambarde's Notes On The Procedures And Privileges Of The House Of Commons", Ward, P.L., ed., London, Her Majesty's Stationery Office, 1977. See generally Read, *William Lambarde and Local Government*.

171 Terrill, "William Lambarde: Elizabeth Humanist And Legal Historian", p. 168.

172 *id.*, pp. 168-171.

173 *id.*, pp. 172-175.

assessment of Lambarde is less reverent. He sees much typical English insularity in Lambarde, and contends Lambarde willfully turns a blind eye, in some instances, to evidence which may lead to conclusions which do not match his parochial viewpoint.[174]

Sir Francis Leigh[175] (c.1579 - c.1625)

Francis Leigh was admitted to the Middle Temple on the 16th of August 1597.[176] His legal appointments included that of Master of Requests in 1614, and he was also Sheriff of Warwickshire (1618-1619). Leigh was the Member of Parliament for Weymouth and Melcombe Regis in 1597, for Oxford in 1601 and 1604, for Leicester in 1614 and for Warwickshire in 1621.[177] To have reached his majority (of twenty-one years), and to have thus been eligible to sit in the Commons in 1597,

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174 Kelley, "History, English Law And The Renaissance", pp. 34-37, for example: "To Lambarde, as to all common lawyers, "English law was like a wall built of stone and oak to defend a city". The enemies at the gates, of course, were those twin menaces, civil and canon law, which - coiled like two snakes about Mercury's wand, as Selden put it - Englishmen tended to regard with a sort of fascinated horror. The prejudice was deeply embedded in the legal profession." at p. 37. See also Prest, W.R., "William Lambarde, Elizabethan Law Reform, and Early Stuart Politics", *Journal of British Studies*, 34 (1995) 464-480.

175 Evidence for membership: Hearne, T., *A Collection of Curious Discourses...*, Oxford, 1720; Bodley MS *Ashmole* 763, fol. 7; William Burton's autograph list on fly-leaf of Weever's *Ancient Funerall Monuments*; and Thomas Smith's list, published in "Vita....Roberti Cottoni", *Catalogum*, Oxford, 1696, p. viii.

176 Sturgess, *op. cit.*, volume I, p. 72.

177 Hasler, *op. cit.*, volume II, pp. 453-454.

Leigh must have been born no later than about 1576.[178] The date of his knighthood is not known precisely, but he was a Knight of the Bath at James I's coronation in 1603.[179]

Sir James Ley[180] (1550/1 - 1629)

After matriculating Brasenose College Oxford in 1569, James Ley was admitted to Lincoln's Inn in 1575-6, was called to the bar on the eleventh of October 1584. He was appointed Bencher in 1600 and was Lent Reader in 1602. In 1603 he was appointed Serjeant at Law, in 1604 Lord Chief Justice of the King's Bench in Ireland (where he served the Crown with Davies). In 1608 Ley was made Attorney General of the Court of Wards and he was also Governor of Lincoln's Inn from 1609 until 1622. In 1621/2 Ley was Chief Justice of King's Bench, a position which he held for just three years. In 1624 Ley retired from the law and was appointed a Privy Councillor, occupying the post of Lord High Treasurer until 1628.[181]

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178 See *infra,* Hayward Townshend, apparently the youngest member of this Parliament - and who must, therefore, have been junior to Leigh.

179 Van Norden, "The Elizabethan College Of Antiquaries", p. 568 and *Dictionary of National Biography*, vol. 11, p. 875. Leigh's biography is emended and in the forthcoming edition of *The History Of Parliament: The House Of Commons 1604 - 1629.*

180 Evidence for membership: the Cotton petition; Stowe MS 1045; Hearne, T., *A Collection of Curious Discourses...*, Oxford, 1720; Bodley MS *Ashmole* 763, fol. 7; Spelman's list in "The Occasion"; Spelman's list in the Norfolk Record Office MS 7198; Society of Antiquaries MS (the Oldys paper), quoted through Gough, *Archaeologia*, 1, pp. xvi-xx; and Thomas Smith's list, published in "Vita....Roberti Cottoni", *Catalogum*, Oxford, 1696, p. viii.

181 Baildon, *op. cit.*, volume I, pp. 404 and 435 and volume II, pp. 61, 66, 70, 73-76, 85-86, 116-118, 202, 219-220 and 258, Hasler, *op. cit.*, volume II, p. 476,

As a Member of Parliament Ley sat for Westbury in 1597 and 1604, for Bath in 1614 and for Westbury (again) in 1621.[182] Ley was knighted on the 8th of October, 1603, created a Baronet on the 31st of December 1624 and then created the first Earl of Marlborough on the 5th or 6th of February, 1625-6.[183] Ley was an important figure in the Stuart Household.

Arnold Oldisworth[184] (c.1561 - c.1632)

Arnold Oldisworth was admitted to Lincoln's Inn in 1580. He was an associate Bencher in 1612.[185] Oldisworth was Member of Parliament for Tregony in 1593 and for Cirencester in 1604. He also occupied the positions of Keeper of the Hanaper in Chancery (probably from 1604, and certainly after 1614) and Receiver of Fines in the King's Bench by 1607.[186] The *History of Parliament* simply describes

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Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771, vol. 2 pp.437-438, Gough, *op. cit.*, p. xi, Schoeck, "The Elizabethan Society Of Antiquities And Men Of Law", p. 419, Van Norden, "The Elizabethan College Of Antiquaries", p. 569, *Dictionary of National Biography*, vol. 11, pp. 1084-1085 and Prest, *The Diary Of Sir Richard Hutton*, pp. 31, 55 and 73.

182 Hasler, *op. cit.*, volume II, p. 476 and *Dictionary of National Biography*, vol. 11, pp. 1084-1085.

183 Hasler, *op. cit.*, volume II, p. 476 and Van Norden, "The Elizabethan College Of Antiquaries", p. 569.

184 Evidence for membership: Hearne, T., *A Collection of Curious Discourses...*, Oxford, 1720; and Thomas Smith's list, published in "Vita....Roberti Cottoni", *Catalogum*, Oxford, 1696, p. viii.

185 Baildon, *op. cit.*, volume II, p. 145 and Hasler, *op. cit.*, volume III, p. 151.

186 *Ibid.*, Van Norden, "The Elizabethan College Of Antiquaries", p. 569 and *Dictionary of National Biography*, vol. 14, p. 1007. Hearne and/or Ayloffe mistake this member for Michael Oldsworth, who is possibly the son of this

him as "a London lawyer".[187]

William Patten[188]

The early legal career of William Patten is somewhat uncertain, principally because no record exists of his admission to any of the Inns of Court. It is known that on the third of June, 1563 he was appointed Justice of the Peace for Middlesex, but this was (of course) an office for which legal training was not a requirement. He was also one of the Tellers of Receipt of the Queen's Exchequer at Westminster and the Receiver-General of Revenues in the County of York.[189] Schoeck suggests, given these facts, that he was either a member of one of the Inns or was trained at one of the Inns of Chancery.[190]

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member: Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771, vol. 2 p.438. Gough also calls him "Michael", but otherwise seems to be commenting on Arnold: Gough, *op. cit.*, p. xi.

187 Hasler, *op. cit.*, volume III, p. 151.

188 Evidence for membership: Stowe MS 1045; Ayloffe, J., ed., *A Collection Of Curious Discourses...*, 2 volumes, London,1771; Bodley MS *Ashmole* 763, fol. 7; Spelman's list in the Norfolk Record Office MS 7198; William Burton's autograph list on fly-leaf of Weever's *Ancient Funerall Monuments*; and Thomas Smith's list, published in "Vita....Roberti Cottoni", *Catalogum*, Oxford, 1696, p. viii.

189 Van Norden, "The Elizabethan College Of Antiquaries", p. 569-70 and *Dictionary of National Biography*, vol. 15, p. 495.

190 Schoeck, "The Elizabethan Society Of Antiquities And Men Of Law", p. 419-20.

Sir Richard St. George[191] (? - 1635)

Sir Richard St. George was admitted to Gray's Inn on the 3rd of March, 1617.[192] His career was in heraldry, being appointed Windsor Herald in 1602, and holding the positions of Norroy King-at-Arms from 1603 until 1623 and Clarencieux King-at Arms from Camden's death in 1623 until his own in 1635.[193]

Sir John Savile[194] (1546 - 1607)

There is some confusion, stemming from at least as far as Ayloffe and Gough (and perhaps as far back as Hearne), as to the identity of this member. The principal difficulty lies in a choice between John (1546-1607) and his brother Henry (1549-1622), although other possible candidates are conceivable. Henry was the Provost of Eton and a parliamentarian. Our primary and contemporary sources are of little assistance, either not referring to a first name, or (in the case of Burton) citing just about all of the possible candidates. One clue is the reference in Spelman's Norfolk Record Office list to "Mr. Savill of ye Midle Temple". Modern analysis is little

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191 Evidence for membership: Spelman's list in "The Occasion"; and Society of Antiquaries MS (the Oldys paper), quoted through Gough, *Archaeologia*, 1, pp. xvi-xx.

192 Foster, *op. cit.*, p. 150.

193 Van Norden, "The Elizabethan College Of Antiquaries", p. 570.

194 Evidence for membership: Stowe MS 1045; Spelman's list in the Norfolk Record Office MS 7198; and William Burton's autograph list on fly-leaf of Weever's *Ancient Funerall Monuments*. Camden's letters are no help, showing various correspondence with Henry, Thomas and John Savile. While the latter two correspondents talk antiquarian "business", the former writes in a purely friendly and social tone: Smith, Sir T., (ed.), *V.CL. Gulielmi Camdeni, et Illustrium Virorum....*, London, Chiswell, 1691.

better: Van Norden actually opts for "Long Henry" Savile, another individual altogether, and Schoeck does not resolve the confusion, listing both John and Henry (of Eton).[195] The *History of Parliament* lists John as the member.[196] There is clear evidence of John's membership of Middle Temple, but no such evidence for his brother Henry.[197] Both brothers appear to have been correspondents with Jean Hotman, son of the famous civilian jurist François Hotman.[198]

John Savile, of Bradley and Methley (Yorkshire), was admitted to the Middle Temple on the 14th of February1564/5 and was called to the bar in 1573. In 1586 he was installed as a bencher, and was also the Autumn Reader that year.[199] He was inducted as a Serjeant-at-Law in 1594. The majority of Savile's legal work was associated with the northern counties where he held numerous positions and conducted a highly successful practice. He was appointed a Baron of the Exchequer in 1598 and was knighted in 1603. In Parliament John Savile sat for Newton in

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195 Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771, vol. 2 p.439, Gough, *op. cit.*, p. xi, Schoeck, "The Elizabethan Society Of Antiquities And Men Of Law", p. 420 and Van Norden, "The Elizabethan College Of Antiquaries", p. 570.

196 Hasler, *op. cit.*, volume III, pp. 350-351.

197 Sturgess, *op. cit.*, volume I, pp. 29, 65, 68 and 76.

198 As was Camden:Smith, D.B., "Jean de Villiers Hotman", *Scottish Historical Review*, 14 (1916-1917) 147-166 at 151-152.

199 Martin, *op. cit.*, volume I, pp. 145, 192, 284-286 and 336 and Sturgess, *op. cit.*, volume I, p. 29.

1572.[200]

Sir Henry Spelman[201] (1563/4 - 1641)

Van Norden notes that Sir Henry Spelman was admitted to Lincoln's Inn on the 15th of April, 1586, although there is no apparent mention of an admission date in Baildon's edition of *The Black Books*.[202] Spelman's other official positions included: Commissioner for Ireland; High Sheriff of Norfolk in 1604; a member of the Council of New England from 1620 until 1635, with authority for Virginia in 1623 and Guiana in 1627.As a Member of Parliament Spelman represented Castle-Rising in 1593 and 1597 and Worcester in 1625.[203] Spelman was knighted on the 14th of March, 1604.[204]

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200 *Ibid*. and Clay, J.S.A. and Lister, J., ed.s, "Autobiography Of Sir John Savile. Knight, Baron Of The Exchequer, 1546-1607", *Yorkshire Archaeological Journal*, volume15, 420-427.

201 Evidence for membership: Ayloffe, J., ed., *A Collection Of Curious Discourses...*, 2 volumes, London,1771; Bodley MS *Ashmole* 763, fol. 7; Spelman's list in "The Occasion"; Spelman's list in the Norfolk Record Office MS 7198; William Burton's autograph list on fly-leaf of Weever's *Ancient Funerall Monuments*; Society of Antiquaries MS (the Oldys paper), quoted through Gough, *Archaeologia*, 1, pp. xvi-xx; and Thomas Smith's list, published in "Vita....Roberti Cottoni", *Catalogum*, Oxford, 1696, p. viii. See also Smith, Sir T., (ed.), *V.CL. Gulielmi Camdeni, et Illustrium Virorum....*, London, Chiswell, 1691, pp. 288-289 (undated, letter 226) where Spelman thanks Camden for introductions provided by him (Camden) for Spelman's son.

202 Schoeck, "The Elizabethan Society Of Antiquities And Men Of Law", p. 420 and Van Norden, "The Elizabethan College Of Antiquaries", p. 571.

203 Hasler, *op. cit.*, volume III, pp. 424-425.

204 Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771, vol. 2 pp.439-440, Van Norden, "The Elizabethan College Of Antiquaries", p. 571,

Spelman was an absolutely prolific writer, publishing no less than five major works during his lifetime, with another seven being published posthumously. As a strong supporter of Laudian Anglicanism, it is not surprising to find his amongst works most dealing with the law, especially aspects of ecclesiastical law.[205] The most complete collection of his works was compiled by Edmund Gibson and published as *Relquiae Spelmannianae* in 1695.[206] Like Camden, Spelman's regular employment of "middle ages" nomenclature for the distant and comparatively recent past, along with his references to contemporary times as a period of discovery, demonstrates a definite self-awareness of the discerned novelty of his own times.[207] In sharp contrast to his views on Lambarde, Kelley regards Spelman as one of the true breakers with

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Cooper, C.H., "On An Early Autograph Of Sir Henry Spelman, With Some New Or Not Generally Known Facts Respecting Him", *Cambridge Antiquary Society Communications*, 2 (1860-64) 101-112 and *Dictionary of National Biography*, vol. 18, pp. 736-741.

205 Parry, *op. cit.*, pp. 159-173.

206 The major works of Spelman are: *De non temerandis Ecclesiis* (1613); *Archaeologus in modum...* (vol. 1, 1626; vol. 2, 1664); *Concilia Decreta Leges Constitutiones in re Ecclesiarum orbis Britannici* (vol. 1 (to 1066) 1639; vol. 2, 1664); *The Growth, Propagation and Condition of Tenures by Knight Service* (1641); *De Sepultura* (1641); *A Protestant's Account...* (1642); *Tithes too hot to be touched* (1646); *Apologia pro Tractu de non temerandis...* (1647); *Aspilogia* (1650); *Villara Anglicum: Or a View of the Towns of England* (1656); *De Terminis Juridicis: Of the Law Terms* (1684) and *The History and the Fate of Sacrilege* (1698).

207 See Edelman, *op. cit., passim*, especially at p. 21, Robinson, *op. cit.*, p. 748, Gordon, "Medium Aevum and the Middle Ages", p. 14 and Powicke, *op. cit.*, pp. 347 and 349-350. Cf. Ferguson, "Humanist Views of the Renaissance", p. 2.

the stultifying isolation of English legal scholarship.[208] There is much validity in this interpretation - amongst the works of the antiquaries Spelman's contributions demonstrate the most fully developed research and the closest connections with European humanist learning.[209] Of greatest significance was Spelman's work in his *Archaeologus* on the origins of the feudal system and the introduction to England of European legal notions by the Normans.[210] It is, all the same, necessary to point out that the majority of Spelman's major works were produced after the cessation of the Society and that he was, after all, one of the group's younger members. As such it is perhaps no small irony that it is through Spelman that the Society's final traces can be uncovered.

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208 Kelley, "History, English Law And The Renaissance", pp. 46-47: "It was not until the seventeeth century that things began to change. Even then there was no thoroughgoing revolution; there was only a handful of scholars who, though they were not civilians, looked more to continental than to English traditions. Sir Henry Spelman had been appalled by his experience in Lincoln's Inn, where he encountered "a foreign language, a barbarian dialect, an uncouth method, a mass which was not only large, but which was to be continually born on the shoulders; and I confess that my heart sank within me." Spelman was a member of the original Society of Antiquaries and acquired a remarkably broad knowledge of European law, feudal as well as civil and canon, and many contacts with continental scholars. As Pocock has suggested, "His role may be compared to that of the `grammarians' of legal humanism", though his work had little impact until after his death."

209 Poole, R.L., note, *Journal Of Theological Studies*, 20 (1918) 38-39.

210 Pocock, *op. cit.*, pp. 96-103.

John Stow[211] (1525 ? - 1605)

The only non-"gentleman" of the Society, Stow was a member of the Merchant Taylor's Company. As such he was, at the least, a wealthy townsman. As a collector of books, Stow's library was second only to Cotton's, and his home was subject to similar "raids".[212] Although he was a Chaucerian scholar, and in this area collaborated with his fellow member Thynne, his best known work was *A Survey of London*, completed in 1598.[213] Stow was a prolific and successful writer of chronicles - one of the last and able to enjoy the 'Indian summer' of chronicles (from about 1550 until about 1600) which were printed and distributed widely, if only as 'coffee-table' collectables.[214]

James Strangeman[215] (1558 - 1595/6)

The 1771 edition of *Curious Discourses* notes that Strangeman was

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211 Evidence for membership: Stowe MS 1045; Ayloffe, J., ed., *A Collection Of Curious Discourses...*, 2 volumes, London,1771; Bodley MS *Ashmole* 763, fol. 7; Spelman's list in the Norfolk Record Office MS 7198; William Burton's autograph list on fly-leaf of Weever's *Ancient Funerall Monuments*; Society of Antiquaries MS (the Oldys paper), quoted through Gough, *Archaeologia*, 1, pp. xvi-xx; and Thomas Smith's list, published in "Vita....Roberti Cottoni", *Catalogum*, Oxford, 1696, p. viii.

212 McKisack, *op. cit.*, pp. 82-85, 112-114 and 131 ff. and Kendrick, *op. cit.*, pp. 158-159.

213 Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771, vol. 2, pp. 440-441 and *Dictionary of National Biography*, vol. 19, pp. 3-6.

214 Woolf, "Genre Into Artifact", pp. 335-6.

215 Evidence for membership: Stowe MS 1045; Spelman's list in the Norfolk Record Office MS 7198; and William Burton's autograph list on fly-leaf of Weever's *Ancient Funerall Monuments*.

responsible for two significant works, one a local history of Essex and the other concerning monasteries.[216]

Thomas Talbot[217]

Van Norden records 1555 as the date for Thomas Talbot's admission to Gray's Inn, and while agreeing with that date, Schoeck is less assured about whether this is the same Thomas Talbot who was Clerk of the Tower Records before 1580.[218] Foster's *Register* contains two possible dates: 1555 and the 25th of February 1598/9.[219] McKisack is uncertain about whether Talbot was a member of Gray's Inn but accepts that he was Clerk of the Tower Records.[220]

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216 Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771, vol. 2 p.443. See also McKisack, *op. cit.*, pp. 147-148.

217 Evidence for membership: Stowe MS 1045; Ayloffe, J., ed., *A Collection Of Curious Discourses...*, 2 volumes, London,1771; Spelman's list in the Norfolk Record Office MS 7198; William Burton's autograph list on fly-leaf of Weever's *Ancient Funerall Monuments*; Society of Antiquaries MS (the Oldys paper), quoted through Gough, *Archaeologia*, 1, pp. xvi-xx; and Thomas Smith's list, published in "Vita....Roberti Cottoni", *Catalogum*, Oxford, 1696, p. viii.

218 Gough, *op. cit.*, p. xii, Schoeck, "The Elizabethan Society Of Antiquities And Men Of Law", p. 420, Van Norden, "The Elizabethan College Of Antiquaries", p. 571 and *Dictionary of National Biography*, vol. 19, p. 337.

219 Foster, *op. cit.*, pp. 25 and 36, respectively.

220 McKisack, *op. cit.*, p. 78.

Francis Tate[221] (1560 - 1616)

Francis Tate matriculated Magdalen College Oxford in 1577. Tate's admission to the Middle Temple, after a period at Staple Inn, is recorded on the 2nd of June 1579.[222] On the twenty-second of February, 1603/4 Tate was appointed Commissioner of the Peace for the counties of Glamorgan, Brecon and Radnor. He was elected Member of Parliament for Northampton in 1601 and for Shrewsbury in 1604.[223] Tate was called to the bar in 1587 and was Lent Reader at his Inn in 1607/8[224], as well as being an itinerant justice in south Wales in about 1607.[225]

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221 Evidence for membership: Hearne, T., *A Collection of Curious Discourses...*, Oxford, 1720; Bodley MS *Ashmole* 763, fol. 7; Stowe MS 1045; Spelman's list in the Norfolk Record Office MS 7198; Society of Antiquaries MS (the Oldys paper), quoted through Gough, *Archaeologia*, 1, pp. xvi-xx; and Thomas Smith's list, published in "Vita....Roberti Cottoni", *Catalogum*, Oxford, 1696, p. viii.

222 Martin, *op. cit.*, volume I, p. 227 and Sturgess, *op. cit.*, volume I, p. 44.

223 Hasler, *op. cit.*, volume III, p. 479.

224 Martin, *op. cit.*, volume I, p. 292 and volume II, p. 484.

225 *Ibid.* and *Dictionary of National Biography*, vol. 19, pp. 376-377. See also Clendenin, *op. cit.*, pp. 317-318. Tate's biography is updated in the forthcoming edition of *The History Of Parliament: The House Of Commons 1604 - 1629.*

Francis Thynne[226] (1545? - 1608)

Some secondary sources record that on the twenty-third of June, 1561 Francis Thynne was admitted to Lincoln's Inn.[227] Baildon's edition of *The Black Books* does not bear this out. Although there seems to be little indication that Thynne practiced law as a profession there is some evidence for his admission as an attorney.[228] His pursuit of heraldic interests lead to his appointment as Blanche Lyon Poursuivant in 1601 and on the 22nd of April, 1602 as Lancaster Herald.[229] Thynne was perhaps best known as the great Chaucerian scholar of his day.[230]

Hayward Townshend[231] (c.1576 - c.1603)

Townshend, a member of Lincoln's Inn, was called to the Bar at an exceptionally young age, with a dispensation because his father was one of the

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226 Evidence for membership: Stowe MS 1045; Hearne, T., *A Collection of Curious Discourses...*, Oxford, 1720; Bodley MS *Ashmole* 763, fol. 7; Spelman's list in the Norfolk Record Office MS 7198; William Burton's autograph list on fly-leaf of Weever's *Ancient Funerall Monuments*; Society of Antiquaries MS (the Oldys paper), quoted through Gough, *Archaeologia*, 1, pp. xvi-xx; and Thomas Smith's list, published in "Vita....Roberti Cottoni", *Catalogum*, Oxford, 1696, p. viii.

227 Schoeck, "The Elizabethan Society Of Antiquities And Men Of Law", p. 420 and Van Norden, "The Elizabethan College Of Antiquaries", p. 572.

228 See *Dictionary of National Biography*, vol. 19, pp. 843-845.

229 Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771, vol. 2 pp.444-447 and Gough, *op. cit.*, pp. xii-xiii and Van Norden, "The Elizabethan College Of Antiquaries", p. 572.

230 See Steeves, *op. cit.*, pp. 16-18.

231 Evidence for membership: Ayloffe, J., ed., *A Collection Of Curious Discourses...*, 2 volumes, London,1771.

Benchers at Lincoln's Inn, on the 29th of January 1594/5.[232] Townshend was also a Member of Parliament for Bishops Castle in 1597 (then being the youngest member of the House of Commons[233]) and again in 1601. [234] He was well known as the great Elizabethan parliamentary journalist.

Robert Weston[235]

Gough and Van Norden list Robert Weston as a member of the Middle Temple, following Hearne.[236] However, there is nothing to be found in the *Middle Temple Records*, and while Schoeck notes that there are three Richard Westons associated with the Middle Temple, there also is one Robert Weston (1515?-1573), a civilian, at Gray's Inn.[237] Foster's *Register* makes no mention of such a Robert Weston. The lifespan of this individual obviously puts him out of contention. The identity of this member, therefore, remains clouded.

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232 Baildon, *op. cit.*, volume II, p. 31.

233 See *supra*, James Leigh, his contemporary.

234 Hasler, *op. cit.*, volume III, pp. 516-517 and *Dictionary of National Biography*, vol. 19, pp. 1054-1055.

235 Evidence for membership: possibly Stowe MS 1045.

236 Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771, vol. 2 p.448, Gough, *op. cit.*, p. xiii and Van Norden, "The Elizabethan College Of Antiquaries", p. 573.

237 Schoeck, "The Elizabethan Society Of Antiquities And Men Of Law", p. 420.

Sir James Whitelock[238] (1570 - 1632)

The legal career of Sir James Whitelock is well documented. He was admitted to the Middle Temple on the 2nd of March, 1592/3.[239] Eventually Whitelock became a justice of the King's Bench, in 1624. As a judge in *Darnell's Case* his sympathies were clearly with the Crown. In the intervening years Whitelock had been appointed Barrister in August of 1600, Bencher in Hilary Term of 1618-19 and Reader later in 1619.[240] In addition to these achievements, Whitelock was Recorder of Woodstock in 1606 and its Member of Parliament in 1609-10, 1614 and 1621-2.[241]

Whitelock's private diary, published as *Liber Famelicus of Sir James Whitelocke* by the Camden Society in 1858, contains abundant references to his legal achievements and connections. Not surprisingly, throughout the 1620s James Ley, John Dodderidge, William Jones and John Davies (all of whom, by then, been

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238 Evidence for membership: Hearne, T., *A Collection of Curious Discourses...*, Oxford, 1720; Society of Antiquaries MS (the Oldys paper), quoted through Gough, *Archaeologia*, 1, pp. xvi-xx; and Thomas Smith's list, published in "Vita....Roberti Cottoni", *Catalogum*, Oxford, 1696, p. viii.

239 Martin, *op. cit.*, volume I, p. 333 and Sturgess, *op. cit.*, volume I, p. 64.

240 *Id.*, pp. 407 and volume II, pp. 634 and 640 and Sturgess, *loc. cit.*.

241 Ayloffe, J., *A Collection Of Curious Discourses...*, London, 1771, vol. 2 pp.447-448, Gough, *op. cit.*, p. xiii, Notestein, *op. cit.*, p. 279, Schoeck, "The Elizabethan Society Of Antiquities And Men Of Law", p. 420, Van Norden, "The Elizabethan College Of Antiquaries", p. 573, *Dictionary of National Biography*, vol. 21, pp. 117-119 and Prest, *The Diary Of Sir Richard Hutton*, pp. 25, 54 and 92.

appointed as senior justices) figure prominently in Whitelock's recollections.[242] Perhaps of greater interest, however, are some of the more personal reminiscences touching Whitelock's associations with other members of the Society. For instance, Whitelock was regularly in receipt of Christmas presents from Francis Leigh.[243] The diarist also vividly records a dinner party at the house of Edward Coke in Stoke Poges where a salmon (which had been a gift of Whitelock) more than satiated the assembled personages.[244]

Mr. Wiseman[245]

There is serious doubt as to the first name of Mr. Wiseman, however a Thomas Wiseman was admitted to Gray's Inn on the 15th of October 1585.[246] On the other hand, Foster records an admission of another Thomas Wiseman to the same place as early as 1546, of a George Wiseman in 1564 and of a William Wiseman on the 6th of August 1597.[247]

A more likely candidate is William Wiseman (c.1550 - 1610) who

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242 *Liber Famelicus of Sir James Whitelocke, passim.*

243 *Id.*, pp. 32, 45 and 49.

244 *Id.*, p. 47. Whitelock's biography is revised in the forthcoming edition of *The History Of Parliament: The House Of Commons 1604 - 1629.*

245 Evidence for membership: Stowe MS 1045; Spelman's list in the Norfolk Record Office MS 7198.

246 Foster, *op. cit.*, p. 67.

247 *Id.*, pp. 18, 33 and 92.

matriculated Cambridge in 1564 and was admitted to Lincoln's Inn in 1567. William Wiseman was called to the bar in 1577.[248] The same Wiseman was Member of Parliament for Maldon (Essex) in 1584, 1597, 1601 and 1604, and also a Justice of that county.[249]

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248 Baildon, *op. cit.*, vol. II, p. 402.

249 Hasler, *op. cit.*, volume III, p. 443.

Appendix 2 - Note on "The Disciplines"

The metamorphosis of an area of learning into a discipline involves the application, by researchers, of rules for construing and studying their objects of interest. Such a transformation also has much to do with a claim that resultant knowledge is scientific. According to Feyerabend, "scientific" thought replaced religious thought as the dominant epistemology in the Western world.[1] This dominance secured a restriction on what could be regarded as "true knowledge" as opposed to knowledge based on speculation. The question of disciplinisation has, hence, focussed upon a comparison of the theoretical and methodological regimentation characteristic of the physical or natural sciences on the one hand, and on the other the more interpretative and political practices of the humanities and social sciences.[2] These differences of approach are clearly referable to the differing natures of the "objects" of study, and it is sometimes asserted that the human condition thwarts those studies which concentrate on humans and human activity from ever developing into true sciences.

The mainstream of "science", which advocates the notion that science can explain phenomena by observation and induction, is known as positivism.

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1 Chalmers, A.F., *What Is This Thing Called Science?*, St Lucia, University of Queensland Press, 1976, p.144.

2 White, H., "The Politics of Historical Interpretation: Discipline and De-Sublimation", *Critical Inquiry* 9 (1982) 113-137 at 115.

Positivism, essentially an epistemology of natural science, was first introduced into the social sciences by Comte. It was proposed to demonstrate that sociology could be as definite in explaining social phenomena as the natural sciences were in their explanation of the natural world.[3] Positivism therefore confines "scientific" knowledge to that which can be observed factually and explained without interference from the researcher's subjective perspective. However positivist methodology is also heavily reliant on a deductivist technique. The deductivist approach is that quantitative research can be valid scientific methodology where its results can be reproduced and verified, and where the sample is sufficiently broad to make deductive conclusions. Deductive reasoning can be differentiated with its counterpart, inductive reasoning, upon which most social theory is based. Deductivists criticise social research on the basis that it takes into account and often emphasises the use of subjectivity in research methodology. In fact deductivists would disagree with the notion that one needs to interact with the research subject in order to discover more than the basic facts of society.

It has now been some decades since Popper introduced the concept of falsification as a means of validating any given knowledge. His concept was based on the premise that if a theory of a specific knowledge can be tested by others, that it is "falsifiable" (that it can be disproved by others in the scientific community), it

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3 Abercrombie, N., Hill, S. and Turner, B.S., *The Penguin Dictionary Of Sociology*, Middlesex, Penguin, 1984, p. 190. For a unsophisticated example see Fife, R.H., "The Renaissance In A Changing World", *Germanic Review*, 9 (1934) 73-95 at 75-76.

therefore has acquired the status of being "scientific".[4] Feyerabend would dispute the implication that there is something inherently valuable in this characteristic of falsification.[5] Skinner explains that in this period (the 1950's), within the philosophy of science, the falsificationist account of what constituted an explanation was dominant, and that deduction of certain facts could only be achieved by a known natural or at least statistical law. However, much of this falsificationist account has been challenged in later years by those who Campbell calls the `post-positivists'.[6]

A great deal of social thought is based, in contrast, on inductive reasoning. Chalmers, however, regards inductive reasoning as "naive" because the inductivist version of science attempts to give credit to the myth of science that one can draw from a singular statement a universal conclusion. Chalmers indicates that the inductivist answer is that "..provided certain conditions are satisfied, it is legitimate to generalise from a finite list of singular observation statements to a universal law".[7] Certainly social science does this to some extent, but usually in combination with an interpretative element. Since most social sciences do not work strictly within the positivist/inductivist paradigm, and in fact interpret the results of research in a

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4 Skinner, Q., ed., *The Return of Grand Theory in the Human Sciences*, Cambridge, Cambridge University Press, 1985, p.5.

5 Chalmers, *loc. cit.*

6 Campbell, D.T., (ed. E. Samuel Overman), *Methodology and Epistemology for Social Science: Selected Papers*, Chicago, University of Chicago Press, 1989, p. 316.

7 Chalmers, *op. cit.*, p. 3.

subjective manner, they are, on the other hand, often disparaged as not being "logical", that is not having applied deductive reasoning. As such the social sciences are regularly not regarded as serious contenders in the acquisition of "the truth". Nonetheless, the species of social science known as hermeneutics would argue that this interpretative element is both unavoidable and valuable. In the realm of historical studies the historicist style drew from this practice.[8] Because observation is theory-dependent, and because human subjects contribute their own theories to the research process, hermeneuticist social scientists would diverge from the inductivist argument. Inductivists generally agree that science begins with observation, whereas most social scientists would argue that science begins with theory. Therefore, the hermeneuticists would argue, science should be regarded as contingent upon cultural, social, political, economic and a whole host of other beliefs. The social scientist might therefore argue that no science, be it social or natural, is free from social values. More recently Giddens has contended that although the methodologies of the natural and social sciences may be similar, because they explore two different fields of inquiry both can use interpretation.[9] He goes on to state that both are bound up in a "double hermeneutic".[10] With the hermeneutic tradition came numerous discourses

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8 See Rand, C.G., "Two Meanings of Historicism in the Writings of Dilthey, Troeltsch, and Meinecke", *Journal of the History of Ideas*, 25 (1964) 503-518 and Huppert, G., "The Renaissance Background of Historicism", *History and Theory*, 5 (1966) 48-60.

9 See White, E., "Truth and Interpretation in Legal History", *Michigan Law Review*, 79 (1980-1981) 594-615.

10 "..the subjects of study in the social sciences and humanities are concept-using beings, whose concepts of their actions enter in a constitutive manner into what those actions are. Social life cannot even be accurately described by

which analysed the relationship between the observer and the subject of social analyses. Particularly, the brands of sociology known as interactionism and phenomenology are examples of this newer tide of thought. The "naive" inductivists would argue that there is no interpretation necessary in regard to the conceptual base of the research because once the data is gathered general conclusions can be drawn from "objective" observations (based on these methodological `givens'). It is submitted that Chalmers' description of these inductivists as being naive is fairly accurate, if a little impolite, not just for the reason which he postulates, but also for the hermeneutical objections to the myth of the "value-free" scientific investigation.

While the tension between the physical and social scientists remains, many social scientists become entangled in the "science" debate and concern themselves with the validation of their knowledge in the scientific community. This concern arises from the divergence of sociology from philosophy. In order to establish a separate discipline, sociologists embraced the "scientific" model. Skinner states that "With the philosophers themselves proclaiming that there was nothing systematic for them to tell us about the substantive moral and political issues of the day, the burgeoning of a purely empirical science of society seemed assured."[11] It is only a matter of viewpoint whether one ascribes to a position on the question whether social

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a sociological observer, let alone causally elucidated, if that observer does not master the array of concepts employed (discursively or non-discursively) by those involved.": Giddens, A.,"What do sociologists do?" and "Nine theses on the future of sociology", in his *Social Theory and Modern Sociology*, Cambridge, Basil Blackwell, 1987, p. 18.

11 Skinner, *op. cit.*, p. 4. Cf. Unger, *op. cit.*, pp. 6-8 and 104 ff.

scientists have achieved this end or not, but it is also worth remembering that Feyerabend's assertion - that in order to understand the debate it is necessary to recognise that the argument was also fuelled by the desire of social scientists to obtain state recognition (and therefore funding), has a real ring of truth.[12] The dominance and exclusivity of scientific thought explains why early social researchers embraced the scientific model - because without the adoption of the natural sciences' perspective of knowledge, these "disciplines" would not have achieved the institutional security necessary for their development.

In summary, the humanities and social sciences can be said to be "science" as they look for explanations on and understanding of the organisation of society, the individuals within the society and the relationship between those things. Some disciplines adhere more strictly to "traditional" scientific methods, that is by measuring individuals within the society without consideration of the role they play in constructing their own reality, whereas other disciplines are only loosely based on the "traditional" scientific premise but choose also to look (qualitatively or interpretatively) at the relationships in society and its structure. Without dwelling further on that specific debate[13], but noting that the physical science model of *the*

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12 Chalmers, *op. cit.*, pp. 123-130. See also Nimis, S., "Fussnoten: Das Fundament der Wissenschaft", *Arethusa* 17 (1984) 105-134 and Woolf, "Disciplinary History and Historical Culture", at 5-13.

13 See additionally Kuhn, T.S., *The Structure of Scientific Revolutions*, 2nd edition, Chicago, University of Chicago Press, 1970 and Foucault, M., *The Order of Things: An Archeology of the Human Sciences*, New York, Tavistock, 1970, especially pp. 344-387.

discipline is far from unassailable even from within[14], it is clear that (for the most part) the human and social sciences have strived to conform to the basic requirements of the regulation of knowledge production by developing systems of method.

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14 Gleick, J., *Chaos: Making a New Science*, London, Heinemann, 1988.

Appendix 3 - The Curious Discourses

The following table sets out the "Curious" Discourses, as compiled by Hearne and Ayloffe. It is arranged in the two volumes of the 1771 Ayloffe edition, but Hearne's original 1720 selection (copied by Ayloffe) is indicated. The use of square brackets [...] indicates my interpolations.

VOLUME I

[1.	**Hearne's original selection]**		
-	The antiquity of the laws of this island	-	W. Hakewill
-	Of the antiquity of the laws of England	-	[anon]
-	Of sterling money	-	Sir Thomas Lake
-	Of sterling money	-	Francis Thynn
-	Of sterling money	-	Mr James Ley
-	Of what antiquity Shires were in England	-	Mr Agard
-	Of what antiquity Shires were in England	-	Mr Thynn
-	Of the time when England was first divided into Shires and the reason of such division	-	Mr Talbot
-	Of the same	-	Mr Brawghton
-	Of the time when England was first divided into Shires	-	Mr James Ley
-	Of the antiquity of Terms for the Administration of Justice in England	-	J Holland
-	Of the antiquity and etymology of Terms and Times for Administration of Justice in England	-	Fr. Thynn

-	Of the antiquity of Cities in England	-	Joseph Holland
-	Dimensions of Land of England	-	Joseph Holland
-	Of the Dimensions of the Land of England	-	Sir John Dodderidge
-	Of the same	-	Mr Agard
-	Of the antiquity, office and privilege of Heralds in England	-	Mr Leigh
-	Of the same	-	Mr Camden
-	Of the same	-	Mr Whitlocke
-	Of the same	-	[anon]
-	Of the antiquity and use of Heralds in England	-	Joseph Holland
-	Of the authority, office and privileges of Heralds in England	-	Mr Agard
-	Of the antiquity and privileges of the Houses or Inns of Court and of Chancery	-	Mr Agard
-	Of the antiquity of the Houses of Law	-	Mr Thynn
-	Of the antiquity, use, and privilege of places for students, and Professors of the Common Laws of England	-	Mr Whitlocke
-	Of Knights made by Abbots	-	Sir Francis Leigh
-	Of the same	-	Mr Tate
-	Of the diversity of names in this island	-	Mr Camden
-	Of the same	-	Joseph Holland
-	Of the same	-	Mr Agard
-	Of the same	-	Mr Oldworth
-	Of the antiquity, etymology and privilege of		

	Castles	-	Sir Robert Cotton
-	Of the antiquity, etymology and privilege of Towns	-	Sir Robert Cotton
-	Of dimension of Land	-	Sir Robert Cotton
-	Of the antiquity of Motts and Words with Arms of Noblemen and Gentlemen of England	-	Sir Robert Cotton
-	Of the antiquity of Arms in England	-	Mr James Ley
-	Foresta	-	James Lee
-	Of the antiquity of the office of the Chancellor in England	-	Mr Ley
-	Of Epitaphs	-	Mr Ley
-	Of Motts	-	Mr Ley
-	Of the etymology and original of Barons	-	Mr Camden
-	Mr Tate's questions about the ancient Britons	-	[Tate]
-	Mr Jones his Answers to Mr Tate's Questions	-	[Jones]
-	Of the duty and office of an Herald at Arms	-	Francis Thynn Lancaster Herald
-	Of the office and duty of Heralds in England	-	Sir John Dodderidge
-	Of the antiquity of Arms in England	-	Mr Tate
[2.	**Ayloffe's Additional inclusions]**		
-	Of the antiquity of Arms in England	-	anonymous
-	Of the same	-	Mr Michael Heneage
-	Of the same	-	Mr Agard
-	Of the same	-	Dr Doyle

-	Of the antiquity of the Name of Duke in England	-	anonymous
-	Of the same	-	Joseph Holland
-	Of the same	-	anonymous
-	Of the same	-	Mr Doyle
-	Of the same	-	Mr Agard
-	Of the etymology, antiquity and privileges of Castles in England	-	Mr Agard
-	Of the same	-	anonymous
-	Of the antiquity, etymology and privileges of Towns	-	Joseph Holland
-	Parishes	-	Joseph Holland
-	Of the antiquity, variety and etymology of measuring land in Cornwell	-	anonymous
-	Of the antiquity, etymology and variety of dimensions of land in England	-	[anon]
-	Of the antiquity of ceremonies used at funerals	-	Sir Wm. Dethick, Garter
-	Of the same	-	anonymous
-	Of the same	-	Mr Holland
-	Of the same	-	Mr Ley
-	Of the same	-	Mr Arthur Agard
-	Of the same	-	Mr Tate
-	Of the variety and antiquity of Tombs and Monuments	-	anonymous
-	Of the same	-	[anon]
-	Of Epitaphs	-	Mr Camden

-	Of the same	-	anonymous
-	Of the same	-	anonymous
-	Of the same	-	Mr Agard
-	Of the same	-	Mr Thynn
-	Of the same	-	Sir Wm Dethick, Garter
-	Of the same	-	Mr Holland
-	Of the antiquity, variety and reason of Motts with Arms of Noblemen and Gentlemen in England	-	Mr Agard
-	Of the same	-	Joseph Holland
-	Of the same	-	Mr Camden
-	Of the same	-	[anon]
-	Of the same	-	Sir Wm Dethick, Garter
-	Of the same	-	Sir Francis Leigh
-	Of the same	-	A b r a h a m Hartwell
-	Of the antiquity, power, order, state, manner, persons and proceedings of the High Court of Parliament in England	-	Mr Dodderidge
-	Of the same	-	anonymous
-	Of the same	-	Mr Agard
-	Of the same	-	Mr Tate
-	Of the same	-	Mr Camden
-	Of the same	-	Joseph Holland
-	Of the same	-	anonymous

- Of the same - Mr Camden

VOLUME II

- The antiquity, authority, and succession of the High Steward of England - Sir Robert Cotton, Bart.
- Of the same - anonymous
- Of the same - Mr Townsend
- Of the same - Mr Holland
- Of the same - Mr Thynne
- Of the same - Mr Tate
- Of the same - Mr Davys
- Of the same - Mr Camden
- Of the same - Mr Agard
- Certain Remembrances touching the same - anonymous
- The antiquity and office of the Constable of England - Sir Robert Cotton, Bart.
- Of the same - anonymous
- Of the same - anonymous
- Of the same - Mr Holland
- Of the same - Mr Agard
- Of the same - anonymous
- Of the same - anonymous
- The antiquity and office of the Earl Marshal of England - Mr Camden

-	Of the same	-	Sir Robert Cotton, Bart.
-	Of the same	-	Mr Agard
-	Of the same	-	Mr Davies
-	Of the same	-	Mr Holland
-	Of the same	-	Mr Thynne
-	Of the same	-	anonymous
-	Of the same	-	anonymous
-	Reasons that the Court of Marshalsea may be fitly enabled in certain cases to hold plea of all manner of trespasses, as well as upon the case as others, albeit, neither party be of the King's household	-	anonymous
-	Of the antiquity of the Christian religion in this island	-	Sir Robert Cotton
-	Of the same	-	Mr Agard
-	Of the same	-	Sir Wm Dethicke, Garter Principal King of Arms
-	Of the same	-	Mr William Camden
-	Of the same	-	W Hakewill
-	Of the antiquity, use and ceremony of lawful combats in England	-	Sir Robert Cotton, Bart.
-	Of the same	-	Mr Davies
-	Of the same	-	Mr Davies
-	Of the same	-	Mr James Whitlocke

-	Of the same	-	Joseph Holland
-	Of the same	-	anonymous
-	Of the same	-	anonymous
-	Of the same	-	Mr Agard
-	Duello Foiled, or the whole proceedings for single fight, by occasion whereof the unlawfullness and wickedness of a Dueilo is preparatively disputed, according to the rules of honour and right reason	-	Mr Edward Cook
-	The manner of judicial proceedings in the Court of Constable and Marshal (or Court Military) touching the use and bearing of Coats of Arms, observed and collected out of Records of the Town of London	-	[anon]
-	A defence of the jurisdiction of the Earl Marshal's Court in the vacancy of a Constable; and of his disowning prohibitions sent thither from other Courts, by way of letter to the Honourable Sir John Somers, Knt., Attorney-General to his Majesty, from Robert Plott LL.D	-	Robert Plott
-	Camera Stellata; or, an explanation of the most famous Court of Star Chamber: Together with an account of the offences there punishable; the payable fees, and the orders for proceeding therein	-	Mr Tate
-	The antiquity of Barons	-	Mr Agard
-	Of Forests	-	Mr Agard
-	The antiquity of Seals	-	Mr Agard
-	The antiquity of the word Sterlingorum or Sterling	-	Mr Tate
-	Of Sterling Money	-	Mr Agard
-	Of the same	-	Mr William Pattin
-	Of the same	-	Mr Broughton

-	Of the same	-	Mr John Stowe
-	Of the same	-	Mr Joseph Holland
-	Of the same	-	anonymous
-	Of Sterling Money	-	Mr Thomas Talbot
-	Of Sterling Money	-	Mr Henry Burchier
-	Of the same	-	Mr Michael Heneage
-	Of the division of Shires	-	Mr Joseph Holland
-	A project touching a petition to be exhibited unto her Majesty (Queen Elizabeth) for the erecting of a Library, for the study of antiquities and history	-	[Cotton Petition]
-	A second discourse touching the Earls Marshals of England	-	Mr Camden
-	The antiquity and etymology, Terms and Times, for administration of Justice in England	-	[Spelman's "The Original"]
-	Of Epitaphs	-	Mr Abraham Hartwell
-	Of Castles	-	Mr. Joseph Holland
-	Of the etymology, dignity and antiquity of Duke or Dux	-	[anon]
-	A further discourse on Sterling Money	-	Thomas Talbot
-	Of Forests	-	[anon]
-	Of the same	-	Richard Broughton

- Our certain definate topographical dimensions in England, compared with those of the Greeks and Latins, set down in order as they arise in quantity - [anon]

Appendix 4 - The Cotton Petition[15]

A project touching a petition to be exhibited vnto her maiesty for the erecting of her library & an Academy.

1. The Scope of this Peticion.

1. The Scope of this petition is to preserve divers old bookes concerninge mater of history of this Realme originall charters & monuments in a Library to be erected in some convenient place of the hospitall of the Savoy St Johns or els whear.

2. Secondly for the better information of all Noblemen and gentlemen Studiows of Antiquitye whearby they may be enabled to do vnto her Maiesty & the Realme sutche service as shall be requisite for their place.

3. This Lib[r]arye to be intituled the Library of Queene Elizabethe. and the same will be well furnished with divers Auncient bookes & monumentes of Antiquity rare & wyche otherwise maye perishe and that at the costes & charges of divers gentlemen which will be willinge theirvnto.

2. That yt may please the Queenes Maiesty to encorporate the persons studious of antiqutiy for the better preservation of the said Library & encrease of knowledge in that behalfe.

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15 Cotton MSS *Faustina* E.V. 12, fols. 89-90b and *Titus* B.V. 67, fol. 210.

The name of this Corporation be The Accademye for the studye of Antiquity and Historye founded by Queene Elizabeth. or otherwise as yt shall please her Maiesty.

The persons & officers of which this Corporation shall consist

1. a Governor or president.

Twoo gardeyns of the library yearly to be chosen & the ffellowes of the same Accademye out of which ffelowes the Governor & president & Gardens ar yeirly to be elected.

Their ar divers gentlemen studious of this Knowledge & which have long tyme assemblid & exercised themselves theirin out of which company & others that ar desirous the body of the said Corporation may be drawne.

That yt would please the Queenes Maiesty to graunt the Custofy & to comitt the care of that Library to the said Corporation according to sutche ordynaunces & Statutes as yt shall please the Queenes Maiestye to establishe.

That none shall be admitted into this Corporation or Socyety except he take the othe of the Supremacy & to preserve the said library to the best of their endeavour.

That is may please her Maiesty to bestowe out of her gratious library sutche & so many of her bookes concernyng history & Antiquity as yt shall please her highnes to graunt for the better

furnishing of this library.

The place wher yt may please her Maiesty to appoynt for this library & the meeting of the said Society.

The place may be eyther some convenient Room in the Savoy which may well be spared. or ells in the late dissolved Monastery of St Johns of Jerusalem or otherwhe[r] whear yt shall please her Maiesty.

That their might be ordeyned in the said Letters pattentes of incorporation certeyn honorables persons to be visitors to visit the said Society from fyve yeir to fyve yeir or as often as it shall please her Maiesty to appoynt.

The names of the visitors

The Archebishopp of Canterbury being of the pryvy Covnsell..

Reasons to move the furdrance of this Corporation.

1 first their ar divers & sundry monuments worthe observation whearof the oryginall is extant in the hands of some privat gentleman & allso divers others excellent monumentes whearof their is no record now extant which by theise means shall have publick & salfe custody for vse when occasion shall serve.

The care which her Maiesties progenitors have had for the preservation of sutch ancient monuments.

Kynge Edward the first caused & committed dyvers copyes of the Recordes and monumentes concerninge the Realm of Scottland vnto divers Abbeyes for the better preservation theirof which for the most part ar now perished or rare to be had & which provision by the dissolution of all Monasteryes is determyned.

The same king caused the libraryes of all monasteryes & other placed of the Realm to be serched for the furder & manifest declaration of his titell as cheef Lord of Scottland & the record theirof now extant dothe alleidge divers Legers bookes of Abbeyes for confirmation theirof . the lik was doon in the tym of king Henry the eight.

Also when the popes auctority was abolyshed out of England by kyng Henry the eight their was speciall care had of the searche of Antient bookes & Antiquityes for manifestation vnto the world of these vsurpations of the pope.

Also their ar divers treatises published by auctoryte for the satisfaction of the world in divers matters publicke which after the[y] ar by publick auctoryty prynted & dispersed they do after som tym become very rare for yat their is no publick preservation of them & the lik is of proclamations.

This society will not be hurtfull to eyther of the vniversiteis

for yt shall not medle with the artes, philosphy, or other fynall Studyes their professed, for this Society tendeth to the preservation of historye & Antiquity of which the vniversityes being busyed in the Artes tak little care of regard.

In foreyn Covntryes whear most civility & learning is their is great regard had of the cherishing & encrease of this kinde of learning: by publicke lectures appoyneted for that purpose & their ar erected publick libraryes & accademyes in Germany Italy & ffrance to that end.

To this corporation may be added the S[t]udy of forreyn modern Tonges of the nations our neighbours Countryes & regard of their historyes & states whearby this Realm in a short tyme may be furnished with sundry gentlemen enabled to do her maiesty & the realme service as agentes or otherwise to be Imployed

Mr Cotton Mr James

Lee

Mr. Dodorug

Appendix 5 - Spelman's 'Occasion'[16]

The Occasion of this Discourse:

About forty two Years since, divers Gentlemen in London, studious of Antiquities, fram'd themselves into a College or Society of Antiquaries appointing to meet every Friday weekly in the Term, at a Place agreed of, and for Learning sake to confer upon some Questions in that Faculty, and to sup together. The Place, after a Meeting or two, became certain at Darby-house, where the Herald's Office is kept: and two Questions were propounded at every Meeting, to be handled at the next that followed; so that every Man had a Sennight's respite to advise upon them, and then to deliver his Opinion. That which seem'd most material, was by one of the Company (chosen for the purpose) to be enter'd in a Book; that so it might remain unto Posterity. The Society increased daily; many Persons of great Worth, as well noble as other Learned, joining themselves unto it.

Thus it continu'd divers Years; but as all good Uses commonly decline; so many of the chief Supporters hereof either dying or withdrawing themselves from London into the Country; this among the rest grew for twenty Years to be dicontinu'd. But it then came

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16 Ayloffe, J., ed., *A Collection Of Curious Discourses...*, 2 volumes, London,1771.

again into the mind of divers principal Gentlemen to revive it; and for that purpose, upon the [blank] Day of [blank] in the Year 1614 there met the same Place Sir James Ley Knight, then Attorney of the Court of Wards, since Earl of Marleborough and Lord Treasurer of England; Sir Robert Cotton Knight and Baronet; Sir John Davies his Majesty's Attorney for Ireland; Sir Richard St. George Kent than Norrey, Mr. Hackwell the Queen's Solicitor, Mr. Camden then Clarencieux, myself, and some others. Of these the Lord Treasurer, Sir Robert Cotten, Mr. Camden, and my self, had been of the original Foundation; and to my knowledge were all then living of that sort, saving Sir John Doderidge Knight, Justice of the King's Bench.

We held it sufficient for that time to revive the Meeting, and only conceiv'd some Rules of Government and Limitation to be observ'd amongst us; whereof this was one, That for avoiding Offence, we should neither meddle with Matters of State, nor of Religion. And agreeing of two Questions for the next Meeting, we chose Mr. Hackwell to be our Register, and the Convocator of our Assemblies for the present; and supping together, so departed.

One of the Questions was, touching the Original of the Terms; about which, as being obscure and generally mistaken, I bestow'd some extraordinary pains; that coming short of others in Understanding, I

might equal them if I could in Diligence.

But before our next Meeting, we had notice that his Majesty took a little Mislike of our Society; not being inform'd, that we had resolv'd to decline all Matters of State. Yet hereupon we forbare to meet again, and so all our Labours lost: But mine lying by me, and having been often desir'd of me by some of my Friends, I though good upon a Review and Augmentation to let it creep abroad in the Form you see it, wishing it might be rectify'd by some better Judgement.

Appendix 6 - British Library Stowe MS 415, ff. 85-86

The Antiquity of the Lord Chancellor of England's Office Collected by Mr Tate of the Middle Temple London

It is most true which Casciodorus in his book of Epistles sayeth (Latere non potest, quod intra Cancelles agitur) there the door and all the Inclosure serveth to keep out the Body, but not to exclude the Eye, whose passage is Left free, through the latticed grates, round about, Ignorance, therefore, in this matter can stop noe man's Mouth. But they only are Able Exactly to discover the Excellency of the Chancellors Office that are admitted to set him about the Marble Table. Of which rank this Society being furnished, with one that is Worthy to be. (Primus inter clericos ad Robas, de prima forma) I will not deprive him of Time, to Instruct us in these Excellent matters, he can discover in all the parts of this question.

The general view which I have taken, looking as commonly we say, per transenna , is but this:

The King which is the fountain to which all subjects Resort for Justice, As well to save his person from Cursed Traytors, as to preserve his Royal Majesty from Contempt, coming into his great hall, to heare and give Reliefe to all partyes grieved, had the place of his Chaire of State Separated from the Residue of the Hall, by barrs and grates made like lattiss windowe, which of a Lattin or Greek Word are called (Cancelli), and within the same was this great Officer whoe through the grates delivered the Kings Answer to the Subject. And from thence many suppose he took his name of (Cancellarius). But Valerius Maximus Seemeth rather to derive it from the Trust reposed in him, to Allow and Authorise by the King's Seale, such Lawes, grants and writeings, as were good for the ComonWealth. And by drawing sloaped lines, acrosse other writeings not fitt to passe the Seale or stand in force, which in Latin is (Cancellare) - a word Improperly and Metaphorically used. Soe that in my Opinion, At the first this name was peculiar to the Kings Chancellor, But after it was by many writers and especially Civillians translated to other notaryes, scribes and Registers. Insomuch as I finde some men of Opinion, in the General Signification, the Word properly doth Signify any Notary, and this great Chancellor is called (Cancelor by a kind of Excellency.

The Antiquity of this Office appeareth, by this: that King Offa had Unwanna to be his Chancellor; King Edred, Eurketill; King Egbert,

Swithin, Ethelstane, Wulfin; King Edgar, Adulphus; King Edward, Leofric and Rainbaldus and William the Conqueror, Morrice Bishop of London. therefore I marvell why Pollidor Virgill should Attribute the makeing of a College of Scribes to King William the Conqueror, and the chief of them to be named a Chancellor, whoe in processe of tyme grew to be Supremus Magistratus.

The Choice of the Chancellor Appertaineth alwayes to the King, not to the Parliament, whatsoever was pretended by Ralph Nevill, and the Nobles in the time of King Henry the Third, whose Argument is Manifestly false and deceiptful, for they Argue thus, the great Seal hath many tymes been delivered to the Chancellor, in full court of Parliament, therefore not to be yielded Back again But in Parliament, nor to be disposed of, but by Assent of all the States.

It was Ordinary for the King in Parliament by Assent of the Lords Spirituall and Temporall, to dispose of his Lands by Charter; but this proveth not, the King cannot dispose of his Lands, but by Assent of the High Court of Parliament. Ingulphus telleth us The King made Turketill Chancellor, not Parliament. (Rex Edwardus Turketillum Cancellarum suum constituit ut quecunque negotia Temporalia vel Spiritualia Regis iudicium expectabant illius consilio tractarentur) St. Edwards Charter to Westminister, by the Chancellors Title proveth

the Kings choice of him, where Swithergarius subscribeth thus (Swithergarius notarius ad vicem Rembaldi Regi, dignitatis cancellarii) So Wulfinus stileth himselfe Regie Dignitatis Cancellarium, he calleth not himself "Cancellarium Anglie" but Regis Cancellarium or Regis Dignitatis Cancellarium. In the *Quadrilogium* (lib. 1, Cap. 6) I finde these words (Elaboratus est a Theobaldo, Cantuariensis Archiepiscopus ut Thome Becket Archidiaconus suus Regis collateratis et cancellarius efficeretur) And after Thome Aula Ingreditur et stribuente Rege officium cancellarie suscepit) If the Parliament should dispose of that place, what needed that Act of Parliament 1 Ric. 2 That the Lord Chancellor and other Officers in the Chancery should be placed by the Parliament during the Kinges minority I doubt not, but it was soe disposed of likewise dureing the Minority of King Henry the Third for otherwise there could be noe Chancellor or Keeper of the Great Seale. As it seemeth by a Charter which I found in the Register of Thorney Abby Part 9: fo: 15: (Henricus dei gratia etc Sciatis quod Electioni facte de Roberto quondam sacrista Edward in Abbem de Thorny Regii....pre buinus Assensum te in cuius Rei Testimonium Has litteras nostras patentes vobis Mittimus. Sigillat sigillo Comitis W. Marescalli Rectoris nostri quod nomen huius Sigillum in Teste ipso comite apud Northampton xvijth December anno Regis nostri secundo) I think noe man doubteth but in [the] tyme of King Edward iiij it was clear that the King might

make Chancellors whom pleaseth him: Yet anno vij Edward iiij George Archbishop of York by the King's commandment yielded up the Seal, and afterwards the King in Parliament gave it to Robert Bishop of Bath.

Sometymes this office is Bestowed but by Word, and then it is revocable at the Kings pleasure. Sometymes it has been given by Pattent for life, as xj.H:3: to Ralph Bishop of Chichester and 7 of King John to Walter Gray.

If it passe by Word and delivery of the Seale, the delivery is either for Custody till the King hath disposed thereof to some other, either as Chancellor or as Keeper of the Seale. As Keeper of the Seale there were in Antient times some as appeareth 2:E:3: Where it is said Custos sigilli precipiet feodum Cancellarii. Et teneat Hospitium per clericis eiusdem anno 6 R 2^{nd} , custos sigilli non presentabit ad beneficia sicut Cancellum Anno 5 Eliz. is the authority made all one.

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This bibliography contains a comprehensive list of the manuscript and printed sources used in this research. It does not include materials which have been consulted, but which have not been directly used in writing this thesis.

The bibliography is divided into the following sections:

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    (a) British Library
    (b) Bodleian Library
    (c) Norfolk Record Office
2. Primary Printed Sources
    (a) Contemporary Tracts and Treatises
    (b) Cases
    (c) Records of the Inns of Court
    (d) Printed Parliamentary Records
    (e) State Papers and Public Documents
    (f) Private Papers, Letters, Diaries etc.
3. Secondary Sources
    (a) Dictionaries, Indexes etc.
    (b) Monographs
    (c) Articles
    (d) Unpublished Dissertations

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