Universal Men of Law:

Humanism, Literature and Play in the Legal Notebooks of Law Students at the Early Modern Inns of Court (1575-1620)

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Abstract.

This thesis examines the legal notebooks of law students at the early modern Inns of Court, from 1575 to 1620. These notebooks were practical tools of learning in which serious-minded students recorded their formal legal studies. This study is specifically focused upon the non-legal texts that are often found written into these otherwise strictly legal notebooks. For the purpose of this study I define non-legal texts as those texts not obviously related to formal legal study at the Inns. These non-legal texts include classical, scriptural and contemporary histories, humanist literature, humorous stories, verse composition and philosophy.

These notebooks have mainly been studied by legal historians with an eye to reconstructing the day-to-day educational practices of Inns members. Literary scholars have occasionally focused upon the literary parts of notebooks such as these, but they have not considered the wider, legal context in which those non-legal texts were written. There has previously been no sustained study on the non-legal, literary contents of legal notebooks belonging to law students at the Inns of Court. Through close textual and material analysis, I treat these notebooks as whole, composite objects. I question why these non-legal texts were included in otherwise vocational and educational legal notebooks, and whether their authors perceived a relationship between their formal legal studies and these non-legal texts.

My research challenges our current understanding of what constituted a legal text in the early modern period. I argue that these non-legal texts were used to supplement the self-directed legal educations of committed and serious law students. In doing so I propose that those students use of literature and play in their notebooks was an adaptation of humanist educational practices that was entirely unique to the Inns of Court.

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Introduction.

Legal Notebooks.

Often referred to as England's 'third university', the Inns of Court in the early modern period were, and continue to be, the principal schools of law in England. Students at the Inns were primarily instructed in the common law through oral methods. The most advanced of these were readings, which were 'devoted to the exposition of a statute or part of a statute', and also moots which were elaborate vocational exercises in the style of a mock trial.[1] Students also attended lectures, which could cover a broader series of subjects relating to law, and they observed trials in order to see the law in action. Alongside oral instruction students also turned to reading and the private study of Year Books and abridgements. Although the Inns may have presented themselves as collegiate societies, they in fact provided no formal supervision, no tutelage and no direction to their members. Those who aimed to succeed in the legal profession often had to struggle on alone. The most formidable part of a lawyer's training was, according to Wilfrid Prest, the reading, digesting and commonplacing of cases from the Year Books and reports into notebooks.[2] These notebooks, he observed, 'summarised cases, statutes and writs under alphabetical headings' while 'institutional books… provide a more or less comprehensive map of the law.'[3] Left to their own devices, and confronted with the intimidating task of mastering English common law, students relied on these legal notebooks to help them condense and manage that task. Legal notebooks were practical tools that facilitated the learning of law, and they were material spaces in which

[1] Wilfrid Prest, *The Inns of Court under Elizabeth I and the Early Stuarts, 1590-1640* (London: Longman Group Limited, 1972), 116-117.
[2] Ibid., 143.
[3] Ibid.

students could shape their own legal educations. The contents of these notebooks are largely study-based materials, relating to the oral exercises and reading practices undertaken by Inns members. Sir John Baker's extensive cataloguing of legal manuscripts both in the United Kingdom and the United States of America provides us with descriptive details of these notebooks' contents, and it is from these catalogues we can see how these notebooks were at once varied, yet also broadly formulaic in their content and composition.

The contents of these notebooks were on the whole, as Baker's cataloguing demonstrates, directed towards legal study. However, written alongside the legal materials are non-legal texts that appear to serve no obvious legal function, and which seem unrelated to the legal studies of the notebook's compiler. Baker notes the presence of these non-legal texts, but he offers no further analysis as to what they are doing in the notebooks. An example of this kind of non-legal text can be seen in a notebook belonging to an anonymous author at Middle Temple, dated c. 1611.[4] Written in Law French and English, this notebook is primarily a record of moot exercises and readers' cases held at various Inns of Court. The notebook is arranged so that it could be used referentially, with Year Book numbers, main points of law and participants of moot exercises recorded in the margins. The notebook is extensive and is evidence of a sustained and committed engagement with legal studies over a period of several years. Written within this notebook, alongside these serious legal exercises, are also a series of humorous stories and jests titled 'Joco Seria'. The stories frequently circle around bawdy and bodily themes, such as the anecdote relating to a law student that was too afraid to urinate, or another that had convinced himself that he had become an owl. Other stories relate to idiots and cowards who, by strange circumstances, found themselves caught up in

[4] CUL Dd.5.14.

battles against their will, and other stories describe with morbid fascination strange methods of execution, and the canny wits of criminals who sought to avoid that fate. When reading the notebook as a serious tool of legal study, the Joco Seria immediately stand out as anomalous, perhaps even strange. It would be easy to dismiss the Joco Seria as disposable moments of play, as frivolous distractions from legal study, but to do so would be to ignore the tantalizing questions that their presence invites. Why did the author write these Joco Seria in the middle of his legal notebook? What work, more generally, are texts such as these - which do not obviously fulfil a function in legal education - doing in notebooks of an otherwise strictly legal nature? This is the question that my thesis seeks to investigate.

The Joco Seria are just one example of the many kinds of non-legal texts that appear within the notebooks of law students at the early modern Inns of Court. My thesis is concerned with these non-legal materials, and their seemingly incongruous inclusion within notebooks of an overtly legal, practical and pedagogical nature. The focus of my research has been to understand these materials, to question whether there existed a relationship between the legal and the non-legal texts within these notebooks, and if such a relationship existed then to ask how these non-legal texts can expand our understanding of what it meant to participate in legal education, and what it meant to be a legal professional in a society that was invested in humanistic ideals of civic duty and study in service to the commonwealth. In answering these questions, my thesis will challenge common pre-conceptions in the secondary literature on the Inns of Court, in which stark divisions are placed between serious-minded students, often referred to as ‘plodders’, and those less serious students, otherwise known as

'revellers'.[5] Instead, I propose an interconnected and overlapping model of culture at the Inns, in which play and literature were components of, rather than distractions from, a committed legal education. I do not believe that the combining of legal and non-legal materials in these notebooks was entirely accidental, nor do I assume that these non-legal texts were by their nature entirely frivolous. I question whether these legal and non-legal texts were brought together deliberately, and if so, my thesis seeks to ask why they were brought together and to what effect.

It is at this juncture that I must clearly define what I mean by non-legal texts in the context of the legal notebooks. Throughout my thesis I use the term non-legal text to describe materials that appear to serve no obvious legal function, those texts that seem at first to be unrelated to legal studies or which are non-practice-based in a legal sense. That is, these texts are not readings, lectures, moots, case notes or any other text that is obviously related to the formal practice of learning law at the Inns of Court. For the purposes of my thesis the term non-legal text is used to distinguish the various literary, humanist, historical, philosophical, theological and humorous texts which are found alongside legal notes. This term is used tentatively, perhaps even provisionally, with an understanding that the nature of my research challenges our understanding of what constitutes a legal text. By labelling what I have provisionally termed 'non-legal' texts, I do not necessarily imply that these texts cannot ever be legal texts, only that they do not appear to be directly related to the formal legal studies for which the notebook was conceived. Defining the non-legal texts has been challenging, and I accept that the definition I have selected presents some difficulties as, by their inclusion within a textual

[5] These terms were coined by Francis Beaumont, see Mark Eccles, "Francis Beaumont's *Grammar Lecture," The Review of English Studies,* vol 16, issue 64 (1940): 406.

space whose principal function was to facilitate legal learning, those texts hint as potentially having a legal usage. It is precisely this difficulty which makes these non-legal texts (as I have defined them) so interesting and worthy of further study. We must consider the legal potential of these so-called non-legal texts. Of course, this is not to say that any additional materials which appear in legal notebooks were, by nature of their inclusion, infused with legal meaning, however, I believe that by reading these texts from both a legal and literary perspective we can discover whether these non-legal, literary, humanistic and playful texts fulfilled a role in the educational development of legal professionals.

These notebook manuscripts are a rich, unique and largely neglected source of legal and literary scholarship. As noted below, they have been almost exclusively examined by academics whose interests lie in the history of law and legal education. They have not been examined from a mainly literary, or humanist perspective. The approach adopted in this thesis is interdisciplinary, spanning legal history, the history of education, both legal and humanist, and literary analysis. My research is, first and foremost, a work of literary scholarship; by grounding my research in this discipline I am reading these legal notebooks in a way which they have previously not been read. It is through this innovative method of scholarship that we can expand our knowledge of literary and professional culture, reading, education and play at the early modern Inns of Court.

Legal Education in the Early Modern Period.

What were the Inns of Court, and what was a legal education like for a student of law during the Elizabethan and Stuart period? The four main Inns, Middle Temple, Inner Temple, Lincoln's Inn and Gray's Inn are believed to have been established sometime in the fourteenth

century, although the exact date of their foundation is obscure.[6] This is in part due to their status as voluntary, unincorporated societies, as such they were 'unhampered by charters or statutes' and so no documents exist from which we can date their original foundation.[7] The Inns were residential institutions, and were geographically concentrated to the West of the old City of London, between High Holborn and the Thames.[8] They each began as distinct institutions that over the centuries harmonized to become a larger, interconnected group of legal societies with shared regulations, learning practices and social connections. By the sixteenth century this association of legal societies also included the Inns of Chancery, which were primarily concerned with the occupation of solicitors, although they too offered initial training for barristers who would then advance into the Inns of Court to complete their education. The primary function of the Inns was to provide a legal education, and yet in the fifteenth and sixteenth centuries the majority of members did not commit to undertake legal study, nor did they pursue a legal career. Working from the plea rolls of the Common Pleas, alongside the membership records of the four main Inns, Baker concluded that 'fewer than ten percent of Inns of Court men in the fifteenth and sixteenth centuries took to the legal profession as a career'.[9] The number of members engaged with legal studies was surprisingly low given the primary function of these institutions. As to the educational background of these members, it must be noted that in 1561 only 13 per cent of Inns men had a university education, with the figure rising to about 42 per cent by 1581.[10]

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[6] John Baker, "The third university 1450-1550: Law school or finishing school," in *The Intellectual and Cultural World of the Early Modern Inns of Court,* eds. Jayne Archer, Elizabeth Goldring and Sarah Knight (Manchester: Manchester University Press, 2011), 8; John Baker, "The First Two Centuries," in *History of the Middle Temple,* ed. Richard O Havery (Oxford: Hart Publishing, 2011), 32.

[7] Prest, *The Inns of Court,* 1.

[8] Jessica Winston, *Lawyers at Play: Literature, Law and Politics at the Early Modern Inns of Court, 1558-1581* (Oxford: Oxford University Press, 2016), 24.

[9] Baker, "The third university", 9.

[10] Rosemary O'Day, *The Professions in Early Modern England, 1450-1800* (Harlow: Longman, 2000), 129.

The lay members were a distinct majority within the Inns of Court, and contemporary accounts attest to the tensions that existed between the learners and the non-learners, or 'revellers'. An account from the late 1530s bemoans that amongst the members of Middle Temple '[t]here is none there that be compelled to learn, and they that are learners […] are much troubled with the noise of walking and communication of them that be no learners'.[11] During the later sixteenth and early seventeenth centuries the Inns were widely considered to be part of a 'conventional gentlemanly education', or the equivalent of finishing schools for sons of the gentry. Members from the merchant classes who had aspirations to advance also attended the Inns, and members from the gentry and merchant classes alike looked to make connections in London, sought opportunities outside of the law, and possibly absorb a little law along the way.[12] The Inns were 'courtly academies' as well as law schools, 'devoted to the cultivation of gentlemanly accomplishments and liberal studies… with perhaps a subsequent dash of Renaissance humanism'.[13] Baker notes that there exists very little evidence as to what proportion of Inns members took part in legal exercises and the records are at best 'sketchy', although it is likely that lay members nonetheless acquainted themselves with a little law, and attended a few readings and moots, which, Baker humorously observes, may have been sufficient to put most of them off the legal profession entirely.[14]

[11] Ibid.
[12] Prest, *Inns of Court,* 23.
[13] Wilfrid Prest, "Conflict, Change and Continuity: Elizabeth I to the Great Temple Fire," in *History of the Middle Temple,* ed. Richard O Havery (Oxford, Hart Publishing, 2011), 88, 92.
[14] Baker, "The third university", 10-11.

If lay members were not wholly committed to learning the law, then what did they do at the Inns of Court? Sir John Fortescue of Lincoln's Inn, writing in the late fifteenth century, observed that the Inns were an 'academy of manners' in which members learned to 'sing and practise all kinds of music; they also engaged in dancing, and sports suitable for gentlemen, just like those brought up in the king's household'.[15] Drama, play and revels, especially around Christmas, were important intellectual and cultural traditions within the Inns. Jessica Winston argues that poetry, translation and performance were not only recreational past times at the Inns, but that they also 'defined and elevated the status of Inns of Court men'.[16] From within the Inns there flourished an extraordinary outpouring of literary culture, and the Inns counted amongst its members some of the most influential and prolific writers and dramatists of the early modern period. Mischief, play and bawdy behaviour were reportedly rife amongst the student body. John Spellman, who joined Gray's Inn around 1500, described Christmas revels as including feasts, music, dancing and mock fights, along with the playing of cards and dice.[17] Prest devotes an entire chapter of his history of the Inns of Court to the subject of disorder and discipline among the student body, noting that from the 1530s the speedy increase in the number of members coupled with the lack of tutors and proctors made it increasingly difficult to manage behaviour. During the second half of the sixteenth century barristers and students 'were perfectly free to attend plays or sermons as they chose, to drink in taverns… and patronising dicing houses or stews at their pleasure.'[18] Disciplinary records give accounts of the offences perpetrated by students, and the fines or punishments levied against them by the Inns authorities. The Black Books of Lincoln's Inn provides one such example: in 1523

[15] Ibid., 11.
[16] Winston, *Lawyers at Play,* v.
[17] Baker, "The third university", 13.
[18] Prest, *Inns of Court*, 92.

Edward Griffin was put out of the commons for 'he did stryke Mr Tankerett with his fyst'.[19] Another incident is recorded in the diary of Henry Machyn, in 1554, in which he describes 'a great affray between the lord warden's servents of Kent and the Inns of Court' in which people were both injured and slain.[20]

Accounts of refined gentlemanly conduct and liberal learning alongside revelry and acts of disorder paint a colourful and oftentimes exciting picture of life at the Inns of Court, yet we must recall that the Inns were, first and foremost, institutions of law. Baker notes that 'the frequency of disorderly incidents over the period as a whole compares favourably with modern universities, and for the realities of serious student life we should look rather at the students' notebooks than at the disciplinary records which fate has so unkindly preserved.'[21] Legal historians such as Baker and Prest look often to these notebooks and legal manuscript records in order to reconstruct the nature of day-to-day legal educations at the Inns of Court. Those educations were, primarily, oral in nature, and were received through the attendance of lectures and readings, which exposed the audience to 'textual analysis, to historical and purposive interpretation, and to some pretty intricate law'.[22] These readings were, according to Prest, ceremonious and sophisticated exercises that were delivered by recognisable members in the legal community. These readings were delivered over a series of dates during the term and they were given only twice a year. Few readings found their way into print, although 'many drafts and student summaries exist in manuscript', many examples of which can be seen in the students' surviving legal notebooks.[23] Students also attended debates,

[19] Ibid., 97.
[20] Winston, *Lawyers at Play*, 40.
[21] Baker, "The third university", 14.
[22] Baker, *Legal Education in London, 1250-1850* (London: Selden Society, 2007), 9.
[23] Prest, *Inns of Court,* 119.

where they could see first-hand some of the leading members of the legal profession 'exercising their wits on pure questions of law.'[24]

Alongside readings, lectures and disputations, law students could also attend moots, those vocational exercises conducted in the style of mock trials, which allowed students to practise their own skills in rhetoric, oratory and legal argument.[25] The essence of the Inns' exercises, Prest argues, was the formulation and debate of a hypothetical case involving one or more controversial questions of law.[26] Moot exercises were overseen by two or three utter barristers, acting as judges, and two students acting as the opposing council. In these mock trials the students would argue a point of law through the citation of legal maxims, precedents and principles of law.[27] Although moots had the appearance of formal exercise, their arrangement and the preparation of cases was entirely the responsibility of the students. These moot cases required a great deal of time and effort to organise; for example, Simonds D'Ewes spent over two weeks preparing for his first moot.[28] These moot exercises would have been conducted in Law French, that artificial technical language of the law courts which was spoken with an English accent, making it incomprehensible to native French speakers.[29] The framing of oral pleas in Law French was the principal qualification for graduation as a barrister, making mastery of the language essential for those who aspired to the Bar. No dictionary of Law French was published until 1702, the language was instead absorbed by students through the process of legal study, by attending readings, moots and by reading

[24] Baker, *Legal Education,* 9.
[25] Ibid., 10.
[26] Prest, *Inns of Court,* 116.
[27] Ibid.
[28] Ibid, 118.
[29] John Baker, *Manual of Law French* (London: Avebury Publishing, 1979), 12.

cases in Law French. Mr Sergeant Davies wrote in 1615 that 'the meanest wit that ever came to the law doth come to understand it almost perfectly in ten days without a Reader'. One suspects that he may have been exaggerating the ease by which students came to master Law French, his argument was that anybody with a grounding in Latin would take to Law French with little difficulty.[30] The writing of Law French into notebooks would certainly have helped law students in their efforts to become proficient in that language.

Alongside oral exercises, many students turned to the private study of manuscripts and printed books to assist them in digesting the vast quantities of law and jurisprudence necessary to advance in the legal profession. These included abridgements of law, law reports, digests treatise and commentaries such as Henry de Bracton's *De Legibus et Consuetudinibus Angliae* (1235), the anonymous *Fleta* (1290), Sir Thomas Littleton's *Tenures* (1481), Anthony Fitzherbert's *La Graunde Abridgement* (1514), John le Breton's *Britton* (1530), Ranulf de Glanvill's *Tractatus de Legibus et Consuetudinibus Regni Anglie* (1554) and Sir Edward Coke's *Institutes of the Laws of England* (1628-1644).[31] A thriving book trade sprung up around the Inns of Court and St. Paul's, which catered not only to a general audience in London but also to the nearby legal fraternity. A notable figure in this book trade is the publisher Richard Tottel, who had shops in the Temple Bar and Fleet Street. Tottel was mainly a printer of law books. In 1556 he held the sole patent for printing law books, which included the works of Littleton, *The abridgement of the boke of assises* (1555) and multiple

[30] Ibid., 14.

[31] The printed editions of these first appeared as follows: Henry Bracton, *De legibus et consuetudinibus Angliae* (London: Richard Tottel, 1569); *Fleta, Fleta seu Commentarius juris anglicani sic nuncupatus* (London: M. Flesher, 1647); Thomas Littleton, *Tenures* (London: Richard Pynson, 1502); Anthony Fitzherbert, *La Graunde Abridgement* (London: John Rastell and Wynkyn de Worde, 1516); John Breton, *Britton* (London: Robert Redman, 1533); Ranulf Glanville, *Tractatus de legibus et consuetudinibus regni Anglie* (London: Richard Tottel, 1554); Edward Coke, *The first part of the Institutes of the lawes of England* (London: Adam Islip, 1628).

volumes of law reports from the Year Books, however it must be noted that he also published literary works including Thomas More's *Utopia* and his edited collection of sonnets titled *Songes and Sonnets,* otherwise known as *Tottel's Miscellany 1557*.[32] These literary works were almost certainly aimed at his largely legal clientele and shows that students committed to a legal education also participated in reading practices outside of the law. Prest notes that private reading of these kinds of printed law books began as 'no more than a supplement to and preparation for oral means of instruction' prior to the invention of printing, but afterwards, from 1550 onwards, 'the position had been decisively reversed'.[33]

It is often a surprise to those reading about legal education in the early modern period to discover that there were no tutors and no formal syllabus at the Inns of Court. Roger North, a law student in the 1670s, wrote a discourse on the study of law in which he lamented that:

> … of all the professions in the world that pretend to book-learning, none is so destitute of institution as that of the common law. Academic studies, which take in the civil law, have tutors and professors to aid them… But, for the common law, however there are societies which have the outward show or pretence of collegiate institution, yet in reality nothing of that sort is now to be found in them.[34]

Along with a complete lack of formal instruction, attendance at readings, lectures, debates and moots was not mandatory. The Black Books of Lincoln's Inn and the Pension Books of

[32] Thomas Littleton, *Tenures* (London: Richard Tottel, 1557); *The abridgement of the boke of assises* (London: Richard Tottel, 1555); Thomas More, *Utopia* (London: Richard Tottel, 1556); Richard Tottel, *Songes and Sonnets* (London: Richard Tottel, 1557).
[33] Prest, *Inns of Court*, 132.
[34] Baker, *Legal Education,* 15.

Gray's Inn show that the payment of fines for absence were common.[35] The burden of education was placed upon the individual student, and Baker notes that many students found this lack of direction 'a torment', or as Blackstone put it 'a tedious and lonely process'.[36] To counter this, many formed groups to provide 'mutual assistance', and others relied on older friends and relatives, those who were further along in their education, to provide some form of guidance.[37] Prest notes that while a few members were fortunate enough to have the support of friends and relatives, the majority 'struggled on alone'.[38] In the absence of formal guidance, many students turned to their notebooks to support them as they embarked on an education that was predominantly self-driven. Prest observes such a process in the notebooks of D'Ewes, who was admitted to Middle Temple in 1611: 'The notes which a serious student like D'Ewes jotted down in court would probably have been written up afterwards in his case or commonplace book, and collated with other materials gathered from private reading and the learning exercises.'[39] D'Ewes read Littleton with 'a young gentleman' and 'took sweete benefit' from discussing cases, although he too found the process overwhelming at times, confessing in his diary that he found the arguments of senior members so perplexing that he despaired, and even considered abandoning his legal studies altogether.[40] Legal notebooks were central to the educational life of students at the Inns of Court.

Law and Literature.

[35] For examples of fines of absence see *The Records of the Honorable Society of Lincoln's Inn: The Black Books Vol I: From A.D. 1422 to A.D. 1586* (London: Lincoln's Inn, 1897); *The Records of the Honorable Society of Lincoln's Inn: The Black Books Vol II: From A.D. 1586 to A.D. 1660* (London: Lincoln's Inn, 1898); Reginald Fletcher, ed. *The Pension Book of Gray's Inn (Records of the Honorable Society), 1569-1669* (London: Chiswick Press, 1901).
[36] Baker, *Legal Education,* 15.
[37] Ibid., 16.
[38] Prest, *Inns of Court,* 140.
[39] Ibid., 131-132.
[40] Ibid., 140.

The interdisciplinary area of study that encompasses both law and literature is, as Lorna Hutson writes, tripartite by the inclusion of the discipline of history.[41] Throughout the 1970s and 1980s leading legal historians such as S. F. C. Milsom and Baker became interested in understanding past societies through 'specific legal doctrines, institutions, and modes of instruction as well as underling legal ideas and forms of practice'.[42] During the years of 1969-1990 Milsom released a series of books which at the time cemented his reputation for 'heretical' scholarship, but for which he later became known as an eminent legal historian.[43] These works include the seminal *Historical Foundations of the Common Law* (1969), *Studies in the History of the Common Law* (1985) and the co-authored (with Baker) *Sources of English Legal History* (1985).[44] *Sources,* Baker and Milsom's definitive sourcebook on the development of English private law, became an essential resource for legal historians. In this work Milsom and Baker translated and made accessible leading primary materials relating to the operation of the courts; these were valuable resources for historians with an interest in not only English law but also government, society and economics. Baker continued this work in subsequent publications such as *The Reports of Sir John Spellman (vols I & II)* (1976), *The Order of Serjeants at Law* (1984), *The Notebook of Sir John Port* (1986) and *Reports from the Lost Notebooks of Sir James Dyer (vol 1 & 2)* (1994).[45] Baker continues to write extensive works of legal history on the Inns of Court and legal education in the early modern period, including

[41] Lorna Hutson, "Introduction: Law, Literature, and History," in *The Oxford Handbook of Law and Literature 1500-1700,* ed. Lorna Hutson (Oxford: Oxford University Press, 2017), 2.
[42] Ibid., 4.
[43] Lesley Dingle. "Conversations with Emeritus Professor Stroud Francis Charles (Toby) Milsom: A Journey from Heretic to Giant in English Legal History," *Legal Information Management* 12, no. 4 (2012): 305-14.
[44] Ibid; S.F.C. Milsom, *Historical Foundations of the English Common Law* (London: Butterworths, 1969); S.F.C. Milsom, *Studies in the History of the Common Law* (London: Hambledon Press, 1985); John Baker and S.F.C. Milsom, *Sources of English Legal History, Private Law to 1750* (Oxford: Oxford University Press, 1985).
[45] John Baker, *The Reports of Sir John Spellman: Vols. I & II* (London: Selden Society, 1976 and 1978); John Baker, *The Order of Serjeants at Law* (London: Selden Society, 1984); John Baker, *Reports from the Lost Notebooks of Sir James Dyer: Volume I & II* (London: Selden Society, 1994).

The Common Law Tradition: Lawyers, Books and the Law Tradition (2000) and *Legal Education in London 1250-1850* (2007).[46]

The foundational work of Milsom and Baker was both accompanied and followed by a series of legal historians whose academic interests were focused upon the Inns of Court and the legal profession in the early modern period. These include Prest, who in *The Inns of Court under Elizabeth I and the Early Stuarts 1590-1640* (1972) provides a detailed and rigorously researched history of the Inns sourced from a wide range of materials, including manuscript records, notebooks and diaries.[47] Prest also examined in depth the social origins of the legal profession, including lawyers' participation in the cultural, political and religious life of Elizabethan and early Stuart England in *The Rise of the Barristers: A Social History of the English Bar 1590-1640* (1991).[48] We can see the intersecting fields of legal history and literary scholarship with Winston's solitary literary chapter 'Literary Associations of the Middle Temple' in the otherwise legal historical survey of Middle Temple edited by Richard O Havery.[49] This is not a new phenomenon, during those early years in which Milsom and Baker were revolutionising the field of legal history, there was also an emerging academic interest in the extracurricular, literary and dramatic cultures within the early modern Inns of Court. For example, Philip J. Finkelpearl's examination of the relationship between Marston's literary works and the literary traditions of the Inns of Court probes that intersection of legal practice and literature, while Marie Axton's analysis of Inns of Court drama, such as Thomas Pound's

[46] John Baker, *The Common Law and Tradition: Lawyers, Books and the Law Tradition* (London: Hambledon & London, 2000); Baker, *Legal Education*.
[47] Prest, *Inns of Court.*
[48] Wilfrid Prest, *The Rise of the Barristers: A Social History of the English Bar 1590-1649* (Oxford: Clarendon Press: 1991)
[49] Jessica Winston, "Literary Associations of the Middle Temple," in *History of the Middle Temple,* ed. Richard O Havery (Oxford, Hart Publishing, 2011), 147.

two marriage masques performed at Lincoln's Inn in 1566, suggests that Inns-based drama sought to purposely intervene in political discourses surrounding the succession crisis.[50] More recent book-length studies of literary culture at the Inns of Court include Winston's *Lawyers at Play* (2016), in which she looks at the Inns of Court as major literary centres and examines the connections between literary and legal cultures. The study of legal language in early modern drama and literature is a particularly popular field which includes Andrew Zurcher's study of both Spenser and Shakespeare's legal language as well as a collection of essays titled *Shakespeare and the Law,* edited by Bradin Cormack, Martha C. Nussbaum and Richard Strier, in which scholars from many disciplines discusses legal influences in Shakespeare's plays, and B. J. Sokol and Mary Sokol's dictionary of Shakespeare's legal language.[51] This is expanded upon by scholars such as Paul Raffield, who argued that the complex language of law shared the same rhetorical strategies as the plays of Shakespeare, while Cormack in *A Power to do Justice, English Literature and the Rise of the Common Law, 1509-1625* (2007) looked specifically at the influences of jurisdiction in early modern literature.[52] James Boyd White turns to examine the literary language of legal professions by examining works by Shakespeare, Chaucer and Proust among many others, asking whether one's profession affects one's language, applying that argument to legal professions and the ways in which legal language affected the writing of judges and lawyers.[53]

[50] Philip J. Finkelpearl, *John Marston of the Middle Temple: An Elizabethan Dramatist in his Social Setting* (Harvard: Harvard University Press, 1969); Marie Axton, *The Queen's Two Bodies: Drama and Elizabethan Succession* (London: Royal Historical Society, 1977).
[51] Andrew Zurcher, *Shakespeare and Law* (London: Methuen, 2010) and *Spenser's Legal Language: Law and Poetry in Early Modern England* (Woodbridge: Boydell & Brewer, 2007); Bradin Cormack, Martha C. Nussbaum and Richard Strier, eds. *Shakespeare and the Law: A Conversation Among Disciplines and Professions* (London: University of Chicago Press, 2013); B. J. Sokol and Mary Sokol, *Shakespeare's Legal Language: A Dictionary* (London: Continuum, 2000).
[52] Winston, *Lawyers at Play*; Paul Raffield, *The Art of Law in Shakespeare* (Oxford: Hart Publishing, 2017); Zurcher, *Spenser's Legal Language;* Bradin Cormack, *A Power to do Justice: Jurisdiction, English Literature, and the Rise of the Common Law* (London: The University of Chicago Press, 2013).
[53] James Boyd White, *The Legal Imagination* (Chicago: University of Chicago Press, 1985).

The Inns of Court as an institutional influence is also an important area in the field of law and literature. Michelle O'Callaghan in *The English Wits* (2007) describes the Inns of Court as both convivial societies and pragmatic fraternities in which men were bound together by bonds of civic brotherhood, and in which laughter and jesting, in that humanist tradition of play, functioned as civic discourses.[54] Winston discusses the institutional and spatial influences of the Inns upon its members' literary output, and the collected chapters in Jayne Archer, Elizabeth Goldring and Sarah Knight's edited work *The Intellectual and Cultural World of the Early Modern Inns of Court*, examines the cultural, literary and architectural culture of the Inns.[55] Other recent works in the field include the recently published collection of essays in *The Oxford Handbook of English Law and Literature, 1500-1700,* which includes the works of literary scholars and legal historians who are interested in tracing the influences of law and the legal profession throughout the drama and literature of the early modern period. Contributors to this volume include Kathy Eden's work on forensic oratory and humanist education, Quentin Skinner's 'Why Shylocke Loses His Case: Judicial Rhetoric in *The Merchant of Venice'* in which he argues for the use of Cicero's legal works in Shakespeare's composition of courtroom drama, Winston's work on legal satire and the legal profession, and Peter Goodrich's fascinating work on printed emblem books and law, in which he argues that emblems, those pictorial representations of Latin norms, civilian maxims and rules, were

[54] Michelle O'Callaghan, *The English Wits: Literature and Sociability in Early Modern England* (Cambridge: Cambridge University Press, 2007).

[55] Jayne Archer, Elizabeth Goldring and Sarah Knight, eds. *The Intellectual and Cultural World of the Early Modern Inns of Court* (Manchester: Manchester University Press, 2011); Contributors to this collection include Damian Powell, "The Inns of Court and the common law mind: the case of James Whitelocke", 75-89, Bradin Cormack, "Locating *The Comedy of Errors:* revels jurisdiction at the Inns of Court", 264-285, Alan H. Nelson "New light on drama, music and dancing at the Inns of Court to 1642', 302-314.

converted to a common law usage.[56] Ongoing scholarship continues to break new ground in this field, some recent examples of which were presented at 'The Inns of Court and the Circulation of Text' conference, held in London in June 2019, and included O'Callaghan's recent work on female presence and writing within the Inns of Court, Alan H. Nelson's work on records of revels in Inns of Court account books, Joshua Eckhardt's research on the records of books owned by Inns men and Arthur Marotti's recent work on the manuscript collections, and the literary contents contained within, belonging to Inns' members.[57] Marotti's research on the circulation of verse at the early modern Inns of Court and on Donne and coterie culture is also a valuable body of work on the movement and use of literary texts amongst professional, legal, social and colligate groups.[58]

In relation to my own research methodology, I am particularly interested in scholars whose literary research includes the examination of primary legal sources. This can be seen in Christopher Brooke's *Law, Politics and Society* in which he examines moot records and copies of readings for their author's views on law, doctrine and jurisdiction and questions how those views were presented to wider society.[59] In a series of essays, published as *Lawyers, Litigation and English Society since 1450* (1998), Brooks also examines the uses of the courts in the early modern period alongside the fluctuating fortunes of the legal profession in which he placed

[56] Kathy Eden, "Forensic Rhetoric and Humanist Education", 23-40, Quentin Skinner, "Why Shylocke Loses His Case: Judicial Rhetoric in *The Merchant of Venice*", 97-117, Jessica Winston, "Legal Satire and the Legal Profession in the 1590s: John Davies's *Epigrammes* and Professional Decorum", 121-141 and Peter Goodrich, "The Emblem Book and Common Law", 142-162 in *The Oxford Handbook of Law and Literature,* ed. Lorna Hutson (Oxford: Oxford University Press, 2017).
[57] The Early Modern Inns of Court and the Circulation of Text, King's College London, 14-15th June 2019.
[58] Arthur Marotti, "The Circulation of Verse at the Inns of Court and in London in Early Stuart England," in *Re-evaluating the Literary Coterie, 1580-1830: From Sidney to Blackwood's,* ed. Will Bowers and Hannah Leah Crumme (London: Palgrave Macmillan, 2016), 53-73.
[59] Christopher Brooks, *Law, Politics and Society in Early Modern England* (Cambridge: Cambridge University Press, 2008).

the law and lawyers in a wider social and political context, framing a larger discussion concerning changing perceptions of the legal profession throughout the sixteenth and seventeenth centuries.[60] Much of the material in the three-volume Records of Early English Drama collection titled *The Inns of Court,* edited by Nelson and John R. Elliott, is sourced from official records of the four Inns of Court, these include the Pension Books, Records of Parliament and the Black Books, with a heavy focus on drama and performance activities, records of Christmas revels and texts of masques and revels. [61] These records also include texts of a more legal nature, such as Dugdale's *Origines Juridiciales.*[62] Luke Wilson, in *Theatres of Intention*, draws upon case law, legal treatises, parliamentary journals and account books as he considers the relationship between legal dramatization and human intention. Here legal and literary scholars interrogate primary legal sources in order to conduct new kinds of legal analysis on early modern literature and drama. This kind of interdisciplinary work, of legal professionals becoming literary scholars, can also be seen in the work of eminent lawyers and legal historians, such as Baker, Prest and David Woolley, who turn their professional legal eye to literary analysis. Perhaps one of the most influential of these professional legal scholars is the judge Richard Posner, whose exploration of the interplay between law and literature sees him reading judicial rulings as dramatic texts.[63] 'Law and Literature' as a distinct scholarly discipline is also being taught at an undergraduate level thanks to texts such as *Teaching Law and Literature*, which is intended not only for teachers of literature, but also for use in law

[60] Christopher Brooks, *Lawyers, Litigation and English Society since 1450* (London: The Hambledon Press, 1998).
[61] Alan H. Nelson and John R. Elliott, eds. *Inns of Court, 3 Volumes (Records of Early English Drama)* (Woodbridge: Boydell & Brewer, 2011); Paul Raffield, "Review of Inns of Court by Alan H. Nelson, John R. Elliott, Jr," in *Renaissance Quarterly*, vol 65, no. 4 (2012): 1327-1329.
[62] Nelson, *Inns of Court,* Volume I, Appendix 11.
[63] Richard Posner, *Law and Literature: A Misunderstood Relation.* 3rd ed (Harvard: Harvard University Press, 2009).

schools as a means to explore law's narrative drama.[64] The theatricality of Elizabethan judicial trials, and questions as to why early modern dramatists were so drawn to these legal performances, is also addressed by Subha Mukherji. Her research includes the study of legal pamphlets, and also an examination of early modern laws concerning marriage, with an eye to discovering a relationship between written law and renaissance drama.[65]

The interdisciplinary study of law, literature and history remains an ongoing and exciting field of research. Presently much of the research within this field is focused upon the literary elite and the more famous members who attended the Inns of Court, as well as the circles in which they moved and the printed textual cultures that surrounded those groups and the Inns of Court in general. Much of that research is indebted to legal historians such Baker, Milsom and Prest, whose extensive use of primary legal sources has opened the historical world of the Inns of Court to a wider academic audience. My own research, like Brooks and Posner, is focused upon the study of primary legal manuscripts, although my methodology is unique as I do not examine legal texts from a literary perspective, but rather, I question whether the non-legal texts within those manuscripts served a legal purpose. It is my belief that students' legal notebooks are valuable and as yet largely untapped resources for the literary historian and for those whose research intersects with the intellectual, social, religious, pedagogical, political and economic culture of the early modern Inns of Court, and it is to those sources that we now turn.

[64] Austin Sarat, Catherine O. Frank and Matthew Anderson, eds. *Teaching Law and Literature,* (New York: MLA, 2011).
[65] Subha Mukherji, *Law and Representation in Early Modern Drama* (Cambridge: Cambridge University Press, 2009).

A Survey of Legal Notebooks.

In order to understand the ways in which law students used non-legal texts within their legal notebooks, it is important to first examine what these legal notebooks were, what forms they took, and how they were typically used by law students at the early modern Inns of Court. Unlike academic commonplace books, which were of a more miscellaneous nature, these notebooks are defined by their primary legal function. They were practical textual objects that recorded and facilitated a process of legal education, from attendance and participation in legal exercises to private study, in which they were used alongside printed texts and manuscripts. The authors of these notebooks were serious students of law and their notebooks are evidence of the considerable amount of time and effort that they channelled into their private legal study. Each notebook is unique, reflecting the author's individual course of study at the Inns. However, there are similarities of form, content and method between these notebooks which suggests that law students were writing these notebooks to fit a generic form, albeit a flexible one. They are typically written in blank books, ranging in size from portable octavos to larger folio volumes, and they contain materials that are directly related to the business of learning law. It would not be possible to select a single notebook to stand as the model for all others as they are diverse in their contents and composition. One notebook might exclusively contain extensive records of cases, another may be copies of readings, and another might be more miscellaneous in nature, containing moot exercises along with notes on statute law. In giving an overview of legal notebooks, it is best to examine examples that show the most commonly used contents and modes of composition. In my definition of a law student's legal notebook, I propose that they must contain materials that record exercises undertaken at the Inns of Court, texts which pertain to legal study, or copies

of materials, either from manuscript or printed sources, which supplement their legal education.

An introductory survey of a number of legal notebooks can illustrate how these notebooks constituted a distinct type of legal writing at the Inns of Court. These notebooks contain one or more of the following materials: legal commonplaces, records of readings and lectures, records of disputations and moot exercises, case reports and copies from printed legal texts or manuscripts. Many notebooks belonging to law students contained legal materials of a far more diverse and miscellaneous nature, however the notebooks discussed here represent the typical materials which are most commonly found in legal notebooks. In order to present these notebooks coherently, I shall be mainly showcasing the ways in which the authors used their notebooks to manage specific types of legal text, rather than describing in detail the whole contents of each notebook, although in some cases I shall do so in order to show the different types of legal materials that were contained within a single textual space.

The first most commonly found type of legal text are legal commonplaces. The first example of this is found in the archives at the Harvard Law School Library, shelf mark HLS MS 139.[66] The notebook is catalogued as a seventeenth-century commonplace book. It is duodecimo in size, bound in vellum, written on paper and consists of three-hundred pages which are mostly blank. At the front of the notebook there are four pages of an alphabetical contents of legal terms in Latin, beginning with 'Abstinentia' and ending with 'Uxor'. These kinds of headings, written in Latin and Law French, are typically found in abridgements of law and are common throughout legal notebooks. The contents pages are divided into columns with majuscule

[66] HLS MS 139.

letters heading each new section, and page numbers given for each entry. There then follows the main legal commonplace book, with the folio number and heading written centrally at the top of the page. The author of this notebook has not placed any legal commonplace entries within this notebook; apart from the folio numbers and headings the pages are blank. What this illustrates was a common practice of planning the contents and direction of a legal notebook from the start, with the intended contents having been fully arranged and indexed in advance. Legal commonplace books such as these were at once proactive and reactive, the overall contents of the notebook had been meticulously outlined, and then the notebook was completed with legal entries and notes of law which the author would have encountered during the course of his legal education. The remainder of the notebook consists of a Latin primer and a ledger for recording personal expenses for food, clothing and books (of which no titles have been provided).

Another example of a legal commonplace book is at Cambridge University Library, shelf mark CUL Ee.1.19.[67] The notebook is from the seventeenth century, with an eighteenth-century binding, and is catalogued as a 'Law Commonplace'. [68] The notebook is quarto on paper, consisting of 216 folios, and written in an 'exceedingly minute hand'.[69] Folios 1r-237v are an alphabetically arranged legal commonplace in Law French, with headings running from 'Abridgement de Plaint' to 'Waste'. The headings are written at the top of the page, although the author has not given folio numbers and there is no contents page or index. Most of the entries have commonplaces written under the headings and are accompanied by citations

[67] CUL Ee.1.19.
[68] *A Catalogue of the Manuscripts Preserved in the Library of the University of Cambridge: Vol II* (Cambridge: Cambridge University Press, 1856), 17.
[69] Ibid.

from the Year Books, the sources of which are cited as Plowden and Dyer's abridgments of law.[70] Most of the headings have entries, although there are also many blank pages found throughout the notebook, once again suggesting the same methodology of arranging in advance the headings of the commonplace, with the intention of filling in the entries at a later date. CUL Ee.1.19 is wholly a legal commonplace, whereas HLS MS 139, in comparison, demonstrates how legal commonplaces could also be part of a much larger, and oftentimes much more miscellaneous, type of legal notebook. Although the sources for legal commonplaces such as these were typically abridgments of law, it must be noted the authors of other legal commonplaces were not looking to make copies of these abridgments, but rather, they drew from those works select extracts that were relevant to their own individual, educational needs. These extracts are typically definitions of legal terms, or brief passages explaining in simple terms complex legal technicalities.

This practice of producing commonplace books can be traced back to the classroom, and in turn to humanist manuals of education by Erasmus, Philip Melanchthon and Juan Luis Vives.[71] The classroom commonplace book was a tool that facilitated the recording, organisation and retrieval of information which were carefully gathered from a wide range of sources and then arranged systematically within a notebook or notebooks. Ann Moss described a schoolroom environment in which 'boys were conditioned to think in ways determined by the instrument they used to probe material they were set to study, store in their memory, and retrieve for

[70] CUL Ee.1.19, Plowden and Dyer are cited throughout the alphabetical commonplace on ff. 1r-237v.
[71] Desiderius Erasmus, "De Pueris Instituendis," in *Concerning the Aim and Method of Education,* ed. William Harrison Woodward (Cambridge: Cambridge University Press, 1904), 179-222; A good reference for Melanchthon's numerous writings on education is *A Melanchthon Reader,* ed. trans. Ralph Keen (New York: Peter Lang Gmbh, 1988); Vives' two most influential educational works were *De Ratione Studii Puerillis Epistolae Duae* (Louvain: Petrus Martens, 1524) and *De Institutione Feminae Christianae* (Antwerp: Michael Hillenius, 1524).

introduction, that is to say, by their commonplace-book'.[72] Legal commonplace books were a continuation of this classroom-based practice as students of law systematically distilled the *copia* of English law into their notebooks.[73] The contents of legal commonplace books were deliberately structured, their contents meticulously planned, and their authors anticipated a continued process of completion throughout their legal education. With no formal direction at the Inns of Court, it would be pragmatic for young law students to return to those classroom-based methods of learning to assist them as they embarked upon a new, and daunting, process of study.

The next kind of commonly found material within legal notebooks are records of oral instruction, the most complex of which were the readings. Some readings were later released in print, but the primary mode of circulation was in manuscript. The spoken lecture or reading was the point at which senior members imparted their learning onto the student body, but it was through the circulation of lectures in manuscript form, and the copying of those texts into individual notebooks, that many students were exposed to the materials necessary to learn law. A great many notebooks belonging to law students at the Inns of Court contained copies of the various readings and lectures given at both the Inns of Court and Chancery. An example of this can be found in a seventeenth-century notebook at Cambridge University Library, shelf mark CUL Add. 3295, which contains a legal commonplace along with readings of statutes.[74] Measuring 175mm x 125mm, on paper and consisting of 190 folios, the notebook retains its original binding of brown leather with a decorative stamped cover. Folios

[72] Ann Moss, *Printed Commonplace-Books and the Structuring of Renaissance Thought* (Oxford: Oxford University Press, 1996), 134.
[73] For further information on the educational practice of keeping commonplace books see M. J. Letchner, *Renaissance Concepts of the Commonplaces* (Pennsylvania: Greenwood Press, 1974).
[74] CUL Add. 3295.

1r-148r are an alphabetical legal commonplace beginning with a contents page, the entries begin with 'office' and end with 'view', which suggests that this notebook was one of several volumes, with a previous volume containing entries for 'A' through to 'M'.[75] On folios 9r-40v, amongst the legal commonplaces, is a copy of a reading given by Charles Calthorpe at Furnival's Inn, which was delivered as a series of lectures between 1574-75.[76] A copy of the reading was printed in 1635 as *The relation between the lord of a mannor and the copyholder*, and was most likely the source from which the author of the notebook was working.[77] On ff. 54r-58v there is a copy of the lecture given by Richard Gardiner at Furnival's Inn at the end of Michaelmas term 1575.[78] In this notebook we see another example of a typical legal commonplace along with copies of popular readings from widely circulated printed texts and manuscripts.

Another example of readings can be found in a notebook from Cambridge University Library, shelf mark CUL Ee.6.3, a duodecimo on paper consisting of 268 folios, many of which are blank, written in Law French and dated to around the middle of the seventeenth century.[79] The notebook consists mainly of readings delivered at Middle Temple and the arguments arising out of them at various times from the 2nd August 1613 to the 2nd August 1620. This is a carefully arranged notebook that contains the readings of 'Walsh', 'Wotton', 'Serj[eant] Harvye', 'Raynell', 'Barker', 'Marten', 'Francis Ashley', 'Nicholas Hyde', Richard Hadsor', 'Pye', 'Rives', 'Whitelocke', 'Hoskins' and 'Trist'. The readings of Whitelocke, Hoskins and Trist are especially prominent in the notebook, and a great deal of care has been taken to transcribe

[75] Ibid., ff. 1r-148r.
[76] Ibid., ff. 9r-40v.
[77] Charles Calthorpe, *The relation between the lord of a mannor and the copyholder* (London: J. Okes, 1635).
[78] CUL Add. 3295, ff. 54r-58v.
[79] CUL Ee.6.3.

all the points of argument and to attribute names to those arguments.[80] The readings are neatly written and formatted into individual points, with Year Book numbers cited in the margins. The readings were arranged to be accessible and easily referenced. The author had meticulously gathered a large quantity of readings, which suggests that he not only attended a great many readings himself, but that he either produced his own copies from contemporaneous notes, or that he sought out copies of the reading to transcribe into his notebook. It appears that these readings were the primary method with which the author chose to learn not only intricate points of statute law, but also methods of argument that arose from those points. While some students did not attend readings and lectures at all, this student apparently relied on them heavily, perhaps even exclusively, for his own legal instruction.

Moot exercises also feature heavily in these kinds of legal notebooks. An example of this can be found in another notebook from Cambridge University Library, shelf mark CUL Ll.4.6, which is catalogued as a 'Commonplace by a Middle Templar'.[81] Dated to the second decade of the seventeenth century, with its binding from the eighteenth century, the notebook measures 305mm x 196mm and consists of 283 folios. On ff. ir-iiv are miscellaneous quotations and Latin maxims, which are followed by an alphabetical legal commonplace on ff.1r-260r, based on the Year Books and abridgements, which begins 'Abatement de brefe' to 'Withernam'. On ff. 273r-275v are records of moot cases held at the Inns of Chancery, c. 1615. These include a 'bon dinner case… Mr Barkeleys case' at New Inn, indicating the session was held during

[80] Sir James Whitelocke, the celebrated English judge and politician, kept a large number of legal notebooks, one of which is examined in chapter four of this thesis.
[81] CUL Ll.4.6; *A Catalogue of the Manuscripts Preserved in the Library of the University of Cambridge: Vol IV,* ed. Henry Richard Luard (Cambridge: Cambridge University Press, 1856), 57.

dinner. Other moot cases include 'At Furnivouls Inne… par Mr Conniers after dinner', 'per reader de Cliffords Inne', 'al Staple Inn' and 'Mr Hutchins post dinner… Bishops case', to name just a few. Again, we see the mixing of educative legal texts within the notebook, that is, legal maxims with an alphabetical legal commonplace and finally the moot exercises. The author of the notebook recorded the locations where the moots were held along with the names of the main participants, which demonstrates not only the interconnected relationship between the various Inns of Court, but also the social nature of moot exercises which were usually held in the main hall, during or immediately after dinner. We should also draw attention to the practical and portable function of the notebook in the recording of these moot exercises. The notebook is small enough to have been carried to the moot exercise, and the cut and thrust nature of moot argument recorded within might suggest that an accurate recording would either have be taken during or shortly after the mooting session. In another notebook, also at Cambridge University Library, CUL Dd.5.14, there are moot exercises recorded in shorthand, which certainly point to the practice of recording moots as they were being conducted.[82] This notebook shall be examined in more detail as part of a larger case study later in this thesis. Another notebook, in the archives at Lincoln's Inn, shelf-mark MS. Misc. 356, is a small vellum bound legal notebook measuring 95mm x 146mm, written in a seventeenth-century hand and containing moot cases held at the Inns of Chancery between 1632-1639.[83] There are two loose paper slips included in the notebook, measuring 25mm x 308mm and 25mm x 203mm, one of which is marked 'New Inn', onto which are written notes of moot cases and Year Book numbers. Baker suggests that these slips would have been used

[82] CUL Dd.5.14, ff. 38r-48r.

[83] LI MS. MISC. 356; J. H Baker, *English Legal Manuscripts Vol II: Catalogue of the Manuscript Year Books, Readings, and Law Reports in Lincoln's Inn, The Bodleian Library and Gray's Inn* (Zug: Inter Documentation Company, 1975), 106.

during moot exercises.[84] Legal notebooks were more than records of moot exercises, they also were functional material objects that were used practically during those exercises.

The reporting of cases were also commonly found legal texts within the notebooks of law students in this period, such as that belonging to Andrew Jenour of Middle Temple, who was admitted in 1595 and called to the Bar in 1602.[85] His notebook, in Cambridge University Library, CUL Ii.5.15, begins, as many others do, with an alphabetical legal commonplace, in this case beginning with 'Abbe' and ending 'Waste'. This is followed by copies of readings given at Middle Temple by Richard Daston in the autumn term of 1598 and another by Nicholas Overbury in the autumn term of 1600.[86] There then follows reports of cases heard in the Common Pleas from the reign of Edward VI to the early years of Elizabeth I. There are also reports attributed to Thomas Coventry, a barrister at Middle Temple, reports by William Bendlowes, sergeant at law, and finally more reports from the Common Pleas dated from the 29th to the 36th year of Elizabeth I (1587-1594). Most of these reports are sourced from print works, as has been indicated by Jenour himself who included citations to his source texts throughout the notebook. Like readings, the oral practice of attending cases and hearing pleas was centrally important to the learning of law, however many students relied on circulated copies of reports, which they then copied into their own legal notebooks.

This can be seen again in a lawyer's notebook in the collection at Harvard Law School, dated c. 1575-1625, shelf-mark HLS MS 4189.[87] This notebook also begins with an alphabetical legal commonplace, and reversing the volume there is a summary of cases copied from Plowden,

[84] Ibid.
[85] CUL Ii.5.15; Hopwood, *Minutes of Parliament: Vol I*, 349.
[86] CUL Ii.5.15.
[87] HLS MS 4189.

titled 'liber hotchpott'. Another legal notebook at Harvard, shelf-mark HLS MS 16, with its original vellum binding, measuring 300mm and containing 488 leaves, is largely a collection of reports from William Bendlowes, sergeant at law, and cases from the Common Pleas and the Queen's Bench dated 1586-1590, which were printed in Robert Keilway's Reports, but which also contains an unpublished version of Perkin Warbeck's case (1499).[88] The notebook contains several hands, suggesting it was either communally used or that it belonged to several different owners who contributed to the notebook. This notebook is an example of the recording of reports by law students, but it also highlights the importance of the circulation of case reports within the Inns of Court, both print and manuscript, and the common practice of students copying those reports into their legal notebooks. The attendance of cases is commonly viewed as a purely oral method of instruction at the Inns, but equally important was the process of copying written case notes into legal notebooks.

This survey is intended to give an overview of the kinds of educational legal texts that are most commonly found within law student's legal notebooks, and how those notebooks primarily functioned as educational aides alongside oral exercises. It is not possible here to cover every kind of legal text found within these notebooks; that work has already been done by Baker, whose extensive catalogues of legal manuscripts both in the United Kingdom and in the United States of America provides a detailed survey of the contents of legal notebooks and manuscripts. What this survey also demonstrates is that it is not possible to give a clear definition as to what constitutes a legal notebook, but that there did exist a loose generic formula of composition that was commonly practised by law students. No two notebooks are the same, however, the contents and format of these varied notebooks do adhere to a

[88] HLS MS 16; Robert Keilway, *Reports d'ascuns cases* (London: Charles Harper, 1688).

remarkably similar method of form, content and composition. What is demonstrated here is the practical, legal and pedagogical function of these notebooks, and how they were composed to fit a form determined by common purpose rather than adhering to a model. In lieu of formal tutelage and with no direction on how to conduct their studies, students had to forge for themselves their own legal educations. These notebooks were practical tools, they were serious textual spaces in which those law students could fashion for themselves, individually or as groups, their own legal learning at the Inns of Court.

Non-legal Contents.

Having established legal notebooks as being practical tools of learning law, we must now turn to consider the fact that many law students also included in their legal notebooks varied texts that, at first, appear to be of a non-legal, literary, humanist or playful nature. It is thanks to the work of Baker and his extensive cataloguing of legal manuscripts that many of these seemingly non-legal texts have been brought to our attention. These non-legal texts are not the norm, but they occur with enough frequency in legal notebooks and manuscripts so as not to be entirely anomalous either. At present there has been no work done on the percentage of legal notebooks which contain literary or non-legal materials, and such a project would be a significant undertaking that is presently outside of the scope of this current thesis. These kinds of non-legal texts can consist of just a few lines to passages that span large portions of the notebook's contents, and they can range in tone from formal to playful. Some examples include a legal notebook at the British Library, shelf mark Lansdowne MS 1115, which is catalogued as 'Law Notes Etc', in which there are a series of notes relating to moot cases heard at the various Inns of Court and Chancery as well as bench table cases and clerk's

common cases from 1643-49.[89] From ff. 35v-38r there are diagrams and instructions for a dance involving four persons, presumably two men and two women as is indicated by the instruction 'men cross over then w. cross over'.[90] Another such example of this kind of non-legal material can also be found as we return to look at CUL Ee.1.19, a detailed and extensive legal commonplace which also has on f. 1v musical staves ruled in red, perhaps in preparation for some musical composition.[91] Materials such as these might easily be dismissed as merely playful jottings with no connection to the serious legal texts they appear beside. But can we really dismiss such materials as frivolous before we consider that they too may have served a function within the legal space of the notebook? Legal historians might look over these non-legal texts as irrelevant, but historians of dance and music in the early modern period might be interested in the relationship between these non-legal texts and the legal material space in which they were written, and how both kinds of text offer a picture of life at the Inns.

Another notebook, again at Cambridge University Library, shelf-marked CUL Dd.9.21 and dated to the latter sixteenth and early seventeenth centuries, offers an example as to the range of non-legal texts that can be found in legal notebooks.[92] The notebook, which belonged to Thomas Palmer of Middle Temple, contains miscellaneous notes on conveyancing, a citation of Lord Ellesmere's speech in the *Postnati Case* (printed 1609), accounts relating to the purchase of cloth, an elegy to Thomas Griffine which begins 'I labor not to know why Griffine died, for all that breathes must all his fatte abide' and ends 'weepe frendes no more ther his noe payne nor hell, prepared for any ever died soe well. Finis', and

[89] BL Lansdowne MS 1115, ff. 35v-38r.
[90] Ibid., f. 35v.
[91] CUL Ee.1.19, f. 1v.
[92] CUL Dd.9.21.

finally an alphabetical commonplace of a general nature, containing materials mostly from classical authors in Latin and English.[93] Notebooks such as this may arguably be considered miscellanies which contain some legal contents, rather than being primarily legal notebooks, however this notebook does illustrate the variety of materials which are often found within the notebooks of law students at the Inns of Court. It was not uncommon for law students to jot ephemeral notes, musings, literary compositions and accounts into notebooks alongside legal texts, and we must be careful not to attribute to these texts a significance or meaning which was never intended by the author; not everything that they wrote down in their notebooks was necessarily intended to serve a legal function.

There are, however, many examples of legal notebooks which contain seemingly non-legal texts that attend to a wider kind of jurisprudence. An example of this can be seen if we return to look again at the legal notebook CUL Add 3295.[94] As has been previously described, the notebook is mainly a legal commonplace with copies of readings held at the Inns of Court and Chancery. When the volume is reversed, we can see on ff. 178v-182v a preface to a treatise on the justices of the peace, attributed to William Fleetewoode, beginning 'The most noble and excellent philosopher Plutarch reporteth that of bulles fleshe corrupted and rotten be engendered bees…', then on f. 183v there are written four points which are titled 'The weale, good government and happiness of a common welth consysteth in these fower pointez…', then on f. 187v is written twelves lines of English verse, titled 'Cornelius Agrippa de privat government. Hector upon the distruction of Troye' and which begins 'I do not doubt, but stately Troye…'. The reversed portion of the notebook ends on f. 188v with legal cases

[93] Ibid., ff. 111v-106v (reversed), 104r (reversed), 2r-10v, 11r-49r.
[94] CUL Add. 3295.

concerning 'disseisin' and 'les causes' against them.[95] The notebook contains varied legal texts and (potentially original) verse compositions that are all tightly focused upon the themes of good governance and the commonwealth. These texts engage closely with classical philosophy, political theory, history and literature. Further to this, the texts in the reversed parts of the notebook are concluded with legal notes that relate directly to the author's legal education, signalling that the author did not consider the reverse parts of the notebook to be separate from the legal materials in the main body of the notebook. The non-legal texts that appear within this overtly legal notebook clearly speak to a wider interest in jurisprudence and the commonwealth, concerns that would have been relevant to a serious student of law aiming to succeed in the wider political world. Whereas the miscellaneous materials that appear in CUL Dd.9.21 may not suggest a relationship between the legal and non-legal texts, the non-legal texts in the reverse of CUL Add. 3295 do suggest a direct and deliberate use of humanist and literary texts to engage with a wider kind of jurisprudence. As such we must consider how these additional texts functioned within the notebook as a part of the author's wider legal education, and what this can tell us about the transference of learning and reading practices from grammar schools and universities into the Inns of Court. I shall return to this subject in the chapters that follow.

Another example of the same kind of intermixing of legal and classical literary materials within a law notebook can be seen in the previously mentioned MS. Misc. 356, from Lincoln's Inn Library.[96] The notebook, in its original limp vellum binding, contains records of moots held at the Inns of Chancery between 1632-1639, and also notes of law out of Littleton and notes

[95] Ibid., ff. 178-182v (reversed), 183v (reversed), 187v (reversed), 188v (reversed).
[96] LI MS. MISC 356.

taken from Christopher St. Germain's *Doctor and Student.* The notebook opens with notes from Turrentius's *Academicae Questiones de Ludis* that are dated to Cambridge on the 12th May 1628. The same author has two other notebooks, also still in their original limp vellum binding, both of which also contain classical and legal materials written side-by-side. The first of these, shelf-mark MS. Misc 134, is a notebook containing texts copied from Aristotle's *De Anima* alongside legal cases, and MS. Misc 135 includes copies from other works of Aristotle, including *De Physica.*[97] A closer reading of the classical contents alongside the legal may reveal a deeper connection between the legal and the non-legal texts within these notebooks. A cursory reading immediately suggests that these notebooks were carried from Cambridge into the Inns of Court, and that the author had comfortably mixed the classical literature that he studied as part of a humanist curriculum with his Inns of Court education. These notebooks speak to the porous nature of the Inns and to the transfer of reading and learning practices between the universities and the Inns. When we consider how law students at the early modern Inns of Court had no formal tutelage, no syllabus and little direction in their legal educations, then the methodologies and practices that they had instilled into them at grammar school and the universities must surely have been foundational to them as they set about the business of learning *how* to learn the law. These kinds of learning practices could also apply to those students who did not attend university. They would nonetheless have attended grammar school, where they would have received grounding in humanist education, they may have employed the services of private tutors, they may have relied upon their follow members to support them in their learning, and they would certainly have been exposed to

[97] LI MS. MISC 354, LI MS. MISC 355.

the wider culture of humanist learning and writing which flourished within the Inns of Court themselves.

Reading Legal Notebooks.

It is the presence of these seemingly non-legal texts within otherwise practical legal notebooks that is the main subject of this thesis. The brief survey of legal notebooks above, along with Baker's extensive cataloguing of legal manuscripts, strongly indicates that these notebooks were conceived and written to be practical tools in the learning of law, and from that we may conclude that the materials written in them were exclusively intended to serve this function. Yet we have also seen that these notebooks often contain a variety of non-legal texts, texts that are not directly related to the study of law or the recording of legal exercises. Baker notes the presence of these varied non-legal texts, but he does not offer any commentary on what kind of work, if any, they might be doing within the legal, material spaces in which they were written. Legal historians on the whole tend to ignore these materials as they do not pertain to their immediate areas of legal and historical scholarship, and also perhaps because these non-legal texts can easily be dismissed as ephemeral moments of play and nothing more. Literary scholars, on the other hand, as has been discussed in the earlier literature review, are mainly interested in the literary and intellectual culture of the early modern Inns of Court, and their focus is mainly on the published works of the literary elite who inhabited those spaces. There has been no formal study done on the notebooks of law students at the early modern Inns of Court from a literary or humanistic perspective and these legal notebooks have mainly gone unnoticed and unexplored by literary scholars. This is not surprising as these notebooks are largely anonymous, written in Law French and Latin and contain large and often impenetrable quantities of dense legal

notes, which tell us much about the methods of education within the Inns of Court but on the surface appear to have little to offer literary scholars. My thesis, however, reveals there is a great deal of literary content worthy of further study within these legal manuscripts. Although the field of law and literature has been largely focused on critical analysis of printed works, or works that were widely circulated in manuscript form, these kinds of literary texts written into notebooks have not been examined in either a literary or a legal context.

In chapter one I examine the legal notebook of Ralph Stawell of Middle Temple, that was composed sometime between 1579 and 1587. Present within this notebook are two kinds of historical and literary texts. The first of these texts are extracts, translated into English, from Boemus's neo-Latin history *Omnium Gentium Mores, Leges et Ritus.* These texts are selected and arranged in much the same format as general, humanist commonplace books. I argue that Stawell read Boemus first and foremost as a common lawyer, his translation and arrangement of select extracts were closely focused upon the origins of English law, the immemorial nature of law, and the necessity of artificial reason in order to comprehend and apply law justly. His choice of extracts points to a deliberate balancing of thought between the common law and equity, and a recognition that those in the legal profession must use wisdom to strike that balance. The process of translation further allowed Stawell to pull apart, re-examine and make prominent the legal language of Boemus's original Latin text. The second text in his notebook are ten Petrarchan sonnets and seven standalone couplets written over two pages. I examine how these sonnets functioned not only as moments of literary play, but also as an exercise to rehearse skills necessary for the legal profession such as rhetoric, argument and memory in a form that was itself rooted in legal tradition, and

which closely resembled the use of Latin verse within the universities, but whose vernacularity marks these sonnets as belonging to a distinctly Inns based tradition.

Chapter two looks at the notebook of Edward Shurland of Lincoln's Inn, which was most likely written between 1597 and 1603. This notebook also contains two non-legal texts that appear to be functioning as supplementary to his legal education. The first of these texts is made up of select extracts from Thomas Smith's legal and political work *De Republica Anglorum*. Upon examining the extracts that Shurland selected we can see that his main interest in Smith was in etymological definitions of legal language rather than the wider political and legal content of the work. Like Stawell, Shurland also appeared to be reading history as a common law antiquarian, and his particular interest in Smith's analysis of Anglo-Saxon legal terminology suggests he was selecting evidence to support the existence of a pre-conquest English legal system. Such evidence would certainly fit into contemporary discourses on the tensions that existed between English common law and civil law. The second seemingly non-legal text in Shurland's notebook is a number of extracts from Thomas More's *Utopia.* Through these extracts Shurland explored a series of jurisprudential themes such as justice and legal reform, alongside an interest in the relationship between the abundant style promoted by humanist scholars, that Erasmian theory of *copia* in which effective styles of writing and speaking must contain a variety of expression and subject matter, and the theory of artificial reason promoted by common law thinkers such as Edward Coke in which a judge's authority to understand and apply the law was arrived at through years of intensive, and copious, study. Shurland also engaged with materials from *Utopia* that relate to the common law and equity as well as public and personal perceptions of lawyers. These non-legal texts reveal the complexity of legal thought and professional self-awareness amongst members of the legal

community in the early modern period and they demonstrate how law students such as Shurland used supplementary historical and literary texts alongside humanist practices to develop and explore that thinking within a legal, material space.

In chapter three I turn to consider the role of play and fellowship as an essential, and above all restorative, part of a legal education. I examine a notebook, possibly belonging to an anonymous Middle Templar, the date of composition being c. 1611, which contains a series of humorous, and often bawdy, stories and jests titled 'Joco Seria'. In comparing the Joco Seria with records of moot exercises within the same notebook, there emerges evidence of a shared methodology between communal moot practice and sessions of communal story-telling. Through group sessions of jesting and competitive story-telling these law students could practice lawyerly skills such as oratory, memory, invention and argument, all of which were conducted in the same manner as formal moot exercises. These sessions of mooting and jesting were held between a tight knit group of fellows who all originated from the same geographic area in the West Country, suggesting that Middle Temple's administrative process of admissions helped to shape these friendship groups, who came together not only for companionship but also to support each other in the study of law. The stories that they shared frequently deal with themes of a legal, moral or jurisprudential nature, but they also focus upon the theme of melancholy through excessive study, and the mental strains associated with academic life. The playful learning practices recorded in this notebook speak to the importance of play not only in rehearsing legal argument, but also as a relief from overmuch study, echoing pedagogical humanist theories in which play was viewed as essential, not only in concert with, but also as a release from, intensive study.

The fourth and final chapter of the thesis looks at the academic notebook of the celebrated lawyer and judge Sir James Whitelocke. Whitelocke studied civil and common law concurrently, at both St. John's College, Oxford and Middle Temple in London, and he composed his academic commonplace book sometime between 1575-1620. This chapter is a departure from the previous three in that the primary function and contents of the notebook being studied was philosophical rather than legal. The contents of the notebook are largely sourced from Cicero's philosophical works, and to a lesser extent from Livy's histories. Through Cicero and Livy, Whitelocke examined a series of exemplary classical figures whose narratives were grounded in themes of justice, law, the law courts, civic duty and administration, legal morality and the need to balance learning in the liberal arts with a civic profession. Whitelocke frequently worked with extracts that lauded the benefits of emulating historical figures such as Lucullus or Manlius Torquatus, and through these figures Whitelocke attended to the tensions that existed between the common law and equity, and between the liberal arts and civic duty. The notebook is a philosophical work, the methodology of composition is that of a university-based humanist commonplace book, and yet Whitelocke's treatment of Cicero and Livy is unique. This is not a commonplace book but rather a new arrangement of Cicero and Livy; an arrangement that frequently deals with law, legal philosophy and the complexities of thought between the common and civil law. I argue that this notebook was the unique product of Whitelocke's concurrent education at St. John's and Middle Temple, and that it is evidence of the two-way flow of education between the universities and the Inns of Court. The notebook is primarily academic, but it is also deliberately designed to serve a legal function.

Although I shall be attending closely to the legal contents of the wider notebooks in which these non-legal texts are written, I shall not be analysing the legal texts to the same extent that I shall be analysing the non-legal texts. During the course of my research I considered the wider jurisprudential and literary potential of the legal texts in the notebooks that I examined for my thesis. This methodology has been successfully applied to primary legal texts by scholars such as Posner and Wilson, however the legal contents in my own notebook manuscripts did not suggest any further usage outside of formal legal learning practices. Unless otherwise stated, translations from Latin and Law French are my own. When quoting from the original manuscripts I have endeavoured to produce a semi-diplomatic transcription, I have stayed true to the original early modern spelling, however superscripts, contractions and abbreviations have been reproduced for ease of legibility. Text enclosed in square brackets are my own addition, and parts of the manuscripts that were illegible or damaged are indicated by braces, or curly brackets. Where passages of Latin have been translated to English in the main text of my thesis, I have provided the original Latin in the footnotes. I am indebted to H. Rackham, whose translations of Cicero greatly supported my study of Whitelocke's academic commonplace book.

Through these four manuscript case studies I conduct a close critical, literary and material analysis of the non-legal texts that are found within those notebooks. My approach is to examine these non-legal texts not in isolation, but in the context of the wider legal and material spaces in which they were written. I ask what is significant about the inclusion of these non-legal texts within the legal notebooks of law students, and further to this I question what work might these texts be doing? As a work of literary scholarship my thesis seeks to examine these manuscripts from a new and previously unconsidered perspective, a

perspective that seeks to uncover how law students used their notebooks to engage with a wider and more literary kind of reading and writing practice that was distinct to their profession and to the Inns of Court.

Chapter 1.

An Auxiliary Education: Ralph Stawell's Legal Notebook.

Introduction.

In the Cambridge University Library archives there is a legal notebook, shelf marked CUL Hh.3.8, belonging to one Ralph Stawell of Middle Temple.[1] The seventeenth-century binding on the notebook identifies the manuscript as a 'Law Common Place', and it is largely a collection of legal commonplaces written in Law French, the contents of which are mostly statute law taken from the yearbooks and printed abridgements. The notebook is a small folio, measuring 305 x 214mm, on paper and containing 166 pages. The legal commonplaces, moot exercises and readings within are typical of the kinds of legal materials found in the notebooks of law students at the early modern Inns of Court. While the notebook is not complete, it was nonetheless an extensive and serious legal work which, as various dates given throughout the notebook suggest, was written over a period of at least eight years. While the manuscript itself is prominently a legal notebook, there are found throughout its pages materials of a seemingly non-legal and literary nature. These non-legal texts appear to have no obvious relationship to the legal texts which constitute the majority of the notebook. John Baker, in his catalogues of English legal manuscripts, does excellent work in drawing our attention to these so-called non-legal entries, but any further commentary on them is beyond the scope of his project.[2] In this chapter I examine the relationship that Stawell may have

[1] CUL Hh.3.8.

[2] See John Baker, *A Catalogue of English Legal Manuscripts in Cambridge University Library: Vol I* (New York: Boydell Press, 1996).

drawn between the legal and non-legal texts within his notebook and consider what kind of role these materials may have played in the educative practices of a law student such as Stawell at the early modern Inns of Court. Instead of placing distance between the legal and the non-legal texts, I want to consider the possibility that Stawell was deliberately bringing these texts together within the material space of the notebook. The broader question that frames this chapter is why did he bring these texts together, and what function did the non-legal texts serve within the notebook? This examination begins with a detailed analysis on the notebook's overall contents, with a focus upon the material nature of the notebook and the variety of hands present within its pages. This can reveal much about how Stawell conceived and perceived the notebook as a practical tool of his legal education. I then turn to examine the literary, historical and theological materials within, and question what these non-legal texts were doing in Stawell's notebook.

The first of these seemingly non-legal texts is an English translation of Boemus's neo-Latin history *Omnium Gentium Mores, Leges et Ritus* (1520).[3] Though this text Stawell could attend to the historical and moral complexities of English common law alongside wider themes of legal philosophy. Through Boemus, Stawell could engage with contemporary arguments and ideas relating to natural and artificial law that were circulating throughout the Inns of Court via the works of writers such as Thomas Smith, William Lambarde and Edward Coke. Furthermore, I argue that the process of translating Boemus from Latin into English was itself a rehearsal of eloquence; an exercise that carefully focused upon the nuances of Boemus's language, which was rich with legal vocabulary and that was deeply concerned with

[3] First printed in 1520, during my research I consulted a later edition: Johannes Boemus, *Omnium Gentium Mores, Leges et Ritus ex Multis Clarissimis Rerum Scriptoribus* (Lyons: Ioan Tornaesium & Guliel Gazeium, 1561).

jurisprudential matters. This process of translation also brings into sharp focus the vernacularity of the non-legal parts of Stawell's notebook and may point towards a kind of self-directed learning at the Inns of Court that was distinct from the Latinate styles of education practiced at the universities. The second type of non-legal text found within the notebook are ten Petrarchan sonnets and seven stand-alone couplets written in English. I refute claims concerning the so-called ephemeral nature of the sonnets and argue that they were not disposable trifles but were instead functional texts that worked in concert with, rather than separate from, Stawell's wider legal education. I contend that the sonnets were adaptations of university-based practices in which verse compositions were used as exercises of rhetoric, argument and memory. In this way Stawell, through the sonnets, sought to supplement his legal education with a kind of pragmatic re-fashioning of humanist education methods, which he adapted to suit his legal educational requirements at the Inns of Court. Lastly, I turn to look at a series of Latin theological texts written throughout the manuscript in a fine gothic script. I consider the possibility that these theological texts were also preparatory texts for Stawell's legal education.

Through the material and textual analysis of Stawell's legal notebook, this chapter proposes that his notebook is an example of the unique ways in which Inns of Court education was developing in the late Elizabethan period. Stawell's use of literary materials is suggestive of a continuation of humanist learning practices found at the universities, and of the kinds of intellectual humanist culture that was present within the Inns themselves. The non-legal texts Stawell wrote into his notebook were not part of the classical, Latinate tradition practiced at the universities, suggesting his use of those texts was a pragmatic repurposing of humanist educative practices to fit his own, largely self-driven, legal education.

The Manuscript.

On f. 1r is written 'Memorandum that I was generally admitted into Middle Temple this 22nd day of Maye 1579 and entered into commons the 4th day of November 1581'.[4] According to the Middle Temple admissions register, the only person admitted on this date was 'Ralf Stawell', whose autograph also appears on f. 71v.[5] This memorandum places both Stawell and the notebook at Middle Temple between 1579-1581, and furthermore suggests that these were the years in which he began composition of the notebook. Following the memorandum on f. 1v there are written notes on moot cases held at the Inns of Chancery. These include a 'Case del Clifford In', 'Un auter case a mesme le lieu', 'Salterne et Walsh post Christmas', 'Mr Boies en son lecture' and 'Ruled case per Gibs, Savile et Lukner'.[6] Baker identifies these mooters as belonging to Middle Temple and he dates the moot exercises as occurring sometime in the 1580s, with the lecture of John Boys being specifically dated to the Autumn term of 1580.[7] There are other dates found throughout the manuscript which give an indication as to the duration in which Stawell was working on this notebook. On f. 150v there are notes on cases dated Michaelmas term in the 25th and 26th year of Elizabeth (1583), on ff. 161v-166v there are notes on moot cases given at the Inns of Chancery, including 'Casus apud New In argued per Cavill reader en le 3 daye de Maye 1585', and on f.165v there is a brief biographical note dated 29 Elizabeth (1587), which demonstrate that Stawell was writing this notebook over a period of at least eight years while at Middle Temple.[8]

[4] CUL Hh.3.8, f. 1r.
[5] Henry F. Macgeagh, ed. *Register of Admissions to the Honourable Society of the Middle Temple: Volume I* (London: Butterworth & Co, 1949), 44; CUL Hh.3.8, f. 71v.
[6] Ibid.
[7] John Baker and J. S. Ringrose, eds. *A Catalogue of English Legal Manuscripts in Cambridge University Library* (Woodbridge: The Boydell Press, 1996), 341-342.
[8] CUL Hh.3.8, ff. 150v, 161v-166v.

On ff. 6v-52r there are a series of legal commonplaces written in Law French, the contents of which, Baker notes, are mostly sourced from the Year Books.[9] There are marginal notes throughout the commonplace entries that show Stawell was also occasionally working from printed abridgements, with the abbreviated citations 'plo' for Plowden, 'Br' for Bracton and 'Litt' for Littleton.[10] On f. 6v there is a contents page of legal subject headings arranged alphabetically, which is then followed by the main legal commonplaces in non-alphabetical order.[11] There are typically two entries per page, with a heading centred at the top of the page and the main text aligned to the right to allow for referencing and notes in the left-hand margin. The commonplace book is incomplete, many pages have blank spaces that appear to have been strategically left for additional content, suggesting that the manuscript was an on-going working project; a book that could be referenced and added to over the years. On several pages there are theological and philosophical materials written in a fine Latin hand.[12] The authorship of the Latin texts, which appear in a different hand from the rest of the writing in the notebook, is discussed in further detail later in the chapter as part of a closer palaeographical analysis.

At the end of the legal commonplace entries, on f. 52r, there are several blank pages, then on ff. 55r-58v there are materials which at first appear to be written in a different hand from Stawell, and which are thematically different from the practical legal contents of the main

[9] Ibid., ff. 6v-52r.
[10] Ibid., ff. 14r, 21v, 24r, 24v, 30r, 32r, 36v, 37r, 41r, 43r, 45r, 45v, 48v, 49r, 50v, 51r, 51v.
[11] Ibid., f. 6v.
[12] Ibid., ff. 2r-6r, 18r, 25r, 28r, 37r, 64r, 151r-161v.

notebook.[13] These passages, titled 'The true opinion of the devines concerning mans beginninge', are a translation from Latin into English of the first two chapters, and the beginning lines of the third chapter, of the German humanist Johannes Boemus's book *Omnium Gentium Mores, Leges et Ritus ex Multis Clarissimis Rerum Scriptoribus* (1520).[14] Part cosmography, part geography and part history, the translated chapters from *Omnium Gentium Mores* describe the events of creation, the expulsion of Adam and Eve from Eden, the flood, the progeny of Noah and how their dispersal across the three parts of the world accounted for the diversity of customs, laws and languages. The scriptural accounts from chapter one are then compared to pagan beliefs in chapter two, which is titled 'The faulse opinion of the heathens concerning mans beginngs'.[15] Here Stawell translated passages that describe the varieties of pagan beliefs relating to the creation of the earth and all life, the coming together of tribal groups, the founding of larger societies, and the inventiveness of man in the face of necessity. Both the Christian and the pagan accounts attend closely to the origins of custom and law amongst early human societies, and the importance of the passing on of those customs through the generations. Such ideas had much in common with contemporary common law arguments concerning natural law and the artificial laws of men, which suggests that Stawell might have perceived or drawn connections between Boemus, English law and his own legal education.

On f. 59r, immediately following the translation from Boemus, there is a second alphabetically arranged contents page for legal commonplaces.[16] This is followed on f. 60r with the legal

[13] Ibid., ff. 52r, 55r-58v.
[14] Boemus, *Omnium Gentium Mores.*
[15] CUL Hh.3.8, f. 56v.
[16] Ibid., f. 59r.

commonplace proper, beginning with the numeral 'i' written in the top right corner.[17] There was an attempt by Stawell to make these legal commonplaces neater than the ones found on ff. 6v-52r.[18] Many pages have a narrow freehand border in black ink and the hand is much tidier with orderly lines and spaces. However, this attempt at neatness was short-lived as Stawell quickly returned to his usual, messier hand. Like the earlier legal commonplaces, this second (or continued) collection of legal commonplaces were a work in progress, with spaces left between legal notes and blank pages for additional content to be later added. On f. 71v Stawell practiced his signature along with pen trials, and he also jotted the mysterious sentence 'Incombent Standinge in the Congregation'.[19] On ff. 112v-113r there are lists of names, arranged in alphabetical columns, which appear to be a mixture of surnames and place names, with page numbers supplied beside each entry.[20] These lists are also incomplete, with spaces left for further additions. There is no evidence to satisfactorily explain what these lists were for, and from which sources the page numbers were taken.

On ff. 145v-146r there are ten Petrarchan sonnets and seven stand-alone couplets written over two pages, beginning with 'Good father tyme flie not awaie so fast…'.[21] The sonnets are crammed onto the page, written sideways in the margins and inverted in the footer. They appear midway through the legal commonplace book, with the two final sonnets on f.146r being written respectively beneath the legal commonplace entries of 'Conclusion' and 'Champartie'.[22] There is some evidence to suggest that these sonnets were of original composition, which leads to the interesting idea that Stawell was composing sonnets while

[17] Ibid., f. 60r.
[18] Ibid., ff. 6v-52r.
[19] Ibid., f. 71v.
[20] Ibid., ff. 112v-113r.
[21] Ibid., ff. 145v-146r.
[22] Ibid., f. 146r.

simultaneously composing a legal commonplace book. Might these compositions, and their position within the legal notebook, point towards a relationship between the sonnet writing process and the practice of learning law? This chapter seeks to explore the possible legal function of the sonnets, arguing that the sonnet form allowed the author to exercise skills necessary to the legal profession, such as complaint, argument and resolution within a tightly confined textual space.

On ff. 151r-161v there are notes relating to the contents of a theological work written in the same neat Latin hand that was responsible for the other theological materials in the commonplace.[23] These contents are also contained within a narrow column surrounded by ruled red lines and large generous margins. From ff. 161v-166v these ruled lines in red ink continue on blank pages, which Stawell used to write notes on moot cases held at the Inns of Chancery.[24] For the first few pages Stawell attempted to remain within the ruled column, but true to form he quickly abandoned any pretence of neatness as his notes spill over the lines and fill the page with the same crammed and chaotic sense of urgency that is common throughout all of his legal notes and commonplaces. These notes on moot cases continue to the end of the notebook.

Biography of Ralph Stawell.

Ralph Stawell was the son of George Stawell of Cothelstone and Isabel of Lympenye in Somerset. The Stawell family were of the gentry and had land holdings in Cornwall, Devon and Somerset. It is not known where Stawell went to school, or if he attended university.

[23] Ibid., ff. 151r-161v.
[24] Ibid., ff. 161v-166v.

There is a record of his father George Stawell, or Stowell, in the *Register of the University of Oxford,* being admitted on the 2nd July 1516, however there is no mention of Ralph Stawell in the university register, nor does he appear in the Alumni Oxonienses.[25] In 1561 it is calculated that only 13 per cent of students at the Inns of Court had a university education, with the figure rising to 42 per cent in 1581.[26] The majority of students at the Inns of Court did not have a formal university education, and with no evidence suggesting that Stawell attended university, it is possible that he was counted amongst the non-university educated majority at the Inns. Within his legal notebook Stawell does provide a few pieces of personal information, on f. 1r he wrote 'Memorandum that I was generally admitted into the Middle Temple this 22th day of Maye 1579 and entered into commons the 4th day of November 1581'.[27] General admission simply meant that Stawell paid the standard admission fees upon entry.

On f. 165v Stawell mentions the death of his grandfather John Stawell on 25th August 1541. There is also mention of a Sir John Stowell on the same page, whom Stawell referred to as his 'cosen'.[28] This familial connection is confirmed through will of Sir John Stawell (II) of Cothelstone, dated 1603, which refers to Ralph Stawell as his cousin and in which he was bequeathed twenty pounds.[29] Stawell's name also appears in the Middle Temple Minutes of Parliament, where it states he was called to the Utter Bar in 1594, and on the 5th July 1509 it

[25] C. W. Boase, ed. *Register of the University of Oxford: Vol I* (Oxford: Clarendon Press, 1885), 96; Joseph Foster, "Alumni Oxonienses 1500-1714" British History Online, accessed March 27, 2019, https://www.british-history.ac.uk/alumni-oxon/1500-1714.
[26] James McBain citing the research of Rosemary O'Day in "Legal Training and Early Drama," in *The Oxford Handbook of Law and Literature,* ed. Lorna Hutson (Oxford: Oxford University Press, 2017), 95; Rosemary O'Day, *Education and Society 1500-1800* (London: Longman, 1982), 263-4.
[27] CUL Hh.3.8, f. 1r.
[28] Ibid., ff. 1r, 165v.
[29] PROB-11-101-454

was noted that he shared his chambers with James Dyer.[30] James Dyer was the nephew of the Lord Chief Justice Sir James Dyer, and he prepared the first edition of his uncle's famous law reports.[31] A genealogy in *The Visitation of Somerset* for the 'Stowell' family records that Stawell married Florence, the daughter of Thomas Arondell of Clotworthie, and that they had two sons, William who died in infancy and Robert.[32] Strangely this genealogy provides no dates for any births, deaths or marriages. There are also no birth or death dates given in *A Quantock Family History* for Ralph Stawell nor his father George Stawell.

Very little is to be found in the county records of Cornwall, Devon or Somerset concerning Stawell, although his name does appear in a title of deeds in the Somerset heritage centre, dated 1586-1588, relating to lands in Cothelstone, Crowcomb, Bishops Lydeard and Aishold, alongside Stephen Dyer.[33] Stawell's name is also to be found in the state papers, alongside Sir John Stawell's, in a petition dated 1587 by the Attorney General Sir John Popham relating to the same matter as above.[34] These records simply evidence that Ralph Stawell was involved in litigation while he was resident at Middle Temple, which in itself is not unusual give the overall litigious nature of the period. Stawell's death is recorded in the Middle Temple records as occurring some time before the 13th April 1597, having died while still in chambers.[35] There is, however, a contradiction in the records as it has been previously noted that Stawell was named by his uncle in his will dated 1603. George Dodsworth Stawell in *A*

[30] Hopwood, *Minutes of Parliament,* 314, 337.
[31] Baker, *Lost Notebooks of Sir James Dyer*, xxxv.
[32] Frederic Thomas Colby, ed. *The Visitation of the County of Somerset in the Year 1623* (London: Mitchell and Hughes, 1876), 106-107.
[33] SHC DD/BR/py/7
[34] TNA SP 63/132 f.94
[35] Hopwood, *Minutes of Parliament,* 373.

Quantock Family uses this record to argue that Ralph Stawell was alive in 1603.[36] In regard to Stawell's professional life, there are no records surviving to evidence what career he settled on after reaching the bar. It also cannot be inferred that his residency in chambers at Middle Temple meant that he was practicing law at the time of his death. There is nothing in the Middle Temple records to indicate any special obligation or requirement dictating that those holding chambers at the Inn had to practice law. [37]

Palaeographical Analysis: The Theological Texts.

Before analysing the contents of the manuscript, it is important first to establish whether Stawell was the sole compiler of the notebook. On ff. 2r-6r there is written, in a careful Latin script, materials under the title of 'Articulus primus de missa privata', which is taken from John Jewel's reply to Thomas Harding on the subject of Roman mass.[38] The text is contained within a narrow central column, the borders of which are ruled in red ink, leaving large marginal spaces on both sides of the page. Theological materials written in the same gothic hand also appear on ff. 18r (crossed out), 25r, 28r, 37r, 64r and on ff. 151r–161v there are notes on the contents of a theological work.[39] The script is described by Baker as imitating print and is markedly different from the legal materials throughout the remainder of the notebook.[40] Both Guillaume Coatalen and Jessica Winston, in their study of the manuscript, state that these theological materials were written by Stawell, however they offer no

[36] George Dodsworth Stawell, ed. *A Quantock Family: The Stawells of Cothelstone and Their Descendants, the Barons Stawell of Somerton, and the Stawells of Devonshire and the County of Cork* (Taunton: The Wessex Press, 1910.), 53.
[37] With thanks to Barnaby Bryan, archivist at Middle Temple library, who confirmed this for me via e-mail correspondence.
[38] Baker, *A Catalogue of English Legal Manuscripts,* 341-342.
[39] CUL Hh.3.8, ff.18r, 25r, 28r, 37r, 64r, 151r-161v.
[40] Baker, *A Catalogue of English Legal Manuscripts,* 341-342.

palaeographical analysis to support their views.[41] It is difficult to find any similarities between the theological text and Stawell's legal materials, indeed it is notoriously difficult to link two scripts of such varying style to one person.[42] The legal texts are written in a flowing, somewhat hasty and cluttered secretary hand, replete with leaning italic lines, loops and flourishes. The lightness of the ink, and occasional instances of the stylus running dry midway through a paragraph, suggest the author wrote with speed and a lightness of hand. The theological materials are closer to a chancery or even black letter style, with the letters carefully formed with bold, straight lines. The lines are thick and dark, with the occasional overflow of ink, which suggest a much slower and heavier hand at work. There are also differences in formatting on the page, in writing his legal materials Stawell frequently pushed his script to the edge of the page, cramming his writing into all available spaces, and squeezing text in-between lines. He occasionally turned the page sideways to fit in additional materials and he pushed his stylus down into the gutter of the book. On the pages with the neat Latin materials there is an abundance of negative space, there are generous spaces between lines, large marginal spaces on both sides of the page, blank headers and footers, and the presence of ruled lines in red ink, suggesting an orderliness that is mostly absent from Stawell's legal notes.

From these observations alone, it is tempting to conclude that Stawell was not the compiler of the theological materials, and yet there is also evidence which suggests that he may have been responsible for the theological entries. First, we must turn to examine the notebook itself as both a material and textual object before examining its formatting and composition.

[41] Guillaume Coatalen, "Unpublished Elizabethan Sonnets in a Legal Manuscript from the Cambridge University Library," *The Review of English Studies,* vol 54, issue 217 (2003): 553-565; Jessica Winston, *Lawyers at Play,* 77.
[42] With thanks to Dr David Rundle, who advised me on this matter through e-mail correspondence.

The binding and the arrangement of the quires, along with a consistent paper type bearing a distinctive trifoil pot watermark, demonstrate that Stawell was working with a blank book. The theological notes are found at the beginning of the book, at the end, and scattered throughout, often written amongst the legal notes, examples of which can be found on ff. 17r, 25r, 28r, 39r and 64r.[43] The foliation in the notebook begins on f. 2r with the numeral 'i', in the top right-hand corner of the page titled 'Jules repli. Unto. M. Hardings answeare', which is written the neat gothic hand.[44] This foliation continues throughout the theological text and into the legal commonplaces which begin on f. 7r.[45] This continuation of the foliation between the legal and the non-legal texts suggests the same author was responsible for both texts. Next, we can examine the similarities of styles found between the legal and theological texts. While the hands found throughout the notebook are varied, the numerals used to foliate the pages and also to reference page numbers within the theological texts and to reference Year Book numbers in the legal notes are all the same. Furthermore, throughout the legal notes there are to be found variations of style which are remarkably similar to the gothic script, for example on f. 11v for the heading 'Grand Cape et Petit Cape', the majuscule 'P' on 'Petit' is the same distinctive style as 'P' in the gothic script, with a hooked ascender and an elongated, open bow.[46] The same 'P' can be found on ff. 93r and 95r.[47] On f. 34r the hand moves from a fine, sloped Italic script to a bolder, straighter script.[48] While not exactly the same as the gothic hand this demonstrates that Stawell was able to alternate his writing to styles similar to the gothic script. On f. 71r is written in a large bold hand 'Incombent Standinge in the

[43] CUL Hh.3.8, ff. 17r, 25r, 28r, 39r and 64r.
[44] Ibid., f. 2r.
[45] Ibid., f. 7r.
[46] Ibid., f. 11v.
[47] Ibid., ff. 93r, 95r.
[48] Ibid., f. 34r.

Congregation' which is autographed by Stawell.[49] The word 'Incombent' is written with straight lines and in a style that is once again remarkably similar to the straight lines used in the Latin gothic script. On f. 79r, and many others like it, Stawell wrote legal notes within the confines of a narrow-ruled border, a formatting style that is also used in the theological texts.[50]

There is nothing in the manuscript to indicate a shared ownership of the notebook, and while there is little palaeographical evidence to link Stawell to the gothic script, what evidence there is certainly seems to suggest that he was in fact the sole owner of the notebook, and so was also the author of both the theological and the legal contents. The range of hands present within the manuscript further suggest that Stawell viewed the notebook as a workspace in which he could master the variety of hands necessary to one aiming at a legal profession. Throughout the legal notes Stawell demonstrated an ability to move between styles, and he seemed to delight in experimental flourishes and decorative letterforms, for example on f. 29r the majuscule 'E' of 'Enfant' is a large mirrored curve with double cross lines in the centre. On f. 40r Stawell wrote the entire entry of '10 H 7' in a small, neat hand that was entirely unlike his usual hasty, sloping Italic hand.[51] On f.40 v his heading is underlined by an abundance of scribbles and loops, the main text slopes on the page and he liberally crossed out lines with a scribble.[52] On one side of the page his hand is orderly and neat, and on the other seemingly chaotic. On f. 60r the 'D' in 'Dett' is elaborate and finished with a cuneiform wedge. On f. 105r Stawell changed his style of writing majuscule 'A' to include a long foot on

[49] Ibid., f. 71r.
[50] Ibid., f. 79r.
[51] Ibid., f. 29r, 40r.
[52] Ibid., f. 40v.

the left ascender, a large 'v' shaped cross line and he decorated the top of the letter with a large black circle.[53] These variations of style and embellishment of letters suggests a measure of experimentation throughout the notebook, and may point towards Stawell being a polygraph, albeit one in training. Palaeographical similarities between the theological and the legal texts are limited, however when considered alongside the overall composition and formatting of the manuscript, alongside Stawell's clear ability to move between a variety of hands, it becomes increasingly likely that he was the sole author of the theological texts.

Palaeographical Analysis: Boemus's *Omnium Gentium Mores, Leges et Ritus.*

On folios 55r-58v is an English translation of the first two chapters of Johann Boemus's *Omnium Gentium Mores, Leges et Ritus*, beginning with the first chapter titled 'The true opinion of the devines concerning mans beginninge'.[54] The first six lines of the third chapter titled 'Of the situation and partition of the earth' is cut off midway through the sentence. At first these extracts appear to be written by a different hand from Stawell's Law French legal commonplaces and notes. The appearance of a different style of hand within this legal notebook is not unusual, as has been previously noted by the presence of the careful Latin script. There are a sufficient number of similarities between the 'The true opinion of the devines concerning mans beginninge' and the legal materials throughout the notebook. Immediately following 'The true opinion of the devines concerning mans beginninge', Stawell wrote an alphabetical contents page of legal headings in his typical hasty hand, complete with ink spots, crossed out words, crowding and overwriting.[55] There then follows a number of legal commonplaces (the foliation here suggests this was either a new set of commonplaces

[53] Ibid., ff. 60r, 105r.
[54] Ibid., ff. 55r-58v.
[55] Ibid., f. 59r.

or a continuation of the commonplaces found on ff. 6v-52r) beginning with the heading 'Dett'.[56] Under 'Dett' the hand begins in a neat script that is very similar, although not identical, to the hand used in 'The true opinion of the devines concerning mans beginninge' on ff. 55r-58v. Midway through the entry for 'Dett' the neat hand quickly slips back into Stawell's usual, somewhat messy, hand. This slippage of hand, and the radical difference between the style of script at the start and end of 'Dett', once again demonstrates that Stawell was capable of moving between writing styles, and is further evidence of the experimental nature of his writing within the notebook. Both the legal contents page and 'Dett' stand as sample texts which can then be compared to 'The true opinion of the devines concerning mans beginninge' in order to establish whether Stawell was the author of both the legal contents and the translation of Boemus.

The following palaeographical analysis between 'The true opinion of the devines concerning mans beginninge' and 'Dett' concentrates on points of similarity between letterforms in both texts. The analysis is followed by a table in which examples of the two hands are placed side by side for visual comparison. This comparison is done with the understanding that many types of handwriting belonging to many different people will naturally share similarities of style, especially between letters which can only be written a limited number of ways, and by men who shared writing practices. What makes the following analysis convincing is the quantity of the similarities found between the texts, in particular the similarities between letter forms distinct to Stawell's legal hand, such as the elongated majuscule 'S' that resembles a figure of eight.

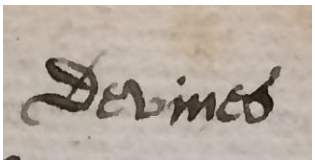
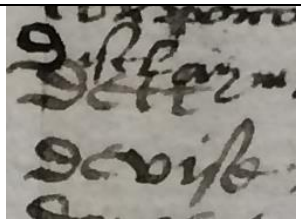
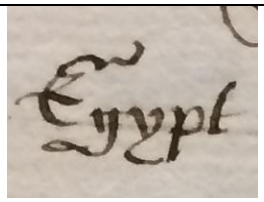
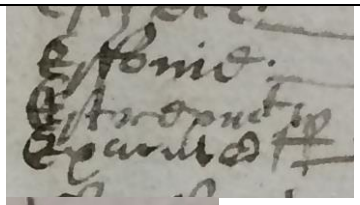
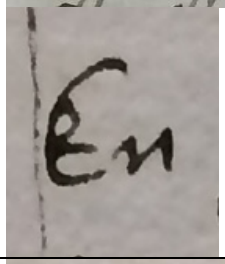
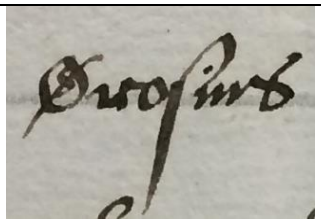
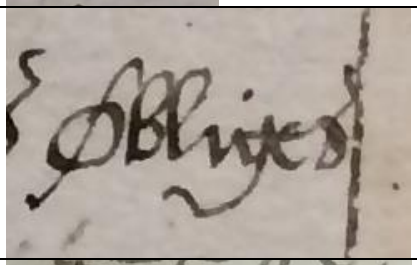
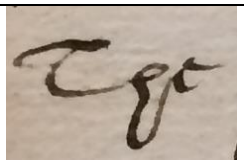
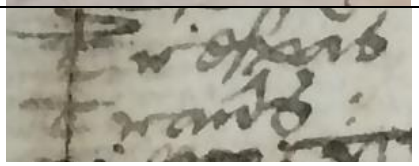
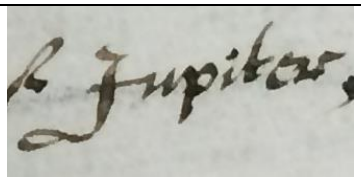
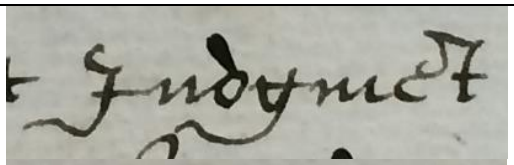
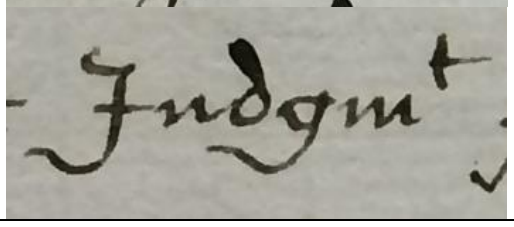
[56] Ibid., f. 60r.

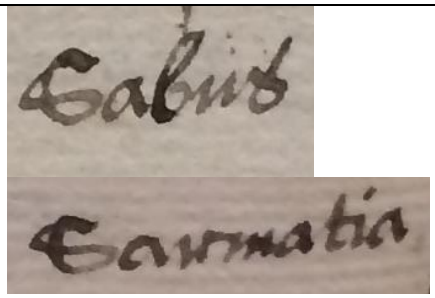
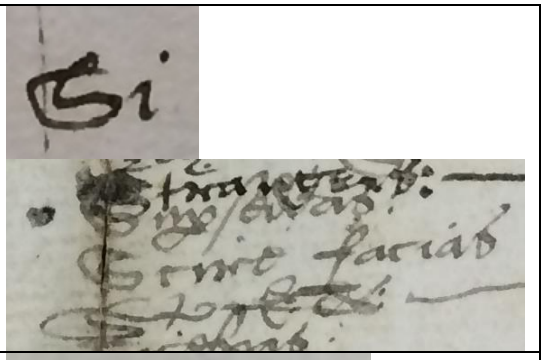
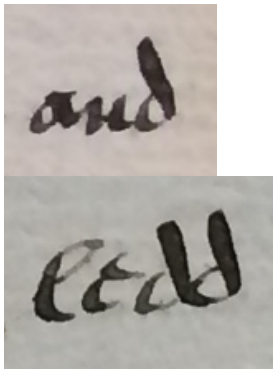
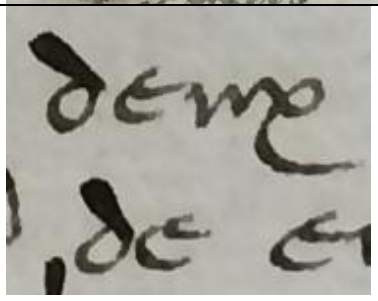
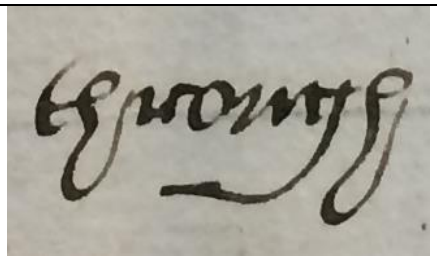
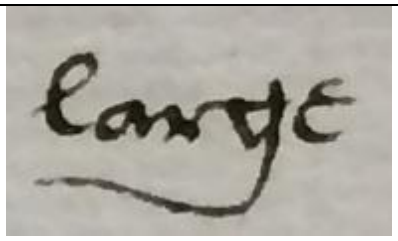
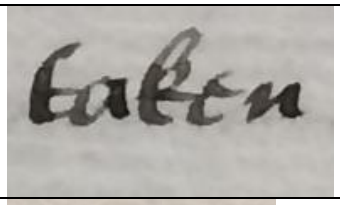
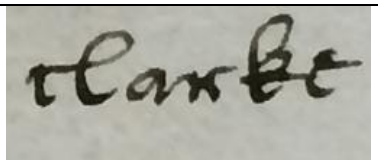
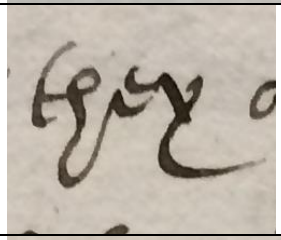
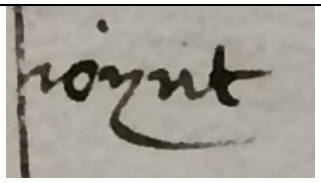
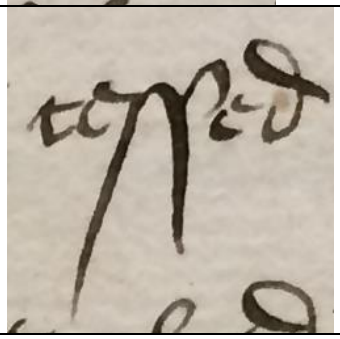
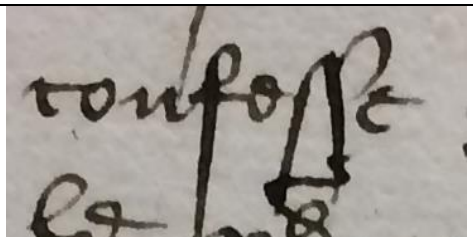
Starting with the majuscule case: The body of the majuscule ‘D’ is formed using a single looped stroke which resembles a reverse ‘e’. The majuscule ‘E’ is especially distinctive with a curved ‘C’ shaped body and a small bow above the central cross stroke. There are several instances of the majuscule ‘O’ being written with a strike. The majuscule ‘T’ is formed with a long head stroke and curved ‘C’ shaped body. Majuscule ‘J’ is written with a hooked head stroke, although it should be noted that there are differences in style on the descenders. There are also similarities of style in the ligature between the central cross stroke of the majuscule ‘J’ with the following letter ‘u’ in both samples of the text. The majuscule ‘S’ is especially distinctive with its elongated figure of eight form that is found throughout the manuscript, but most importantly is used by Stawell in his autograph on f. 71v.[57]

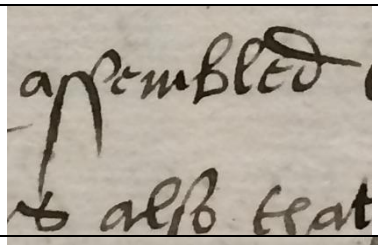
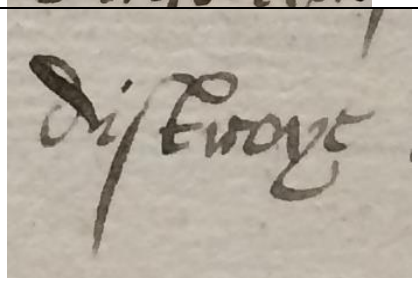
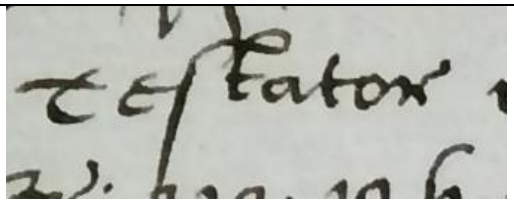
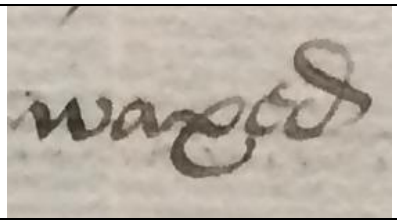
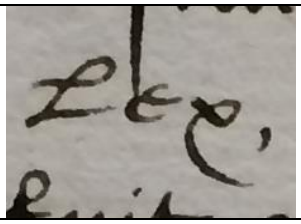
Moving onto the minuscule case: Minuscule ‘d’ has a thick ascender sloping to the left, minuscule ‘g’ is written with a separate horizontal top line and a flowing tail to the left, minuscule ‘k’ is formed with a bow and has a looped ascender, minuscule ‘y’ has a tail that flicks to the right. The long double ‘s’ fall into each other, they slope to the right and they are formed with a curved top which is almost closed. I have included several examples in order to demonstrate the similarities. Another example of a distinctive style relating to long ‘s’ is its looped ligature with ‘t’ and ‘l’. Lastly, the minuscule ‘x’ is looped to resemble an ‘e’. These distinctive letterform styles are found in both the legal and non-legal samples of text and are illustrated in the following table:

[57] Ibid., f. 71v.

Table 1: Palaeographical Analysis.

Letter(s)	'The true onion of the Devines concerning mans beginning.'	Legal commonplace contents page and 'Dett'
Majuscule D		
Majuscule E		 
Majuscule O		
Majuscule T		
Majuscule J		 

Majuscule S		
Minuscule d		
Minuscule g		
Minuscule k		
Minuscule y		
Minuscule long double s		

		
Minuscule long s joining t with looped ligature		
Minuscule x		

There are often variations between letters within the same paragraph, sometimes even the same sentence. The minuscule ‘d’, for example, does also appear frequently throughout the latter parts of ‘The true opinion of the devines concerning mans beginninge’ with a looped ascender, while the long ‘s’ to ‘t’ ligature also appears without the loop, however the looped style is dominant. Although Stawell’s distinctive, elongated majuscule ‘S’ appears in both the legal and non-legal texts, his equally distinctive elongated ‘w’ is not found in ‘The true opinion of the devines concerning mans beginninge’. There are also many letters which do not share any similarity at all, however this can be explained by the fact that Stawell was making a conscious effort to change his writing style. The similarities of style between the ‘True opinion of the devines concerning mans beginninge’ and the legal texts are numerous and strongly suggest that Stawell was indeed the author of both the legal materials and the translation of Boemus’s *Omnium Gentium Mores*.

Boemus in the Legal Notebook.

In 1520 the German humanist Johannes Boemus, published a book titled *Omnium Gentium Mores, Leges et Ritus.* In this work he attempted to collate a comprehensive account of the laws and customs of the peoples of Africa, Asia and Europe, stating in his author's preface 'I have sought out…the manners and facions, the Lawes, Customes and Rites of all such peoples…'.[58] His methodology was that of a historiographer rather than traveller or explorer. Boemus never visited the countries that he wrote of, but instead gathered together and 'digested' a large quantity of information from ancient scholars, some forty-two of them according to the anthropological historian Margaret Hodgen, whose research identified the sources in *Omnium Gentium Mores* not listed by Boemus.[59] Boemus's purpose was, as argued by Hodgen, twofold: First he wished to make the body of knowledge concerning the variety of human behaviour accessible to a wider, and more ordinary, audience. Second, he sought to improve moral political thought at home by informing his readership of the laws and customs of other nations.[60] By exposing his readers to a historical diversity of laws and customs Boemus invited comparison to the domestic laws and customs of his homeland, much in the same way Thomas Smith later sought to explore the variances of English common law through comparison with Roman law in his *De Republica Anglorum.*[61]

[58] Johannes Boemus, *The Fardle Of Facions Conteining the Aunciente Maners, Customes, and Lawes of the Peoples Enhabiting the Two Partes of the Earth Called Affricke and Asie, trans.* William Waterman (Lyon: John Kingstone and Henry Sutton, 1555), 13.
[59] Some of the sources Boemus does mention in his preface include Herodotus, Diodorus, Berosus, Strabo, Solinus, Trogus Pompeius, Plinius, Cornelius, Dionysius, Pomponius Mela, Caesar, Josephus and certain later writers including Vincentius, Aeneas Siluius (later named Pius II) Anthonie Sabellicus, John Nauclerus, Ambrose Calephine and Nicholas Perotte. See Margaret Hodgen, *Early Anthropology in the Sixteenth and Seventeenth Centuries* (Philadelphia: University of Pennsylvania Press, 1964), 132.
[60] Ibid., 131.
[61] Thomas Smith, *De Republica Anglorum* (Cambridge: Cambridge University Press, 1906).

Boemus's work was hugely influential, and the book an instant success with repeated publications, reissues, revisions and translations. In 1536 a revised and expanded Latin edition was printed, and between 1536-1611 there where a further twenty-three re-issues in five languages, including Italian, French, English and Spanish.[62] The first English edition, titled *The Fardle of* Facions, was translated by William Waterman in 1555, thirty-five years after the first publication of *Omnium Gentium Mores*. Throughout the sixteenth and seventeenth centuries Boemus was credited as being a direct influence upon a host of eminent scholars and literary figures, most notably the French jurist, legal historian and political philosopher Jean Bodin, who credited Boemus as being a 'pre-eminent authority'.[63] Other writers influenced by Boemus include Edmund Spenser, Michel de Montaigne, Robert Burton and Edward Brerewood to name a few.[64] For his collection and collation of customs, Boemus has been credited with starting a new ethnological literary genre that flourished after the publication of *Omnium Gentium Mores.* Hodgen notes that the imitated works following the success of Boemus were 'in some sense cosmographies, a type of publication devoted to geography, history, manners, and science.'[65] Clearly the breadth of knowledge collected by Boemus, along with the eminent wealth of sources from which he drew, appealed to a variety of professional and scholarly practitioners and authors whose interests include, but by no means were limited to, politics, medicine, antiquarianism, diplomacy, science, geography, theology, history, mathematics, linguistics, and law.

[62] Hodgen, *Early Anthropology in the Sixteenth and Seventeenth Centuries*, 132.
[63] Ibid., 133.
[64] Ibid., 133.
[65] Ibid., 134.

Boemus's *Omnium Gentium Mores* comprised three books, with the first acting as an introductory volume in which the first three chapters describe the origins of life on earth, the foundations of societies and the dispersal of peoples across the three parts of the earth as sourced from both scriptural and pagan sources. The remaining three chapters of the first book, and the following two books, chart in exacting detail the customs and laws of specific countries. The depth of detail provided for the various countries of Africa, Asia and Europe is astounding, from their foundation to their geography, climate and styles of architecture, art, habits of dress and toilet to exhaustive lists of monarchs and rulers and lists of regions, counties, provinces, parishes and diocese. Boemus described the layers of social hierarchy and the organisation of political, governmental and legal systems, which included the courts and penal systems. Religions and superstitions are explored in depth, along with manners of living, family life, languages, dialects, and so on to such an extent of variety that it would be impossible to list them all here.

It is significant that Stawell only translated the first two chapters, and the opening lines of the third chapter, into his legal notebook. Was he focused only upon the opening chapters, or was this an attempt at a much larger, yet abandoned, project of the whole of Boemus's work? It is possible that Stawell broke off because he had reached the limits of his interest, but it is also possible that he intended to complete the translation elsewhere, in a material space that afforded him the room to complete such a large and ambitious project. We cannot know for certain, however Stawell clearly had an interest in Boemus and by including these specific passages in his legal notebook he demonstrated that he was concerned with the origin and diversity of customs, laws, nations and languages. By placing this legally focused history within his working legal notebook, it is likely that Stawell perceived a relationship between Boemus

and his own legal education. By translating Boemus's work, Stawell was engaging precisely with jurisprudential materials that allowed him to consider the historical and moral complexities of English common law as a system that was at once innate and inherited, immemorial yet changeable, universal yet unique, written on the hearts of men by the hand of God but also the artificial product of man's singular wit and invention. It is by examining Boemus as an authoritative historian, and the process in which Stawell produced a translation of that history, that we can gain an understanding of how Stawell used this historical and literary text in concert with his legal education at Middle Temple.

Boemus as Historical Authority.

In the first chapter of *Omnium Gentium Mores*, Boemus states that he drew heavily on Berosus's account of the progeny of Noah from *Commentaria super opera diversorum auctorum de antiquitatibus loquentium*.[66] This historical text of Berosus was in fact a forgery written by Annius of Viterbo in 1498, in which he sought to fill the historical gap left by Genesis on the progeny of Noah.[67] This text shaped how early modern scholars understood the foundations of nations, the dispersal of peoples, and the variety of customs and languages all over the world. Although the forgery was detected early on, it nonetheless had a significant influence during the renaissance and this Pseudo-Berosus was viewed as an authority by not only Boemus but many humanist scholars in the early modern period. According to Annius's Pseudo-Berosus, the descendants of Noah's first three sons were distributed through the world thusly: Sem went to Asia, where he built Jerusalem, Japeth went to Europe and Cham,

[66] Boemus, *The Fardle Of Facions*, 13, 27.
[67] Joannes Annius Viterbiensis, *Commentaria super opera diversorum auctorum de antiquitatibus loquentium* (Rome: Eucharius Siber alias Franke, 1498).

due to his transgressions against his father, was sent to the third part of the world to live a savage and forsaken life.[68]

In the first book of *Omnium Gentium Mores,* Boemus focused specifically on the fate of Cham, an interest shared by Stawell who translated the same material into his legal notebook:

> [Cham] leaving to his posteritie no sacred kyde of usage, for in deed he hym self had learned none of his father. Wherof it came to passe that whereas in tracte of tyme upon great increase of people many were sent out of that land likewyse to inhabit cuntries uninhabited… in such sorte, that some led their lyffe (as you shall hear) after a rude and barbarous manner, that a man might scarcelie discerne any difference between them and savage beasts.[69]

Stawell in particular focused on the descendants of Cham, and how they evolved from living a solitary and animal-like existence in the open to living communally in caves, and from there drawing together into larger societies. They developed language, and through hardship became wise and inventive. In time they built towns, then cities, and continued to progress into a version of modern society with their own distinct languages and customs that would have been familiar to Stawell. Cham's descendants, cut off from all knowledge of their forefather's legal customs, developed their societies and laws without any kind of Judo-Christian moral framework guiding them. As God's creatures their development of law was guided by an innate sense of natural law. Yet within this narrative natural law was mixed with theories of artificial law; the formation of societal customs were described as being reactive,

[68] 'This Berosus affirmeth' from Richard Lynche, *An Historical Treatise of the Travels of Noah into Europe: Containing the first inhabitation and peopling thereof* (London: Adam Islip, 1601), np.
[69] CUL Hh.3.8, f. 56r.

in response to necessity while simultaneously being guided by an unknown inner moral force. Doctrinally savages, such as Cham's descendants, 'were men, first, last and always – bestial and degenerate in their behaviours, perhaps, but still men and thus creatures of God.'[70]

While European man, supposedly descended from Japheth, did not fall to those levels of savagery, they nonetheless had a shared bloodline, and like their estranged brothers were equally guided by the same universal human natures. Annius, in his Pseudo-Berosus, believed that the modern man of his lifetime was one and the same with savage man of historical past. Civilised man and savage man shared a common ancestry, their hearts were equally touched by God and thus the only difference between the civil and savage man was time, circumstance, and individual moral choice. If one subscribed to the history of Noah as written in the Pseudo-Berosus then man naturally gravitated towards the rule of law, no matter his origins, through an innate sense of moral justice and reactive human invention. This view was not held by all during the renaissance period; Hodgen notes that 'there were others in plenty who looked down upon the savage either as an inferior man or as a superior animal… in voyage accounts, in poetry, in drama, in political theory – with remorseless repetition.'[71] In this way the savage man was robbed of his humanity, he was believed to be incapable of development or improvement, and his lack of any perceivable language or custom placed him outside of any doctrinal theory (fraudulent or otherwise) on the universal homogeneity of law. This popular opinion was incompatible with English common law ideology. Stawell's translation of Boemus was that of a common lawyer; he communicated an understanding that man was capable of legal growth, indeed he would not only have understood that those savage men where his

[70] Hodgen, *Early Anthropology in the Sixteenth and Seventeenth Centuries,* 405.
[71] Ibid., 407.

own ancestors, but that they were the early progenitors of the laws, languages and customs that he practised at the Inns of Court.

Through both Christian and pagan historical narratives, Stawell demonstrated that he was interested in the punitive outcomes of breaking with customary law. The consequences of such transgressions were disastrous and far reaching, for example the fall of civilised states was usually the consequence suffered by disobedience to customary law. Following these catastrophically punitive events, the restoration of civilisation through law and custom was viewed as a gradual yet natural process. The first chapter that Stawell translated into his legal notebook gives the doctrinal version of the early history of man: Adam enjoyed the bounty and order of paradise before he 'strayed from the lawe' and by this 'transgression' was banished.[72] From here man became lawless and wild, committing crimes against God which resulted in the punitive flood. Once the flood had abated Noah sought to repopulate the earth. His son Cham, like Adam, transgressed customary law and was banished. Cut off from the teachings and customs of his elders, Cham's progeny descended into lawlessness and savagery while the progeny of Sem and Japeth 'were well brought uppe of their elders…whereby it came to pass the studie of veritie, I meane of pietie and ye true honoure of god did secretlie remaine with one nation until the tyme of Messias.'[73] The passing of customs and religion from one generation to the next secured an unbroken civilised state for those respective nations. Stawell then moved on to chapter two from Boemus, which was concerned with the views of ancient philosophers on the origins of early man. This he titled 'The false opinion of the heathens concerning mans beginning', suggesting here that one can read widely upon a

[72] CUL Hh.3.8, f. 55r.
[73] Ibid., f. 56r.

subject and give equal consideration to alternative histories without necessarily subscribing to one specific view. The pagan narrative Stawell translated charts the rise of man from their states of savagery to civilisation, how they progressed from a 'savage and unknown life' to gradually developing speech, drawing together as communities in caves and 'At length being taught by experience…commodities of mans lyfe were in short tyme invented, finally necessitie which was the mistres of these things ministered to mens wyttes the knowledge and skyll of every thinge.'[74] With no knowledge of previous custom, these early men naturally grew to govern themselves and in time established their own customs.

Through these translated extracts Stawell considered two branches of history. The first was the doctrinally accepted narrative in which states of civilisation ebb and flow, in which the customs of forefathers stabilised nations, and those cut off from those customs become bestial in nature. This history allows for man to be rehabilitated; from Adam to Cain to Cham, men have been cast out from civilisation and their progeny reduced to their basest human forms, only for them to climb back up to civilised states through the combined forces of natural and artificial laws. The second narrative, from the pagan's perspective, touches upon the ingenuity of man who drew towards civilisation and the establishment of customs and laws as a matter of survival. Here the focus is mainly upon the foundation and creation of common laws. The legal natures of man and the origin of law within these passages were not incidental subjects for Stawell to have included in his legal notebook. Through these passages Stawell was engaging with contemporary arguments concerning the very nature of law,

[74] Ibid., f. 57v.

justice, the commonwealth and legal jurisdiction, arguments that were centrally important to one immersed in a legal education and who aimed for a legal profession.

Theories of English Common Law.

The historical narratives that Stawell translated into his notebook had much in common with contemporary English common law arguments. The themes that Stawell returned to time and again were those of natural law, artificial law and law as universal to all men. Through Boemus, Stawell was able to attend closely to accounts relating to the origins of customary law, which held that law was at once written in the hearts of men by God from the dawn of creation while also being created artificially by man in response to the needs of developing societies. These concepts of legal philosophy and questions relating to the origins and nature of law have occupied the minds of ancient and medieval philosophers and lawyers, from Aristotle and Cicero to Henry Bracton in the thirteenth century. In the early modern period, the subject was just as popular and hotly debated, in particular those arguments surrounding royal prerogative and the power of parliament to create or amend laws. Stawell did not communicate any political leanings in his notebook, however he did demonstrate a keen interest in jurisprudence and matters of legal philosophy. In his notebook Stawell used the yearbooks and moot exercises to learn law as a technical necessity of his profession, and through Boemus he attended to the moral and philosophical matters of law that were just as necessary. Stawell's exploration of these themes was in keeping with the ideas and arguments put forth by legal writers of the time, who used the same sources as Stawell in order to better understand the laws that they were beholden to. There are many similarities between the materials that Stawell translated into his notebooks and the arguments of contemporary legal writers.

Sir John Fortescue, writing in the fifteenth century, was one of the most widely read and influential legal writers of the early modern period. In his work *In Praise of the Laws of England* (1543), Fortescue stated that 'all human laws are either laws of nature, customs or statutes' before touching on the universal nature of law by quoting Aristotle, '"Natural law is that which has the same force among all men."'[75] For Fortescue there was no sub-species of savage man and no one race doomed to exist outside of *lex eterna*. Fortescue believed that English common law was 'very ancient' and stemmed from the beginning of rational creation. He wrote that laws existed not just on paper as statute, but naturally in the hearts of men as a kind of innate sense of justice. In advising princes on the quantity of law they should seek to learn, Fortescue wrote:

> Hence doctors of law say that "The emperor bears all the laws in the casket of his bosom", not because he knows all the laws in reality and in fact, but since he apprehends their principles, and their form, and nature likewise, he can be deemed to know all the laws… so that all laws are in him potentially, as Eve was in Adam before she was formed.[76]

The artificial laws of men, he argued, were 'the gradual result of time and experience; the passions and wants of man combined with the various emergencies of his situation.'[77] This has much in common with Stawell's focus on passages from Boemus relating to law as natural and the artificial invention of man. Both scripture and pagan philosophy were used by Fortescue in his arguments on the perfection of English common law, and like Boemus he too

[75] John Fortescue, *On the Laws and Governance of England,* ed. Shelley Lockwood (Cambridge: Cambridge University Press: 1997): 24, 26.
[76] Ibid., 79.
[77] Sir John Fortescue, *De Laudibus Legum Angliae,* trans. A. Amos (Cambridge: Butterworth & Co, 1825), 43.

advocated for the idea of English law as a mixture of innate natural law and the artificial creation of men, as being ancient and also universal. Fortescue was interested in law beyond technical statute, he believed in law and justice as an innate force of moral goodness, and that the virtue arrived at through the process of law held the key to the common wellbeing and happiness of society.

Thomas Smith's *De Republica Anglorum* (1562-1565) is a text that shares many similarities with the themes that Stawell included in his notebook. In chapter twelve, titled 'The Natural Beginning of a Kingdom', Smith's account of the foundation of commonwealths is similar to Boemus's Noachian narrative of migration. 'Households' (Smith's metaphor for commonwealths) being the natural gathering of peoples for mutual benefit and security, multiplied and expanded before sending forth their children to establish 'households' or commonwealths of their own.[78] Chapter thirteen, titled 'The First and Natural Beginning of the Rule of a Few' echoes 'The False Opinion of the Heathens' as it describes early man drawing together to form the first societies, and from there the 'urgent necessity' which spurred them to agree 'upon certain laws and orders' in which they had 'a most earnest care to maintain against wild and savage beasts.' Smith referred to these laws as being immortal 'by their fame and succession of posterity'.[79] The immemorial nature of customary law was also accounted for by Smith in Chapter fourteen, titled 'The First Original or Beginning of the Rule of the Multitude' in which successive generations since original man were 'each owing their merits of education apart to their fathers and grandfathers.'[80] At all times Smith stressed that these events, and the laws born from them, were entirely natural and thus inevitable.

[78] Smith, *De Republica Anglorum,* 23.
[79] Ibid., 25.
[80] Ibid., 26.

Like Boemus, Smith treated law as an immemorial and generational custom formed by men as a necessary protection against a savage existence. Through the passage of time, nature, and the rigors of countless legal processes those laws were either maintained or cast away if found to be ineffective or aberrant. Common law was understood to be something that was at once ancient and eternal, a product of natural reason that discarded laws deemed unnecessary or ineffective. Smith recognised law as being simultaneously natural, or fixed by God, and something that was also artificial, which was adopted and adapted by man in response to harsh necessity. Once again we can see in Smith's work the same themes that Stawell attended to through Boemus.

In 1581 William Lambarde, legal historian, antiquarian and politician, wrote a manual on the office of the justices of the peace titled *Eirenarchia*. Using 'many old histories' to underpin his work, Lambarde cited both ancient and medieval sources, including Bracton, Fortescue and Cicero. He also turned to scripture to support his arguments, such as his use of Romans in chapter two.[81] In this work Lambarde discussed themes of legal philosophy which had much in common with the materials that Stawell translated from Boemus. In chapter two, titled 'On Peace', Lambarde stated that 'peace is our law' before arguing that peace (or law) where at once 'inward' and 'outward'. Inward peace being defined as the 'peace of conscience' that was infused into man by God, and outward peace was in respect to other men: 'The lawe of God (which is the only true philosophy) respecteth the mind and conscience, although the Laws of men doe look but to the bodie, hands, and weapons.'[82] So too does Stawell, through Boemus, focus upon the those two divisions of law, one as the inner eye of conscience, or

[81] William Lambarde, *Eirenarchia: or of the office of the justices of the peace* (London: Richard Tottel & Christopher Baker, 1581), 5.
[82] Ibid., 5.

natural law, and then the outer laws driven by necessity. Law, once again, was viewed as being at once divine and human, natural and artificial.

In Jean Bodin's *Les Six Livres de la Republiques* (1567) the same historical methodology used by Boemus can be clearly seen as Bodin turned to both classical and biblical sources to support his legal arguments.[83] Bodin divided law into two categories, *ius naturale* or natural law, and *ius humanum* or human law. In the first chapter of this work Bodin wrote that the mark of a true commonwealth was that which was ruled by 'Right government, according to the laws of nature'. He described the coming together of early peoples to create commonwealths and listed those things 'which are necessary and profitable' requirements of the 'first beginnings' of a commonwealth, such as advancements in medicine and the invention of tools. By these innovations early man was able to move away from a harsh existence.[84] Men, Bodin wrote, were 'well by nature and better by education instructed', recalling Boemus's examples in which early man grew through the duel qualities of innate knowledge and human invention in response to necessity, but which also brings to mind Coke's later divisions of law into 'reason' and 'artificial reason'.[85] Coke emphasised the need of education, experience and wisdom in order to understand law correctly. This considered reflection upon the law as a thing to be not only dimly understood but studied is further argued by Bodin as he turned to Genesis and the creation of man, in which God gave the seventh day so that man could repose 'in contemplation of his law'. In chapter two of *Les Six Livres* Bodin used the familiar metaphor of the family unit as commonwealth, in which he placed lawyers and law makers 'as guides to

[83] Jean Bodin, "The Six Books of the Commonwealth: Les Six Livres des la Republique," abridged and translated by M. J. Tooley, Constitution Society, 2019, Accessed Nov 2019: https://www.constitution.org/bodin/bodin_.htm
[84] Ibid.
[85] Ibid.

follow in reasoning of a commonweale'. Here Bodin argued that law was universal in nature, diverse amongst different peoples, and ancient in its custom: '…although laws be common to all… but that families [commonwealths] may have their certaine particular for themselves and their successors, made by the ancient heads of their families…', before giving the historical example of the Saxons and their laws and customs, *à la* Boemus.[86] Furthermore, Bodin argued for the supremacy of customary law over civil law, 'For it is not without the great cause to be suffered, that the lawes of privat families should derogate from the customs of the country, and so, much less from the general lawes and ordinances.' Bodin continues this argument with reference to the ancient nature of customary law, and the unbroken generational lines necessary to pass those laws into posterity, 'Neither are they which come after, by this law of families by their grand-fathers, & great grand-fathers made, contrary to the common customs and lawes…'.[87] Boemus's influence in Bodin's work is plain, with the same themes of the origins of laws and legal societies being discussed alongside legal philosophies. These philosophies include the harmony between the divisions of natural law and man-made law, the supremacy of customary law, the universal nature of law, the diversity of law, and a focus upon the importance of the generational inheritance of those laws.

Arguments relating to natural law, man-made law and the universality of law were evidently prevalent amongst legal writers, both ancient and early modern. These same ideas have been found in the moot exercises of students at the Inns of Court. Baker observed that:

> In a previously unnoticed moot in Gray's Inn, from the later 1520s, where the question arose whether Parliament could sanction the grant of land on

[86] Ibid.
[87] Ibid.

> condition that it could not escheat, several opinions were expressed that, although Parliament could make new law, it could not enact something repugnant, absurd, or contrary to law and reason. In a real case of the same period, it was argued that Parliament could not alter immemorial local customs such as gavelkind.[88]

Here the argument was pulled between two ideas of law, on one hand there was a need to create and amend laws according to contemporary circumstances, and on the other hand the argument sought to enshrine immemorial custom as sacrosanct. Here the limits of English law were tested against the seemingly immovable force of *lex eterna*. These arguments, Baker suggests, were academic rather than indicative of actual legal process, suggesting that common law philosophy factored into moot exercises and that a student's education at the Inns included the contemplation of these wider legal concerns, albeit hypothetically. Baker notes that arguments of natural law often bore little fruit in practice and sat more easily with 'the rhetoric of political argument, or the abstractions of philosophical speculation, than with the conventions of judicial decision-making.'[89] This is not to say that arguments relating to natural law carried no weight at all outside of a purely academic application, Sir Fredrick Pollock in his collections of essay on the law observes:

> We do find the Law of Nature making a considerable figure in the argument of two well-known cases of the late sixteenth and early seventeenth centuries – *Sharington v. Strotton* (the case of "Uses" in Plowden), and *Calvin's Case* (the *post nati),* 7 Co.Rep. 12b. Both of these were highly exceptional, of the first impression,

[88] A system of inheritance in which lands are divided between male heirs; John Baker, "Human Rights and the Rule of Law in Renaissance England," *Northwestern Journal of International Human Rights,* vol 2, issue 1 (2004): 271-284.
[89] Ibid.

> and argued throughout on general principle. As already hinted, there was no longer any risk in using the Law of Nature to adorn an argument.[90]

Common law theories of natural law were spread throughout the literature, education and courts of the late sixteenth and early seventeenth centuries. Its presence may not have been dominant, however there existed a current of legal philosophy, as has been noted by David Ibbetson who argues that 'By the second half of the fifteenth century, the idea of natural law was widely dispersed across English law, though very thinly. Insofar as any theory is visible, it was the wholly orthodox one that natural law was given by God and recognized as existing by human understanding.'[91] It does not appear that any of the moot exercises and case reports in Stawell's notebook are those which openly refer to arguments of natural law, this is not surprising as Baker, Pollock and Ibbetson have argued these traces of natural law are thinly spread throughout legal practice. It is Stawell's translation of Boemus, however, that engaged with a distinctly common law mode of thought and legal philosophy. Stawell's inclusion of Boemus in his legal notebook demonstrates that he deliberately supplemented his technical legal education with historical and literary materials that had much in common with contemporary legal writers and which dealt heavily with wider jurisprudential themes relating to the laws of nature and the laws of men.

<u>Stawell's Translation of Boemus.</u>

[90] Fredrick Pollock, *Essays in the Law* (Hamden: Archon Books, 1996), 57.
[91] David Ibbetson, "Natural Law in Early Modern Legal Thought," in *The Oxford Handbook of European Legal History.* eds. Heikki Pihlajamäki, Markus D. Dubber, and Mark Godfrey (Oxford: Oxford University Press, 2018), Accessed March 1st 2019.
http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780198785521.001.0001/oxfordhb-9780198785521-e-24

Stawell's copy of Boemus is written in English, however it is clear from the differences in translation and style that he was not working from Waterman's 1555 translation, titled *The Fardle of Facions*. This is further evidenced by the fact that Stawell's translation included the marginal notations from Boemus's Latin work, while Waterman's translation did not. Either Stawell produced his own translation, or he was working from another translation that has since been lost. As there is no evidence of another English transition, I shall be working from the hypothesis that Stawell produced this translation himself. There is nothing to indicate how much of Boemus Stawell intended to translate, however there was clearly not enough space within his legal notebook to contain the three books of Boemus, had that indeed been Stawell's intention. On f. 58v Stawell ceased writing midway through a sentence at the very top of a page, leaving the remainder of the page blank, with unused ruled lines.[92] It is strange that he did not complete the sentence that he was working on, although this might suggest that he simply left off from this translation (albeit abruptly) to either move onto fairer version, possibly in a notebook with adequate space, or that he abandoned the project altogether. It may also be that his interest was only in the first two chapters of *Omnium Gentium Mores,* those chapters that pertained to the origins of law, and so the partial translation that he produced in his notebook was thus sufficient to his requirements. We cannot know what Stawell's intention for this translation was, or why he left off from it midway through a sentence. We can only examine the materials that he did include, and in doing so question whether there existed a relationship between his process of translation and the legal space in which he placed that translation. By attending to his process of translation, and how it varies from both *Omnium Gentium Mores* and *The Fardle of Facions,* it becomes clear that Stawell

[92] CUL Hh.3.8, f. 58v.

sought to produce a more literal translation of Boemus in which matters relating to the origin and diversity of law, and the punitive outcomes of transgression, were prioritised over the need to produce a readerly or literary translation.

Although it is possible that Stawell was aware of Waterman's translation, it is equally likely he did not have access to a copy at all. Stawell does not inform us what his motivation in creating an English translation was, did he seek to circulate Boemus amongst a wider audience, was he correcting deficiencies that he perceived in Waterman's translation (if he did have access to a copy), or was he using the process of translation to pull apart, re-assemble and closely attend to Boemus is an entirely new way? When reading what Stawell had produced, there are stylistic choices which suggest that his translation of Boemus was done with an entirely different mindset to Waterman, a mindset that prioritised legal language and common law themes. Much of the first and second chapters of *Omnium Gentium Mores* are concerned with the lives of early man. In the original Latin Boemus described early man as living harsh and brutish lives, as being 'inculta' and 'barbara' and living in a manner that was 'sylvestri & incognita'.[93] Waterman avoided the use of pejoratives, while Stawell's more faithful translation described first man as 'rude', 'wicked', 'savage' and no different from 'brute beasts'.[94] Waterman sanitised his translation, while Stawell restored Boemus's true opinion towards the 'savage' first men. Where Waterman translated 'silvestris' as 'wildness', Stawell reached for 'savage'; where Waterman translated 'Ethnicorum' as 'philosopher', Stawell chose 'heathen'. What did this mean for a lawyer such as Stawell, whose institutional values were grounded in the immemorial customs of the common law, and a belief that English law began

[93] 'rough', 'savage', 'wild & unknown'; Boemus, *Omnium Gentium Mores,* 17-23.
[94] CUL Hh.3.8, ff. 55r-58v.

with these same savage people, driven by both innate natural law and the inventive reactivity of man to the harshness of a wild existence? Perhaps by acknowledging the savagery of early man, Stawell was giving emphasis to those common law beliefs surrounding the foundation, evolution and perfection of law via natural and artificial means.

The first two folios of Stawell's translation describe the events of Genesis concerning the creation of the earth and life, of the great flood, and the progeny of Noah. Stylistically there appears to be little in common between Boemus's brief summation of creation and the much longer account given in Genesis. Clearly Boemus was working closely from scripture, however, in squeezing the first seven chapters of Genesis into a few paragraphs he was not overly concerned with preserving the language and style of the bible. When reading both Stawell and Waterman's English translations of Boemus it is equally difficult to find any verbatim similarities between their translations and Genesis. This difficulty is further compounded by the relative brevity of the passages that relate to Genesis. There is, however, a sentence in both Waterman's and Stawell's translations which suggests that both men were referencing an English translation of Genesis as they were writing their own individual translations. The passage relates to the destruction of life on earth during the flood. A comparison between Boemus's original Latin text with Waterman's and Stawell's translations reveals not only their respective individual stylistic differences, but also the influence of the English bible on both their versions:

> Ut Deus… cataclysmum immiserit, qui inundans omnem terram, una clade omnia animantia, quae tunc in terris fuere, praeter admodum pauca, quae mystica navis tuebatur, cum volucribus etiam extinxit. – Boemus.[95]

> That God… sente a flode vniversall, which couering all vnder water, except a fewe beastes, birdes, and wormes that ware preserved in the misticall arke. – Waterman.[96]

> God sent a floude which overflowing the face of the whole earthe should at once distroye all beasts of the field and fowles of the ayre, except a fewe which the misticall ship conteyned. – Stawell.[97]

In both Waterman and Stawell there are additions which are not to be found in the original Latin of Boemus. Boemus's beasts are described as being 'in terris', however his birds, the 'volucribus', are not described as being in any location.[98] Stawell's translation places the birds 'in the ayre', which is unlike Stawell's typically literal translation of the source text. In the same sentence Waterman also adds his own material by including 'wormes' in the list of animals saved by the ark. Where did Waterman get these worms from, and why were both Waterman and Stawell including details which are not in Boemus? It is possible that they were relying upon their pre-existing knowledge of scripture to assist them in their translations. Genesis 7:21 refers to '*omnium…reptilium*', meaning snakes, a word that was synonymous with worms in early modern English. It is further possible that Stawell and Waterman

[95] Boemus, *Omnium Gentium Mores,* 18.
[96] Boemus, *The Fardle of Facions*, 27.
[97] CUL Hh.3.8, f. 55v.
[98] 'On earth', 'bird'.

referenced an English version of the bible as they worked on their respective English translations of Boemus.[99] In the Geneva bible we can see that the same passage is translated into English as: 'Then all flesh perished that moved upon the earth, bothe foule and cattel and beast, & everie thing that crepeth & moveth upon the earth, and everie man'.[100] Here there is no description of birds in the air, nor worms. In chapter six of Genesis, again from the same edition of the Geneva bible, there is a reference to birds *in situ* as God threatens 'I will destroy from the earth the man, whome I have created, from man to beast, to the creeping thing, & to the foule of the heaven'.[101] Although close 'heaven' is not the same as 'ayre' and 'creeping thing' is not the same as 'worms'. It is thus from other editions of the bible that Stawell and Waterman may have been influenced. In the Bishop's Bible, God's repentance of the creation of man is written in English as 'And the Lorde sayd: I wyll from the upper face of the earth, destroy man whom I have created, from man unto cattell, unto worme, and unto foules of the ayre.'[102] When describing the destruction of the earth the Bishop's Bible uses the same language 'And all fleshe perished, that moved upon the earth, in foul, in cattell, in beaste, and in every worme that creepeth upon the earth, yea, and every man also.'[103] In the Great Bible there is to be found 'of foules also of the ayre' and 'every worme that crepeth upon ye earthe', as well as 'All subtaunce that I have made, wyll I destroye from the upper face of the earth', which also echoes Stawell's use of 'the face of the whole earth.[104] In the Tyndale bible these same translations are also to be found: the threat made by God appears in Tyndale as 'I will destroye mankynde which I have made, from the face of the earth: both man, beast, worme

[99] With thanks to my examiners Michelle O'Callaghan and William Rossiter for pointing out this synonym; Gn 7:21.
[100] *The Bible and Holy Scriptures conteyned in the Olde and Newe Testament,* trans. William Whittingham (Geneva: Rouland Hall, 1560), 4.
[101] Ibid., 3.
[102] *The Holie Bible Conteynyng the Olde Testament and the Newe* (London: Richard Iugge, 1568), Gn 6:7.
[103] Ibid., Gn 7:21.
[104] The Bible in Englyshe (London: Edward Whytchurche, 1540)

and foule of the ayre.'[105] The 'foules of the ayre' and 'wormes' are also repeated throughout the first chapter of Genesis in the Great Bible, Bishop's Bible and Tyndale, so much so that they become the refrain of creation in these editions. Were both Waterman and Stawell familiar with these English translations of Genesis then it would be fitting for them to use the same word choices in their own translations.

Although both men may have drawn inspiration from an English translation of Genesis, their own respective translations of Boemus are likely to be their own work. In comparing both translations to Boemus's original Latin, it is possible to see the deliberate choices Stawell made to produce a text with a primary focus upon the origins of law and custom. Referring to the above quoted passage relating to the flood, Waterman's translation does not specifically state that there was a destruction of the beasts or the birds, but states that only 'a fewe' were saved. Stawell's more literal translation pays respect to the loss of life, he states clearly that the animals were destroyed, and then lists those which had been killed, not saved. This distinction may seem to be merely semantic, however it clearly affects the tone of the individual piece. Stawell was concerned with the punitive consequences of transgression while Waterman focused upon a hopeful future of safety. These differences of tone and style can be seen again as matters relating to the physical earth and lands are downplayed by Waterman, who translated '*omnem terram*' as 'all' while Stawell opted for the more accurate 'whole earth'. Waterman also did not translate the word 'terris', upon which the animals existed, thus minimalising the losses incurred by the flood. Through these word choices Stawell attended to the tangible and serious losses caused by the flood, and in doing so

[105] William Tyndale, *The firste boke of Moses called Genesis newly correctyd and amended by W.T* (Antwerp: M. de Keyser, 1534), 8.

conveyed a truer sense of an immediate and world-ending cataclysm which is sorely missing from Waterman's translation. Stawell dwelled on the severe outcomes that followed the breakdown of law, while Waterman passed over those consequences to instead look ahead to hopeful new beginnings.

In an earlier passage Stawell once again, through his translation, turned the spotlight onto themes of law and justice. The passage on f. 55r is concerned with Adam and Eve's transgression of God's law in the garden of Eden:

> Caeterum lege aberrantes amaenissimo incolatu, sedeque illa beatiore depulsi, solum flebiliter vertere. – Boemus.[106]

> But when they ones had transgressed the precepte, they ware banysshed that enhabitaunce of pleasure and driven to shift the world. – Waterman.[107]

> But so sone as they strayed from the lawe wher which they were charged, being banished from the most delectable habitation, and driven out of yt happy seate, they turned the ground with wepinge and waylinge. – Stawell.[108]

Waterman translated 'lege' as 'precepte', while Stawell chose the legal word of 'law', which he followed up with the fact that Adam and Eve 'were charged', an addition which is not present in Boemus, but which infuses the sentence with a criminal and judicial meaning. In Boemus's edition Eden is described in two ways 'amaenissimo incolatu' and 'sedeque illa

[106] Boemus, *Omnium Gentium Mores,* 17-18.
[107] Boemus, *The Fardle of Facions*, 26.
[108] CUL Hh.3.8, f. 55r.

beatiore'.[109] Stawell translated both these descriptions as 'most delectable habitation' and 'yt happy seate', while Waterman elected to use only one, that 'enhabitaunce of pleasure'. Here Stawell once again used a more literal translation of Boemus to emphasise the scale of what has been lost and to also underline the harsh consequences of breaking the law. These consequences were further highlighted by Boemus with 'solum flebiliter vertere', which Stawell slightly expanded in English to be 'they turned the ground with wepinge and waylinge'.[110] Waterman did not include the weeping, only noting that the exiles were 'driven to shift the world', a sentence that possibly carries a double meaning with 'shift' meaning both 'to move' and also in early modern English to 'make do', or 'to cope'. Waterman's translation is one that softens the blow, that eases over suffering and difficulty, and which finds a hopeful conclusion to the penalty suffered by mankind, while Stawell's sought to restore Boemus's original tones of severity and lamentation. In doing so Stawell further infused that restoration of meaning with the language of law and justice, perhaps bringing his own legal mode of thought to his translation.

Boemus's narrative then moves to the progeny of Noah. Here my analysis is not concerned so much with the differences of translation, but with how both Waterman and Stawell attended to Boemus's passages on the diversity of nations, customs and language. The passage begins, once again, with an act of transgression, when Cham 'through the mocking of his father was enforced to flyt with his wife and children'.[111] Cham was banished before he was able to learn the laws of his people, and so founded nations which were divorced from ancient custom:

[109] 'Loveliest place', 'that happy place'.
[110] 'Turning the ground with weeping'.
[111] CUL Hh.3.8, f. 56r.

> Fuit brevis illa & immatura filiorum alienatio a progenitoribus (quorum viuendis ritus & mores nondum ad huc satis imbiberant) omnis diversitatis, quae sequuta est, causa. – Boemus.[112]

> This sodaine and untimely putting away of the children from their parents, whose rites and manners of living they had not yet learned, was the cause of all dinversytie which afterwards followed. – Waterman[113]

> That spiedie and unripe puttyng forthe of the children from their progenitours, before they had throughly learned and ensured them selves with their facions and maners, was the cause of all the diversitie that after ensued. – Stawell.[114]

'Alienatio' here is used to convey the sense of estrangement, of 'putting away' or 'puttyng forthe' as has been translated by both Waterman and Stawell, but the meaning can also be interpreted as avoidance with antipathy, of a distance that is tainted with a kind of madness and disgust. This would be contextually fitting given the circumstances of Cham's banishment.[115] The issue of transgression and consequence is framed by a wider narrative on the origins and diversity of law. The severity of those consequences is perhaps conveyed with more force by Stawell as he directly translates 'Progenitoribus' as 'progenitours' indicating ancestors, rather than Waterman's choice of 'parents'. By selecting 'progenitours' Stawell communicates not a single event concerning one's direct relations, but an event that is

[112] Boemus, *Omnium Gentium Mores,* 19.
[113] Boemus, *The Fardle of Facions,* 28.
[114] CUL Hh.3.8, f. 56r.
[115] 'Aversion'.

generational, thus emphasising once more the severe and long-lasting outcomes of breaking with tradition.

Although Stawell's translation is perhaps the least literary of the two, his literalism nonetheless infused his work with a brevity that is brutal and to the point. Where he does seek to expand upon Boemus, that expansion was designed to communicate severity and consequence, or to furnish the passage with a legal emphasis. Where Waterman eases the way of the reader with flourishes of omission and addition, Stawell largely looked to restore the severity of Boemus's original Latin. Early men, the progenitors of English law and custom, were viewed by both Boemus and Stawell as savage beasts living harsh lives. This was not an effort by Stawell to distance himself from early man, but to recognise both the ancient nature of law as well as the harsh circumstances in which those early laws were forged. In situating that understanding within a scriptural context the origins of law and custom are read as historical fact, and in reading pagan sources on the origins of custom and law, sources which existed outside of Christian frameworks, the universal nature of law as both natural and man-made can be further understood from a classical and equally ancient perspective. Some parts of Stawell's translation may have been influenced by vernacular scripture, but overall the work is his own. Through individual choices of translation Stawell carefully attended to the themes of transgression and penalty, ensuring that the full force of consequence was communicated in English. Waterman's translation delivered the narrative with style, however Stawell sought to bring to his version a judicial quality in which severe judgement was rightly passed upon those who broke with ancient custom and in which themes of natural law and the law of men could be examined from many different perspectives.

The Sonnets

On ff. 145v-146r are written ten Petrarchan sonnets in English, beginning 'Good father tyme flie not awaie so fast…' and seven stand-alone couplets.[116] The first four sonnets are written down the centre of f. 145v and are situated underneath a legal note marked as being from the Year Book 1h7:1. The fifth sonnet is written sideways in the bottom left-hand margin, and is followed by the seven couplets which are also written sideways. These couplets are crammed tightly into the same marginal space as sonnet five. Sonnets six and seven are written sideways in the right-hand margin, and sonnet eight is reversed at the bottom of the page. This layout is likely the result of Stawell manually turning his notebook in a clockwise direction during composition. Sonnets nine and ten, finally, appear on the following page, respectively under the legal headings and Year Book notes of 'Concusion' and 'Champtie'.[117] The sequence of composition listed here is deduced by how Stawell utilised the series of couplets written in the left-hand margin. These couplets do not appear in sonnets one to five, but then are found in sonnets six, seven, nine and ten, suggesting not only the order in which Stawell wrote the sonnets, but that the sonnets were an original composition, with the couplets being included on the page as a part of that compositional process. Guillaume Coatalen argues that the couplets may have been copied from other favourite sources, most likely from French sonnets, which Stawell would have been able to read given his fluency in Law French.[118] Responding to Gavin Alexander's opinion that the couplets were copied from another poet in print or manuscript, Coatalen notes that 'The sonnets are not listed in M. Crum, *First-Line Index of English Poetry, 1500-1800 in Manuscripts of the Bodleian Library*

[116] CUL Hh.3.8, ff. 145v-146r.
[117] Ibid., f. 146r.
[118] Coatalen, "Unpublished Elizabethan Sonnets", 564.

(Oxford, 1969), W. A. Ringler, *Bibliography and Index of English Verse in Manuscript, 1501-1558* (London, 1992), S. W. May, 'Bibliography and First-Line Index of English Verse, 1559-1603' (in progress), or in the Chadwyck-Healey English Poetry database on CD-ROM.'[119] There is no surviving evidence to suggest that Stawell copied these sonnets from another source.

Coatalen argues that there is no obvious order in which the sonnets should be read, stating that 'various arrangements are possible and no real progression from a beginning to a resolution is discernible no matter what order one assumes.'[120] Stawell's influences, he argues, are pre-1590s English adaptations and translations of foreign sonnets 'in the wake of Surrey's and Wyatt's experiments'.[121] The sonnets are largely Petrarchan, replete with playful frivolity, romantic affection, longing and the agonies of spurned love. Ultimately Coatalen is sceptical as to the literary merit of these sonnets: 'In tone the sequence owes much to "the passionate, or desiring", much less to "the Anacreontic, witty and highly learned", notably in Sonnet four, and nothing at all to the "reflexive, or stoical".'[122] What value there is in these 'amateurish' verses, he argues, is how they serve as evidence to common practices of composition and the literary tastes of a member of the Inns of Court and the landed gentry in the latter sixteenth century.[123] The ephemeral nature of the sonnets is a matter of contention. Coatalen claims that the sonnets were trivial, stating that 'Stawell took great pains to copy the valued religious and Latin texts in careful hands and by contrast, he hurriedly crammed the sonnets on no more than two pages, even though he did not lack paper. It is thus most likely he considered the verse a mere trifle'.[124] Coatalen labels the theological materials as

[119] Ibid.
[120] Ibid., 565.
[121] Ibid.
[122] Ibid., 564.
[123] Ibid., 565.
[124] Ibid., 564.

'valued' and the sonnets as a 'mere trifle', a judgement which is also given by Winston as she slightly alters Coatalen's argument by stating that 'He uses a careful italic or secretary hand for Latin and legal materials, but he crams the sonnets into the margins, suggesting that the verse is 'a mere trifle'.[125] Arguments of value based upon the style of Stawell's hand are unconvincing, especially since the legal texts were not written in a careful hand, on the contrary, they were written in the same seemingly haphazard hand as the sonnets, complete with crammed margins, ink spots, smears, crossing out and overwriting. Quality of style does not necessarily equate to quality of intention. The sonnets were written in Stawell's legal hand, and they appear alongside his legal notes, indicating the care of composition that Stawell afforded to the sonnets was on par with the care he afforded to his legal notes.

Although the sonnets offer little evidence to suggest that Stawell was an especially skilful poet, we might nevertheless consider the relationship between the sonnets and the wider legal function of the notebook. Stawell's translation of Boemus demonstrates that he used methods more commonly associated with humanist, university based educational practices to engage with a broader kind of legal philosophy. It is possible that the sonnets could have been put to work in a similar way, that is, to allow Stawell to supplement his wider legal education via literary means, in a manner that adapted university styles of learning to supplement his legal education at the Inns of Court. Playfulness and seriousness are not mutually exclusive, and the sonnet form lends itself perfectly to rhetorical exercise, complaint, argument, resolution, conclusion, brevity of speech and skill of composition. It is true that Stawell's sonnets lack the serious, moralising and didactic themes of the more serious Inns of Court poets, such as Googe, Turberville and Gascoigne, however this does not

[125] Winston, *Lawyers at Play,* 77.

necessarily mean that the sonnets themselves did not serve a serious, as well as a playful, purpose.[126] These sonnets are potentially complex compositions in which fashion, play and frivolity simultaneously work as forms of serious rhetorical exercise and argument; literary play mingled with classroom exercise. As with his translation of Boemus, I believe we are once again seeing Stawell adapting humanist methods of learning to compliment his Inns of Court education.

Sonnet Writing as a Form of Legal Exercise.

Winston, in *Lawyers at Play,* argues that the serious Inns of Court poets, specifically Googe and Turberville, wrote poetry to 'laud duty and denounce love to show that they were *not* the sorts of men who composed amorous lyrics' a genre that had historically been associated with 'the neglect of familial and civic duties'.[127] In part Winston bases this argument on the serious nature of verse at the Inns by examining the practical and pedagogic uses of Latin verse in grammar schools and universities. The reading and writing of poetry, she argues, 'helped to prepare one for a life of service to the state, the principal goal of a humanist education.'[128] The study of poetry honed skills of rhetorical and forensic oratory and was used to expand and strengthen the memory. Richard Helgerson observed that 'Classroom verse making aimed at furthering eloquence and strengthening morals, not at producing poets.'[129] This particular use of Latin verse, however, cannot be linked to compositions of English sonnets, which were not a part of the curriculum at grammar school or university. Yet I argue that Stawell's use of the sonnets echoes that university-based practice of using lyric verse to

[126] Ibid.
[127] Ibid., 14.
[128] Ibid., 78.
[129] Richard Helgerson, *Elizabethan Prodigals* (Berkeley: University Press of Virginia, 1976), 35.

improve skills in oratory and rhetoric. Stawell was using the sonnets in a manner that, in its embrace of the vernacular, was adapting that Latinate education to the Inns of Court. It was not so much the content of the sonnet but the *form* that made it such a valuable tool in a self-directed legal education. A. D. Cousins and Peter Howarth discuss the educative potential of the sonnet form within a specifically legal context:

> This capacity to flourish in dialogue and persuasion was endemic to the [sonnet] form from the very start. From its legal beginnings, the sonnet brought together music, desire and the arguing of a case, through the turn or volta, which allows the sonnet to state more than one point of view, change its mind or adapt an interlocutor's.'[130]

The sonnet was, we are reminded, invented by a lawyer in the mid-1230s, and further to this the 'lawyers invention was very good at being adapted, adopted, and talking back'.[131] The sonnet form was perfectly suited to the lawyers arts: 'Its internal turns of thought involve anticipating and pre-empting a response – to oneself or by another – in a space whose smallness makes foreclosure inevitable.'[132] Here the sonnet form is comparable to the lawyer's argument, and like the hypothetical moot exercises at the Inns of Court, it was not so much the content of what was being argued so much as the form that mattered, as Prest notes '…the essential element [of moot cases] was always the formulation and elucidation of cases…'. [133] That the main audience for Tottel's Miscellany or *Songes and Sonnets* were young Inns men may speak to a professional as well as literary interest in the sonnet form. By writing

[130] A.D Cousins and Peter Howarth, "Introduction," in *Cambridge Companion to the Sonnet,* ed. A.D Cousins (Cambridge: Cambridge University Press, 2011), 1.
[131] Ibid., 1.
[132] Ibid., 2.
[133] Wilfrid Prest, *The Inns of Court: 1590-1640* (London: Longman Group Limited, 1972), 119.

these sonnets within his legal notebook, it is possible that Stawell too saw the educative as well as the legal possibilities inherent in the sonnet form, and so adapted those methods of reading and composition to supplement his own legal education.

The sonnets are all in the English tradition and typically follow the predominant Elizabethan or Shakespearian rhyme scheme, abab cdcd efef gg, although there is sufficient variation among the sonnets to suggest Stawell was experimenting with his compositions:

Sonnet 1 – ABAB CDCD EAEA EE

Sonnet 2 – ABAB CDCD EFEF DD

Sonnet 3 – ABAB CDCD DEDE DD

Sonnet 4 – ABBA BCCB DEDE FF

Sonnet 5 – ABAB CDCD EFEF GG

Sonnet 6 – ABAB CDCD EFEF GG

Sonnet 7 – ABAB CDCD EFEF GG

Sonnet 8 -ABAB CDCD DEDE FF

Sonnet 9 – ABAB CDCD EFEF GG

Sonnet 10 – ABAB CDCD EFEF AA

Each sonnet is arranged with three quatrains in which Stawell develops a problem or question through a series of rhetorical turns, before decisively concluding the sonnet with a final rhyming couplet. The dominant theme throughout the sonnets is that of unrequited love, but there is also a reoccurring theme of scholarly anxiety and feelings of inadequacy and frustration that are heightened through comparison to other, more brilliant and proficient,

individuals. By examining one of Stawell's sonnets we can see an example of rhetorical argument within its structure:

Deare what doth hee deserve that loves yow soe
at least some little favor he deserves
which yow in Iustice and in kindness owe
to him which with so true devocion serves

But knowe yow this that hee contents him not
With a sweet glove or ann enamelled Ringe
A fether of a fanne a trulove knot
A Sipres scarfe or such a light vaine thinge

for as for such tokens of love as these
children and fooles perhaps they may content
but that which highe aspiring thoughtes will plese
is farr more rare & farr more exelent

And yet with lesser cost may granted be
for it is nought but oportunitie[134]

[134] CUL Hh.3.8, f. 145v.

The first quatrain is a direct address in the form of a rhetorical question, possibly to an unknown or imagined lover, that introduces the question 'what doth hee deserve that loves yow soe'.[135] This question is further framed by accusation, with the implication that the withholding of favour from a devoted lover is a moral failing. The expectation, Stawell argued, is that 'devocion' to a subject or cause (or lover) must yield a just reward.[136] The second quatrain introduces the first turn of argument, in which Stawell lists trivial favours that he regarded as being insufficient, a 'sweet glove' or 'ann enamelled ring'.[137] Here Stawell not only situated love within a contractual setting, he also anticipated and swiftly dismissed the answer to his hypothetical question, a rhetorical move in which he assumed the position of the opposition to undermine what he would have foreseen as their most likely reply. In the third quatrain Stawell expands upon his argument, stating that such tokens of love would only please 'children and fools', that higher minds desire something 'farr more rare & farr more excellent'.[138] Once again Stawell may be alluding to his scholarly interests, his focus was not on his heart but on 'highe and aspiring thoughts' that transcended the usual rituals of lover's play.[139] Michael Spiller argues that passion and love allowed the poet to express himself as a 'desiring entity', with love serving as an analogy for 'political success' and 'for maximising one's power'. [140] It is possible that Stawell was using the analogy of love to express his own professional and scholarly anxieties and ambitions. Further to this Spiller also equates the sonnet form with legal argument, comparing the appeal for pity within a Petrarchan sonnet with a speaker 'who pleads before a jury'.[141] The final couplet of sonnet five turns to the

[135] Ibid.
[136] Ibid.
[137] Ibid.
[138] Ibid.
[139] Ibid.
[140] Michael Spiller, *The Development of the Sonnet* (London: Routledge, 1992), 125.
[141] Ibid., 48.

closing argument, in which the lamenting poet, having worked through his arguments, assumes a conciliatory position. All ten sonnets follow this pattern, with three quatrains arguing the 'case' at hand through a series of rhetorical and poetic turns, and the couplet at the end closing the sonnet with a final judgement.

Sonnets two and six in the sequence also express anxieties relating to the scholarly or professional self. In sonnet two Stawell communicates frustration at his lack of ability to express himself with articulation. He vents his feelings of inadequacy when he is close to one who easily reflects the light of knowledge, turning in the second quatrain to confess 'So I which take both life & sence from yow, In presence seem both life & sence to want'.[142] With the closing couplet he laments 'those rare perfeccions which in yow I see, doe cause such imperfections in mee'.[143] Within the sonnet Stawell refers to 'the sonns bright Sphere', 'light', 'shine' and 'sence' as things which he must 'discouer', yet he struggled to make those discoveries when eclipsed by a greater person. In sonnet six Stawell dwelled upon feelings of intellectual inadequacy, but he was able to resolve those feelings within the confined space of the sonnet. Once again turns of rhetorical argument can be seen within the sonnet form:

> Wher is my wit now when I most it need?
>
> Who ever sawe true love so il exprest?
>
> Did ever eye sutch wretched verses reed?
>
> Was ever miend with passion so distress?

[142] CUL Hh.3.8, f. 145v.
[143] Ibid.

O that I had your wit your self to woe

or that yow would once vowtsaffe to love

then should yow see what wonders I would doe

then with my songes I trees & Rockes would move

but nowe I have accomplist my entent

if by these rude vnpolished verses heare

yow wil conceave that kindest love is ment

by understanding more than doth appeare

for as for mee poore slave unfortunate

the Ragged rimes fit best my poore estate.[144]

The opening quatrain introduces the problem via a series of rhetorical questions, each one circling around the same theme of inadequacy and an inability to express true feelings. By layering these questions Stawell was able to emphasise his distress and draw in his audience, but in doing so he muddled the precise problem he wished to discuss, an ironic and paradoxical move in which he perfectly illustrated his lack of skill. In the second quatrain the argument is turned outwards, to address the object of his passion. He desires her wit and imagines a hypothetical outcome should he possess that intelligence. The third quatrain turns the argument back towards himself, and back to reality. Here Stawell used the device of paradiastole to redress his lack of skill as a positive quality, arguing that the distribution of wit

[144] Ibid.

between the two parties was perfectly balanced. The object of his desire is able, through their greater intelligence, to penetrate the deeper meaning of his simple verse, 'yow will conceave that kindest love is ment, by understanding more than doth appeare'.[145] Were the balance of wits to be redistributed then meaning would be lost. Finally, he used rhetorical decorum to close his argument, concluding that 'Ragged rimes fit best my poore estate' to mean that by the process of his previous arguments he concluded that his lack of skill was, after all, entirely proper and adequate.[146] Within fourteen lines Stawell introduced a series of problems and through several turns of rhetoric he reversed that issue, turning inadequacies into appropriate qualities , before firmly resolving the issue with a decisive closing argument of decorum.

Marotti argues that sonnets as a literary form in this period extended beyond being simply expressions of love, but that they also communicated far more complex societal themes and ideas.[147] This same multi layered work is seen within Stawell's sonnets; the sonnets, which contain a legal vocabulary with words such as 'judgement', 'justice' and the repeated need to 'prove' one's affection, were clearly spaces in which turns of rhetorical argument could be honed alongside expressions of desire and through a lexicon that was not only romantic, but also legal. Just as these sonnets allowed Stawell to express scholarly ambition or anxieties, they could also be forms in which he could engage with wider themes of law and legal practice. The humanist methodologies practised at the universities and grammar schools, in which poetry was used to develop skills of rhetoric, oratory and memory, suggest that the

[145] Ibid.
[146] Ibid.
[147] Arthur Marotti, "'Love is not Love': Elizabethan Sonnet Sequences and the Social Order," *ELH,* vol. 49, no. 2 (1982), 396-428.

inclusion of sonnets within Stawell's legal notebook was intended to emulate the same pedagogic function. His use of sonnets deviates from the classical, Latinate tradition of reading found at the universities. It is uncertain that Stawell had a university education, and so his adaptation of those methodologies was one of pragmatic emulation rather that one based in a strictly Latinate experience. In this way the sonnets were not simply trivial instances of play, but rather they served a serious educative and legal function.

A Practical Reading of Theological Arguments.

We now return to examine the theological materials, whose palaeographical analysis opened the beginning of this chapter. The notebook begins with a legal contents page, and notes on moot cases held at the Inns of Court. Immediately following these legal materials, on ff. 2r-6r, are a series of extracts written in a fine Latin gothic hand that are titled 'Jules repli unto M. Hardings answeare.'[148] The text from which these extracts were copied was written by John Jewel in 1565 as a response to Thomas Harding's 1564 work *An Answere to Maister Iuelles Challenge.*[149] When Harding wrote his reply, the fierce literary battle between the Apologists of the Church of England, of whom Jewel was a central figure, and the Oxford set of recusants (these included Thomas Harding, Thomas Stapleton, John Martiall, Richard Shacklock, Thomas Heskyns, Robert Pointz and William Allen) based at the Louvain, was already in full swing. Baker states that the extracts were lifted from the first four articles of the *Repli*, and he identified the source text as most likely being 1578 Latin edition. This may not be entirely correct, in the right-hand margin of ff. 2r-6r we can see that Stawell provided

[148] Ibid., ff. 2r-6r.
[149] John Jewel, *Replie unto M. Hardinges answeare* (London: Henry Wykes, 1565); Thomas Harding, *An answeare to Maister Iuelles challenge, by Doctor Harding, augmented with certaine quotations and additions* (Antwerp: William Sylvius, 1565).

folio numbers for the majority of the extracts, which do not align with the Latin edition of the *Replie,* however they do align with the English edition printed in 1565. That Stawell was working with a text in translation, that is transferring or translating text from an English edition into Latin, is not surprising given his translation of Boemus in the same notebook. It is also worth noting that Stawell was not working from just the first four articles, he was copying extracts from the sixth article as well. At first it appears that Stawell was working sequentially through Jewel's articles, however extracts from article six are in no apparent order, and three of the extracts on f. 5r are also taken from article six, which Stawell marks with a manicule in the margin instead of folio numbers.[150]

Why did Stawell copy Jewel's *Repli* into his working legal notebook? An immediate and logical answer is that a lawyer such as Stawell would have been professionally interested in the rhetorical methods of Jewel and Harding's public argument. Throughout his reply Jewel worked carefully and methodologically through Harding's answer, pointing out inconsistencies or falsehoods and citing evidence to refute each point made against his own challenge. This process would have been useful to a lawyer in training, yet Stawell did not copy a single part of Jewel's argument into his notebook. The extracts are exclusively copies of the evidentiary quotations from patristic and classical writers that Jewel used to support his arguments, and not the arguments themselves. What is missing is not only Harding and Jewel's arguments, but the cut and thrust that was typical of the literature attached to this controversy. These extracts, lifted from the printed text and re-situated within Stawell's legal

[150] CUL Hh.3.8, f. 5r.

note book, are thus removed from their original structural framework and recomposed into something entirely unique.

Unlike Boemus's work, which dealt with clearly jurisprudential matters, Jewel's *Repli* was a staunchly theological text that leaned heavily upon scripture and the works of early Christian writers such as Cyprian, Tertullian, Augustine and Jerome. From the one-hundred and twenty-six extracts that Stawell copied into his notebook only two are from Cicero, with the rest being from patristic writers, and they are wholly concerned with arguments relating to private mass. It is difficult to find any common ground between these extracts and Stawell's legal education. There are no examples of rhetoric here, nothing that relates to legal philosophy or matters of the commonwealth, but rather quotations that focus solely upon individual faith and matters of private worship. Here I believe, at the start of his notebook, Stawell was engaging in practices relating to a broader kind of self-learning at the Inns of Court rather than engaging with a text that spoke directly to his legal interests. Here he was assembling a series of commonplaces through which he could exercise his skills of translation and practice a careful Latin hand. Furthermore, by collating a series of commonplaces he was practising the skills necessary to producing the wider legal notebook. It may be that he looked to Jewel as a model for the practise of commonplacing; Jewel himself kept a commonplace book and used it to manage the vast storehouse of knowledge necessary to write his *Repli.* Jewel's *Repli* was a single repository from which Stawell could extract, translate and arrange materials into his own legal note book. These extracts are not arranged into any narrative structure, and so perhaps he was simply seeking to reconstruct the sort of commonplace book that Jewel himself may have had, in preparation for his legal commonplace book that was to immediately follow.

Philosophical and Patristic Extracts

Scattered throughout the legal commonplaces, in the same fine hand that Stawell used to assemble the theological quotations from Jewel's *Repli,* there are ten extracts that are copied from patristic and classical writers. Unlike the commonplaces extracted from Jewel, these extracts are from another source or sources. Many of these extracts appear to be far more philosophical and jurisprudential in nature, engaging with broader legal themes that certainly interested Stawell. Written in Latin and in the same hand as the *Repli*, these smaller extracts seem to serve a different function in the notebook. They are usually written above, or amongst, legal entries within the commonplace book, which suggest a deliberate positing of philosophical and literary materials alongside legal texts. By examining these extracts, we can attend not only to the legal themes present within those extracts, but also examine any possible relationship Stawell may have perceived between those philosophical extracts and the legal commonplaces.

On f. 17r, at the top of the page, there are two Latin extracts which are on the theme of falsehood or lying.[151] The first is from Xenophon and reads 'Falsehood is the greatest impediment to man's favourable achivements', and the other from Demosthenes reads 'You have an ancient law, one held in great respect, that if anyone deceives the people by false promises, he shall be brought to trial, and if convicted shall be punished with death.'[152] The specific texts from which Stawell copied these extracts is not known, although he cites Demosthenes as the original sources of the quotes. The theme of lying is specifically situated

[151] Ibid., f. 17r.
[152] Ibid., 'Mendatium est impendimentum hominibus maxime ad veniam consequndam. Zenophon. Lib 3. De paedia Cyri.', 'Est vobis lex vetus & laudabilis si quis pollicitus aliquid populo, decipiat eos, (iubet) vocare eum in iudicium & si conuictus fuerit mortis supplicio multandus est. Demosthenes.'

by Demosthenes within the context of customary law or 'lex ritus', prosecution in the law courts and punishment. These are the same themes that Stawell focused on frequently within Boemus. These extracts have then been scored out, and written over with legal notes titled 'Retorne del vicot', which relates to legislation from the Year Book 7H.7.5-7 'An Act that the Challenge called "Riens deyns le gard" be noe Challenge', with 'Rien deyns le gard' ensuring that the jury had no property within the ward in which a trial was to be held.[153] There is a tenuous link between rules governing trials and the mention of a trail in Demosthenes, but not enough to suggest any direct relationship between the philosophical Latin text and the legal entries on f. 17r.[154] That Stawell scored out these Latin extracts further suggests no direct relationship with the legal materials, however, there is evidently a thematic relationship between these extracts and the wider legal materials within the notebook.

On f. 25r is an extract from St Augustine on the resurrection of Christ and the confidence of faith.[155] This is followed by three legal notes titled 'Judges', which discuss acts from the Year Books relating to judges' powers in ruling cases. Again, there appears to be no connection between the patristic quotation and the legal materials on the page. Two lengthy extracts on f. 37r are also from Augustine quoting his *Doctrine* on the cultivation of virtuous habits and another from book II, chapter 20 of *City of God,* on God as the mediator of the holy word.[156] Both of these extracts precede an entry titled 'Juror' which discusses the *Statutum de Defensiones Juris,* or the statute defending the right which relates to inheritance law. Once again it is difficult to draw direct links between the theological text and statute law besides

[153] For definition of commonly used Law French terms see Baker, *Manual of Law French.*
[154] CUL Hh.3.8, f. 17r.
[155] Ibid., f. 25r
[156] Ibid., f. 37r.

the obvious dictum that one aiming to practice law should be a morally upright person that seeks not only to cultivate a rote understanding of law, but also to obtain the wisdom that would allow him to apply that law justly.

On f.28r it is possible to trace the source of Stawell's extracts.[157] He was working from an edition of the *Syntagma seu Corpus Doctrina Dei* (1565) by Johannes Wigand and Matthaeus 'Judex' Richter, a protestant biblical theology written in Latin. There are three extracts from this work, all taken from the section titled 'Expositio noni et decimi praecepti' or 'An exposition of the ninth and tenth commandments.'[158] Here Stawell had altered the title in his notebook to 'Nonn[i] & decimu[m] praeceptu[m] quae mala p[ro]hibentur his praeceptis' or 'The ninth and tenth commandments, which badness is prohibited by these precepts.'[159] The ninth and tenth commandments refer to coveting and stealing, and by this subtle change of language Stawell shifted the focus of analysis to encompass the societal function of these commandments. It is also worth recalling that in his translation of Boemus, Stawell translated 'preaceptum' as 'law', which might suggest his view of the commandments here may also have been coloured by his legal training. In the left-hand margin beside this title he had written 'The use or absence of earthly things', further emphasising the importance of material property when interpreting the ninth and tenth commandments.[160] The first entry under this heading in the manuscript are a series of sub-headings from the opening lines of successive paragraphs under the heading of 'Expositio' in the printed edition of *Syntagma.* They are: 'The acquisition or possession of goods by stealing is not right.', 'On interest charges', 'Pleasure',

[157] Ibid., f. 28r.
[158] Johan Wigand & Matthaeus Richter, *Syntagma, seu corpus doctrinae veri & omnipotentis dei* (Basel: Johann Oporinus, 1565).
[159] CUL Hh.3.8, f. 28r.
[160] Ibid.

'False impediment', 'Violation of labour', 'Oppression of widows and orphans' and 'Failure of duty'.[161] Although these headings are taken from a theological work, they are nonetheless strikingly similar to the kinds of headings found in any typical legal commonplace book and they deal with subjects such as family and property law, usury and duty to the state. Below these extracts there immediately follows the legal commonplace heading of 'Surrender' and a series of notes from the Year Books on the subject of land and property law. Clearly the legal and theological texts are linked through shared concepts of 'ritus' or 'praeceptum'. Stawell demonstrated a deeper kind of thinking in which the moral and societal values of those concepts were explored through wider reading and commonplace practices, and within a shared, legal material space. This suggests that Stawell was reading these theological and philosophical extracts from a legal-moral rather than strictly legislative perspective, and in a manner that engaged with wider jurisprudential themes rather than focusing solely upon the study of law.

Conclusion.

Ralph Stawell's legal notebook is evidence of the diverse ways in which a law student at the early modern Inns of Court sought to supplement his legal education through non-legal texts. Stawell's notebook is largely a legal commonplace book, with alphabetically arranged headings and extracts from the Year Books and abridgements. These materials are typical of the kinds of contents found in practical legal notebooks kept by law students in this period and can be directly linked to the formal practice of learning not only law, but also the refinement of other skills necessary to the legal profession such as Law French, penmanship

[161] Ibid.

and law reporting. But what are we to make of the other kinds of text that are present with the manuscript, those texts that are of a historical, literary and theological nature? Until now there has been no scholarly work done on the relationship that Stawell might have perceived between the legal and non-legal contents of his notebook. This is surprising, as it is the seemingly discordant juxtapositioning of such diverse materials within the notebook that makes this notebook so puzzling, and which prompts inevitable questions as to *why* Stawell included non-legal texts into an otherwise practical and professional materials space. To dismiss these non-legal texts as trivial, or as disposable moments of distraction, is not a convincing argument, and furthermore it discourages the rigorous examination of the notebook manuscript as a whole textual object.

I argue that the non-legal texts within the notebook served to supplement Stawell's legal education, and as such are evidence to the manifold ways in which law students such as Stawell sought to engage with a broader kind of legal education; an education that was grounded not only in established learning practices at the Inns of Court, but also in the humanist learning practices of grammar schools and universities. Through his translation of Boemus's *Omnium Gentium Mores,* Stawell attended to a series of jurisprudential arguments and ideas surrounding the origins of English law, and the recognition of natural law and artificial reason as the driving forces behind the formation of customary legal systems. The translation process especially allowed Stawell to express, through specific word choices, omissions and additions, the severe consequences of breaking with tradition and the rightful justice doled out to those who transgressed customary law. Stawell's broader legal interests had much in common with contemporary legal writers who also worked from scriptural and classical sources to explore the same kinds of legal philosophies. That these non-legal texts

serve an obvious legal function problematises the term 'non-legal', and raises questions as to the potential legal function of texts such as these which, until now, have been dismissed by legal and literary historians alike as being entirely non-legal in nature.

While the Petrarchan sonnets may not set a standard of literary excellence, they suggest a transmission of rhetorical verse exercise from out of the universities and into the Inns of Court. By embracing the vernacular Stawell adapted existing educative practices to fit his legal education, which allowed him to practice rhetorical turns of argument, brevity of speech and conclusive closing arguments. Lastly, in attending to the theological arguments between Thomas Harding and John Jewel, specifically those parts of the arguments which leaned heavily upon gathering evidence from a range of authoritative patristic sources, Stawell was rehearsing the method by which he composed the remainder of his notebook. These skills include commonplacing, arrangement, translation and penmanship to name but a few. From Boemus to sonnet composition to the reading and commonplacing of patristic and classical writers, these non-legal texts each served a legal or practical function that related directly to Stawell's legal education or to wider jurisprudential themes. I argue that these non-legal texts were intrinsically a part of Stawell's legal notebook and that they were deliberately used to supplement his legal education.

Through notebooks such as Stawell's there can be uncovered a wealth of textual evidence that can expand and advance our understanding of not only the ways in which these law students sought to direct their own legal educations, but also their use of a wide range of non-legal texts and humanist methodologies as part of their legal training. The Inns were not hermetically sealed legal spaces, as the ever-expanding body of scholarship surrounding the

intellectual, literary and cultural Inns of Court scholarship demonstrates. It is through the study of notebooks such as Stawell's that we can see the functional application of non-legal texts with humanist learning practices within a formal, legal space. It is by turning to examine the notebooks of other such law students that we can gain a broader understanding of the individual ways in which they too turned to non-legal texts and humanist models of learning to fashion for themselves a broader kind of legal education and to engage with contemporary discourses surrounding the origins, development and usage of English common law. It is in Chapter 2 that we now turn to examine how the author of another legal notebook used non-legal texts to engage with a distantly common law mode of thought.

Chapter 2

A Common Law Mind: Edward Shurland's Legal Notebook.

Introduction.

The second legal notebook that I examine is catalogued by the British Library as 'A Collection of Law-Readings on Various Statutes'.[1] Shelf-marked BL Hargrave MS 89, and with 53 pages, this paper notebook, in folio, is part of the collection of legal books and manuscripts belonging to the lawyer and antiquarian Francis Hargrave (1741-1821), and was purchased by the British Library in 1813.[2] On f. 1r is written '*Sum liber Edwardi Shurlande teste Jo: Michell*', 'I am the book of Edward Shurland, witnessed by John Michell'.[3] This autograph is decorated with flourishes, underscoring and ornamental lettering and serves as both a mark of ownership and book title. Below the autograph there are six short passages of Latin verse proverbs, taken from classical and scriptural sources, that engage with themes of both a moral and legal nature, and which are ascribed to 'W.B' and 'William Hubb'. Written on the bottom half of f. 1r, in a small cramped hand, are extracts in English from Thomas Smith's *De Republica Anglorum.* Following this, on f. 1v there is written a list of place names alongside a list of eighteen names, many of which were members associated with Lincoln's Inn.[4] On ff. 2r-2v there is, in English and Latin, the form of a legal indenture.[5] This indenture is immediately followed on ff. 3r-3v with extracts taken from Thomas More's *Utopia,* written in English and in the same cramped hand responsible for Smith's *De*

[1] BL Hargrave MS 89.
[2] Henry Ellis, *A Catalogue of Manuscripts Formerly in the Possession of Francis Hargrave, Esq* (London: G. Woodfall, 1818).
[3] BL Hargrave MS 89, f. 1r.
[4] Ibid., f. 1v.
[5] Ibid., ff. 2r-2v.

Republica.[6] The remainder of the notebook is written in a finer hand and is largely composed of the readings of some of the most prominent legal personalities of the early modern period, including Sir John Popham's readings on various statutes on ff. 4r-21r, two accounts on ff. 21r-35r of Sir Edward Coke's reading on fines, given at Lion's Inn in 1580, a further reading by Coke at Inner Temple on ff. 36r-37v and lastly a reading by Sir Edmund Plowden concerning entails on ff. 38r-47r.[7] The notebook ends with a small legal note written in English, in the same hand as the *De Republica* and *Utopia* extracts, along with the form of a writ written in the finer Law French.[8]

This chapter will focus on the extracts taken from Smith's *De Republica* and More's *Utopia,* and the ways in which Shurland used to those texts to supplement his legal education. Close analysis of Shurland's choice of extracts from *Republica* suggests that his interest was not in the broadly descriptive contents concerning governance and law, but rather he was focused on gathering, in the style of a humanist commonplace book, a collection of legal etymologies and language. Using these extracts, I argue that Shurland's use of Smith was shaped by humanist styles of learning, in particular the practice of compilation and the making of commonplace books. Shurland's interest in the etymology of legal language, in particular Anglo-Saxon and French, is evidence of a deliberate engagement with common law antiquarianism and a desire to explore the origins of English law, both pre and post-conquest. I will argue that Shurland used his notebook to attend closely to contemporary arguments relating to language and etymology that were frequently employed not only by advocates of English common law, but also by those who viewed the Chancery courts as

[6] Ibid., ff. 3r-3v.
[7] Ibid., ff. 4r-21r, 21r-35r, 36r-37v, 38r-47r.
[8] Ibid., f. 49v.

superior. Shurland's use of Smith may seem unconventional, however, as a student of law, and as a man steeped in common law culture at the Inns of Court, I argue that his treatment of *De Republica* was not only entirely appropriate, but that it also served to supplement his legal education and to solidify his legal identity.

In turning to examine Shurland's extracts from *Utopia* I continue to demonstrate how humanist literary texts along with humanist pedagogic methods and styles of notebook composition, such as abundant style and the collection of proverbs, were being deliberately used to supplement his legal education. Furthermore, these texts enabled Shurland to engage with a broader kind of jurisprudence, which in turn allowed this young lawyer in training to dig deep into complex arguments surrounding the common law and equity. In this chapter I propose that Shurland's method of notebook composition was born of the humanist classroom, but that it was also tempered with a legal pragmatism that was unique to the Inns of Court; a method that was deliberately designed to support a broader kind of legal education. It is by examining notebooks such as these that we can not only reveal how law students such as Shurland used a range of so-called non-legal, literary and humanist texts to support their own self-directed legal educations, but through these texts we can also uncover new information as to how young students of law in the early modern period were participating in arguments relating to English common law, and by extension perhaps even reveal distinct modes of thought that were rooted in English common law exceptionalism.

The Manuscript.

On f. 1r there are written three different names, those are Edward Shurland, William Hubb and John Michell.[9] It is unlikely that John Mitchell was the author of the manuscript as he is identified here as being a witness only. The most likely author was either Shurland, who claimed ownership of the notebook, or Hubb who wrote 'per me', suggesting authorship. There are three styles of handwriting present within the notebook, with each style being divided between thematically and linguistically distinct groups of texts. The first hand, an ornamental gothic style script, is found only on the title page and is used to write the title and proverbs in Latin. The second hand is used to write the English extracts from Smith and More on ff. 3r-3v and a small legal note in the back of the notebook which is also in English. The final hand is used throughout the remainder of the notebook to write the formal legal texts such as the indenture and the readings, these are in Law French. This variety of hands may suggest more than one author; however, palaeographical analysis strongly suggests there was only a single author responsible for the notebook.[10] The legal materials in Law French that make up the majority of the notebook are written in a confident, fine secretary hand. The text is carefully formatted with clearly defined paragraphs, indented paragraphs to distinguish opening remarks for individual lectures, and the headings and endings of lectures are clearly marked and aligned to the centre of the page. A generous marginal space is afforded for annotations and Year Book referencing. Although the secretary hand is markedly different from the gothic style hand used on the title page, a number of the headings for the readings are written in the same hand as the autographs and proverbs on f. 1r, suggesting that the

[9] Ibid., f. 1r.

[10] As we have seen with Ralph Stawell in CUL Hh.3.8, a single author is more than capable of writing in a number of different styles.

author of the legal contents was also the same person responsible for the title page. An example of this can be seen on f. 30r, the heading in Law French is written in a gothic hand beginning with 'Lectua tercia Fine de surrender'. The distinct majuscule 'F' on 'Fine' has an exaggerated top line with a serif on the right of the top line and a hook on the left, as well as a serif on the centre line and a hook at the bottom of the descender, matching closely the gothic style majuscule 'F' used on f. 1r in which the same placement of serifs and hooks can be seen.[11]

Where the author of the notebook used a fine secretary hand for Law French, and a decorative gothic hand for Latin, he used a less formal hand when writing in English. The English extracts from Smith and More are written in a cramped, messy and economical cursory hand. The text is crammed to the edges of the page and written sideways in the margin, with almost no space afforded between the lines. The letters are formed through heavy strokes and seem to be the opposite of the light flourishing hand of the Law French. Both style and formatting alone might suggest these texts are later additions to the notebook, yet this hand too can be linked to the same single author of the manuscript. On f. 13r there is a note written in the right-hand margin that reads 'une in venter mer' that is the same cramped cursory hand used to write the English text.[12] There are also corrections and additions made to the main text in the same hand. These additions alone could be attributed to a later author, however on f. 37r, midway between paragraphs written in the fine secretary hand, there are twenty-one lines in Law French that are written in the same cursory hand as the Smith and More extracts.[13] This 'slip' into a different hand links the author of the fine Law

[11] BL Hargrave MS 89, ff. 30r, 1r.
[12] Ibid., f. 13r.
[13] Ibid., f. 37r.

French to the cramped English hand, and furthermore is evidence that he was a polygraph, or at least he was attempting to be one.

At the back of the notebook, on f. 49v, there is legal writ written in English that is in the same hand as the Smith and More extracts, demonstrating that the author of the literary texts was also the author of legal texts.[14] A comparative analysis between the hand used on f. 37r and the hand used throughout the Smith and More extracts and the writ on f. 49v further proves that the same author who wrote the readings in Law French also wrote the English extracts. There is some variety between letters depending on whether they are initial, medial or terminal letters, however many letters are strikingly similar such as the miniscule 'b', 'e', the hooked back of the letter 'p', the elongated 's', the right leaning curved stem on the letter 't', and 'v'. Of particular note is the final line of the second paragraph on f. 37r, in Latin, which is in the same gothic hand as the Latin proverbs on f. 1r and the Latin headings used throughout the readings.[15] There is strong palaeographical evidence linking the Latin proverbs, the literary extracts and the legal texts within the manuscript to a single author. This analysis further demonstrates that the author used different hands to write in different languages, which perhaps explains the variety of hands used within the notebook.

The Author.

From the autographs on the title page, it can be inferred that the author of the notebook was either Edward Shurland or William Hubb, however biographical evidence suggests that the author was most likely Shurland. Edward Shurland, late of Gray's Inn and Christ's College in

[14] Ibid., f. 49v.
[15] Ibid., ff. 37r, 1r.

Cambridge, originated from Elmsett in Suffolk and was descended from the De Shurland family of the Isle of Sheppey.[16] He was first admitted to Lincoln's Inn on the 28th May 1566, and is later found in the Gray's Inn register of admissions as one 'Edward Sherland', of Suffolk and previously of Staple Inn, admitted 3rd March 1590.[17] The executor of his will, dated 1599, was one Henry Yelverton, a lawyer and fellow of Gray's Inn. Also mentioned in the will was his nephew Christopher Shurland, who was admitted to Gray's Inn on the 1st November 1603-1604, and was called to the bench 1617.[18] A further connection between the Shurland and Yelverton families can be found in the Gray's Inn records as a Henry Yelverton is listed as participating in Inns business alongside Christopher Shurland. Edward Shurland bequeathed his chambers at Gray's Inn to his nephew Christopher on his death in 1609, and according to custom they would have shared chambers prior to his death.[19]

On f. 2v are three columns of names, two of those columns are place names in the county of Essex and the third column is a list of men who were prominent legal and political figures, many of which shared connections with the Shurland family.[20] Lord Darcy, listed beside Colchester, was probably Thomas Darcy who later became the viscount of Colchester in 1621. The next name is Sir Thomas Lucas, who was admitted to Gray's Inn in 1604, the same year as Christopher Shurland, and was called to the Bar in 1617, the same year that Christopher

[16] Augustine Page, *A Supplement to the Suffolk Traveller or Topographical and Genealogical Collections Concerning That County* (London: J. B. Nichols and Son, 1844), 993.
[17] W. Paley Baildon, ed. *The Records of the Honorable Society of Lincoln's Inn: Vol I* (London: Lincoln's Inn, 1846), 74; Fletcher, *The Pension Book of Gray's Inn, 1569-1669*, 226.
[18] PROB 11-114-59; Joseph Foster, ed. *The Register of Admissions to Gray's Inn, 1521-1889* (London: Hansard Publishing, 1889), 110.
[19] PROB 11-114-59; For an example of the familial inheritance of chambers see Wilfrid Prest, "Conflict, Change and Continuity," in *History of the Middle Temple*, 84. The practice can also be seen as commonplace throughout the Black Books of Lincoln's Inn, the Pension Books of Gray's Inn and the Minutes of Parliament of Middle Temple.
[20] BL Hargrave MS 89, f. 2v.

Shurland was called.[21] There are four members of the Mildmay family on the list, the first being the lawyer Sir Thomas Mildmay who attended Christ's College and both Lincoln's Inn (1559) and Gray's Inn (1592).[22] Thomas Mildmay also quarrelled with Lord Darcy over the half-hundred of Witham. Walter Mildmay and Humphrey Mildmay were both admitted to Christ's College in the same year that Edward Shurland was admitted, and they were both later admitted to Gray's Inn, Walter in 1608 and Humphrey 1612.[23] Humphrey Mildmay later became a Justice of the Peace in Essex.[24] The final Mildmay on the list is Mr Thomas Mildmay-de-Barnes, possibly either the father or the son of Sir Thomas Mildmay. Sir Edmund Huddleston (d. 1607), another name on the list, attended Lincoln's Inn in 1551 and was later the Sherriff of Essex.[25] Mr Harlakenden was most likely one of the Harlakenden's of Earle's Colne in Essex (1568-1631), one of several generations that attended both Christ's College and Gray's Inn.[26] It is significant that Roger Harlakenden (d. 1603), who also attended Staple Inn as well as Gray's Inn, was prosecuted for the fraudulent sale of Earle's Colne Priory in 1599, the indenture of which was written and served by John Harvey, another name on the list in Shurland's notebook.[27]

Lastly, the name 'Jo: Michell', which is also written below Shurland's autograph on f. 1r, is most likely the same John Michell who was admitted to Gray's Inn 1583.[28] A common theme begins to emerge from the names in the manuscript: these men were typically connected to

[21] Foster, *The Register of Admissions to Gray's Inn,* 198; Fletcher, *The Pension Book of Gray's Inn,* 229.
[22] N. M. Fuidge, "Thomas Mildmay II." History of Parliament Online (Accessed 19 December, 2017).
[23] John Peile, ed. *Biographical Register of Christ's College, 1448-1665, Vol I* (Cambridge: Cambridge University Press, 1910), 75; Fletcher, *The Register of Admissions Gray's Inn,* 120 & 132.
[24] S. M. Thorpe "Humphrey Mildmay." History of Parliament Online. (Accessed 19 December 2017).
[25] Baildon, *Lincoln's Inn,* 60.
[26] Peile, *Christ's College,* 60.
[27] Foster, *Gray's Inn,* 184; TNA C 78/104/17.
[28] Foster, *Gray's Inn,* 63.

Essex, they were prominent figures in legal or political circles, many of them attended Christ's College in Cambridge alongside Shurland, and they were also enrolled at Gray's Inn with both Edward and Christopher Shurland. Furthermore, many of them were involved in legal disputes, often with each other. It is possible that the list, as it appears inside the legal notebook, was a list of known associates, and perhaps even potential clients, to the Shurland family.

William Hubb, whose name also appears on the title page, cannot be discounted as the author of the notebook, although there is no other evidence linking him to the notebook nor to any of the names or places listed within. His name cannot be found in the admissions records for Christ's College, nor in the admissions book or pensions book of Gray's Inn or Lincoln's Inn. Although there was a William Hubbard admitted to Middle Temple in 1571 and a William Hubbold to Inner Temple in 1627, neither of these dates coincide with the dating of the notebook manuscript, which shall be discussed in more detail presently.[29] It is difficult to trace William Hubb through legal records of the time, there are dozens of equity case records in the National Archives relating to men called William Hubbard throughout the sixteenth and early seventeenth centuries, however the name is a common one and cannot be specifically linked to the autographed William Hubb in the notebook. Neither William Hubb or Hubbard appear as a legal person in any State Paper records, there is no known connection between the names on the list within the notebook and any person with variations of the name Hubb, and there are also no records relating to William Hubb nor William Hubbard in the Essex County archives. The lack of surviving evidence for William Hubb does not discount him from being the author of the notebook, however, this lack of evidence must be contrasted with the

[29] Hopwood, *Middle Temple Records: Vol I*, 180.

wealth of evidence connecting Shurland to the notebook. Biographical evidence strongly suggests that Edward Shurland was the most likely author of the manuscript, and he shall be treated as such throughout this chapter.

Dating the Manuscript.

It is possible to date the manuscript through both the legal and literary materials found within. Coke's reading at Lyon's Inn is dated 1580, and while the readings are certainly later copies, and as such do not represent the year in which the notebook was written, it is evidence that the notebook was certainly composed after 1580. The Thomas More extracts on ff. 3r-3v are written in English and closely follow the Raphe Robinson translation (first published 1551), albeit with some editorialising by Shurland. On line 3 of the More extracts there is written 'truth loveth simplicity & plainnesse', this line does not appear in the main text of the earlier printed editions of Robinson's translation of *Utopia* but is included as a marginal note in both the 1597 and 1624 editions.[30] No other editions of *Utopia* in this period include that specific marginal annotation. Another date can be deduced from the writ found in the back of the notebook manuscript, in which 'her majestie' is referred to on line 1 and 'her majesties' on line 3 of the writ, suggesting that part of the manuscript was composed prior to the death of Queen Elizabeth I in 1603.[31] It is possible that addresses to 'her majestie' in the writ was directed to Anne of Denmark, wife of James I, however the legal matter of the writ would have been handled in the Chancery Court, a division of the High Court, and thus addresses to that court would be made to the reigning monarch. In placing the composition of the

[30] Thomas More, *A Most Pleasant, Fruitfull, and Wittie Work, of the Best State of a Publique Weale, and of the Yle Called Utopia,* trans. Raphe Robinson (London: Thomas Creede, 1597); Thomas More, *Sir Thomas Moore's Utopia, An Excellent, Learned, Wittie, and Pleasant Discourse of the Best State of a Publike Weale,* trans. Raphe Robinson (London: Bernard Alsop, 1624).
[31] BL Hargrave MS 89, fol. 49v.

notebook within the reign of Elizabeth I the 1624 edition of *Utopia* can be excluded as the source of the Thomas More extracts, giving a potential date range of the manuscript's composition as being between 1597-1603.

Legal Learning and Literary Play.

The focus of this chapter are the extracts that appear to be non-legal texts, or texts that are seemingly unrelated to the formalised legal texts in the notebook. These non-legal texts are the Latin proverbs on f. 1r, extracts from Thomas Smith's *De Republica* and the extracts from Thomas More's *Utopia.* The catalogue at the British library does not include the Latin verse nor the Smith and More materials within the manuscript's description, and while the inclusion of extracts from *Utopia* is briefly mentioned in the Catalogue of English Literary Manuscripts, no further description, commentary or analysis is given.[32] This notebook has mostly gone unnoticed by modern legal and literary historians, and historical interest in the manuscript is related solely to its formalised legal contents. The antiquarian and former owner of the notebook, Francis Hargrave, wrote the contents of the manuscript in columns on either side of the Latin verse on f. 1r.[33] Here he lists only the readings given by Coke and Popham, ignoring the extracts from Smith and More, suggesting that Hargrave's interest in the notebook was entirely focused upon those pages relating to the formal legal lectures given at the Inns.

The non-legal texts within the notebook may not relate to the strictly technical business of learning law that was practiced at the Inns of Court, however we must consider that by the nature of their inclusion within the notebook these texts may have served a legal function

[32] "Hargrave MS 89" Catalogue of English Legal Manuscripts.2019. Accessed Sept 20, 2019, http://www.celm-ms.org.uk/repositories/british-library.html#british-library_id695949.
[33] BL Hargrave MS 89, f. 1r.

and were supplementary to Shurland's legal education. Shurland's title page alone perhaps reveals his intention to bring together formalised legal practice with non-legal texts and also with humanist methods of learning. On f. 1r there is a distinct and deliberate mixing of legal formality with literary play: 'Sum liber Edwardi Shurlande' he wrote, followed by 'teste Jo: Michell' - the witnessing of this statement is strange in its legal formality, not to mention entirely moot within the given context as there is no legal reason why a notebook should be witnessed. Witnessing, in this context, was a playful application of an otherwise serious legal formality.[34] The excessive flourishing of letters in the title of the notebook further emphasises a playful or creative engagement with the practical business of creating an otherwise practical legal notebook. Such ornamentation serves no function in a legal sense, it is there simply to delight and perhaps also to help Shurland practice his penmanship. The Latin verses that follow the title are proverbs from classical literature and scripture that also take the form of legal maxim. The first of these, 'Dum spiro: spero' is a proverb that was paraphrased by Theocritus in his *Idylls* and Cicero in his *Epistulae ad Atticum* as 'while there is life there is hope'.[35] This is followed by the proverb or maxim 'Fallere fallentem non est fraus' or 'to deceive the deceiver is not fraud'. This moral approval of deception in legal practice did not seem to sit easily with Shurland, who completes the verse with 'fallere quicquid nec est laus' or 'to deceive anything is not laudable', a phrase which mirrors the commonly cited *regula* in early modern legal circles 'non omne quod licet, honestum est' or 'not everything that is allowed is moral'. In pairing these maxims Shurland composed a playful rhyming couplet of Latin verse in which opposing arguments of legal morality, in the form of maxims, provoke a

[34] Ibid.
[35] Theocritus, "Idyll I-4," in *Loeb Classical Library 28: Theocritus, Moschus, Bion*, ed. trans. Neil Hopkinson (Harvard: Harvard University Press, 2015), 14; Cicero, *Loeb Classical Library: Letters to Atticus Vol I,* trans. ed. D. R. Shackleton (Harvard: Harvard University Press, 1999) book 9, letter 10, section 3.

dialectic reaction from the reader. On the title page of his legal notebook Shurland was engaging with serious legal philosophies while playfully engaging with forms of legal maxims by fashioning them into creative verse couplets. Here perhaps we see the first instances of a methodology in which serious legal learning and literary play are put to work within the notebook. Was this just play, or did Shurland have a more serious legal purpose?

So often these small passages of literary texts are treated by legal historians and literary scholars alike as being entirely divorced from the wider legal textual spaces in which they appear. We can see from Shurland's use of Latin verse on f. 1r that these literary texts were distinctly jurisprudential in nature, they expose tensions relating to legal and moral philosophies and they invite a dialectical response. By examining these kinds of ignored literary texts from a legal perspective and by treating them as legal texts, we uncover an entirely new usage in which non-legal texts and humanist methodologies were deliberately integrated into the formal legal spaces of law students' notebooks. Throughout this chapter I shall examine both Thomas Smith's *De Republica* and Thomas More's *Utopia* as serving a deliberate legal function within Shurland's notebook. I argue that Shurland's treatment of *De Republica* and *Utopia* was grounded in humanist practice, but that his application was legal in nature. I propose a distinctly pragmatic, but also playful, Inns based repurposing of texts and learning practices that are not typically associated with legal education in the early modern period. Through this analysis I question *how* Shurland read and interpreted both Smith and More within his legal notebook, not just as a law student, but specifically as a common lawyer. In treating these so-called non-legal texts as legal texts, I propose that Shurland was specifically reading them from a mindset that, in legal historiography, has commonly been referred to as the common law mind. The existence of such a mindset has

been hotly contested by legal historians, and John Pocock's definition of this term to denote a kind of isolated exceptionalism has been challenged in recent years.[36] This chapter does not seek to offer a conclusive definition of what the common law mind is, or was, but it does argue that it did exist in some form and that it influenced the way in which Shurland used both Smith and More to supplement his legal education.

Thomas Smith's *De Republica Anglorum.*

De Republica Anglorum was written by Thomas Smith while he was acting as an ambassador in France. Written in the years of 1562-1565, the text was not published until 1583, six years after his death. Smith described his *De Republica* to Walter Haddon, in a letter dated 1565, as a text which would 'raise nice points as to justice and injustice, and whether what is held yonder in England as law be better, or what is held here and in those regions in accordance with Roman Law.'[37] In drawing these comparisons between English law and Roman law, Smith commonly viewed English law as the superior system. This is not to say he did not see the value in the structures of Roman law as he himself worked tirelessly to establish civil law schools within English universities. *De Republica* was not a work in which Smith dogmatically aligned himself with one system of law, but rather, it was intended to be a descriptive survey of the English government and judiciary. Smith's biographer Mary Dewar notes that *De Republica* was, on the whole, 'basically descriptive rather than analytical or critical', and that Smith had no desire to engage in problems relating to legal and political systems. He was not, she argues, only entirely detached from these problems, but 'thoroughly complacent'.[38]

[36] See J. G. A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century* (Cambridge: Cambridge University Press, 1987), 30-55.
[37] Thomas Smith, *De Republica Anglorum,* ed. Mary Dewar (Cambridge: Cambridge University Press, 1982), 1.
[38] Ibid., 2-3.

De Republica was used, primarily, as a handbook on the complexities of government and English law.[39] An example of this usage is given in Robert Beal's *Instruction to a Principal Secretary* (1592), in which he advised that Thomas Smith must be read in order to 'understand the State of the whole Realm'.[40] Smith's work was valuable to those who aimed for public office and needed a comparative grounding in English legal systems, this would have appealed to law students such as Shurland who did not receive such training from the Inns themselves. Despite *De Republica's* lack of polemics, Dewar observes that 'later readers quarried it happily for ammunition' and that people would find in the pages of *De Republica* material to support whatever argument they favoured.[41] Edward Hake's late sixteenth-century tract *Epieikeia: A Dialogue in Equity in Three Parts,* relied heavily upon *De Republica* in support of the royal prerogative, while the anonymous author of *An old Mould to cast New Lawes* (1607) turned to Smith to find evidence to argue against James I's regal powers in England.[42] Smith himself seemed entirely ambivalent towards *De Republica*, he only mentioned it once in his prolific correspondences and he made no effort to revise or publish it on his return to England. It was only in the wake of its posthumous publication that *De Republica* was quickly put to use as a source of authority in arguments which Smith himself had little or no interest.

Etymology

[39] Ibid., 7.
[40] Ibid.
[41] Ibid., 5.
[42] Edward Hake, *Epieikeia: A Dialogue on Equity in Three Parts,* ed. D. E. C. Yale (New Haven: Yale University Press, 1953); *An Old Mould to Cast New Lawes* (Oxford: Lichfield, 1643) was often attributed to Thomas Smith, who was in fact the compiler.

On f. 1r of Shurland's legal notebook, at the bottom of the page and running sideways in the bottom left-hand margin, are select extracts taken from Smith's *De Republica.*[43] These extracts are most likely copied from either the first 1583 edition or the second 1584 edition, both of which were printed in London by Henry Middleton for Gregorie Seton. We know that Shurland was working from either of these two editions by the citation that he provides in the first line of the extracts, which reads 'T Smith de Republica Anglorum li 2 fo 75 constable comith of Kinnynge'. Here Shurland provided the book, page number and a brief note on the contents that were on that page. It is only in the 1583 and 1584 editions that the line 'Constable seemeth to me to come of our old English word *kinning,* which is *Kinnyngstable*' is found on page 75.[44] In the 1589, 1594, 1601 and 1609 editions of *De Republica* the contents in book II, page 75 are all on the subject of the Court of the Common Pleas and there is no mention of 'kinnynge' or constables.[45] It is not possible to know whether Shurland used the first or second edition of *De Republica,* both texts are nearly identical and while there are some variations of spelling and abbreviations between editions, such as 'mã' on folio 75 of the 1583 edition and 'man' in the 1584 edition, there is no consistency of spelling found between Shurland's notebook extracts and the printed text. Line breaks and punctuation are not followed in the notebook, and omitted sections of text are inconsistently substituted with 'S'. Spelling and formatting cannot be relied upon as a reliable method of source identification, however, the citation given by Shurland does allows us to confidently narrow his source text down to either the 1583 or 1584 edition of *De Republica*.

[43] BL Hargrave MS 89, fol. 1r.
[44] Smith, *De Republica,* 75; Thomas Smith, *De Republica Anglorum (*London: Henrie Middleton, 1584), 75.
[45] Thomas Smith, *De Republica Anglorum* (London: John Windet, 1589); Thomas Smith, *De Republica Anglorum* (London: Valentine Simmes, 1594); Thomas Smith, *De Republica Anglorum* (London: James Roberts, 1601); Thomas Smith, *De Republica Anglorum* (London: John Windet, 1609).

The contents of the extracts from Smith almost exclusively relate to etymology and language. While Smith's work was expansive in its scope and ambition, Shurland seemed to be interested only in passages relating to the antiquity of words. The extracts open with the etymological origins of the titles of 'constables', 'sheriffs' and 'earls' before moving quickly to Anglo-Saxon legal terminology such as 'hundreds', 'lathe and rape', and 'wappentakes', with the legal definitions of these words being provided within their respective etymological discussions.[46] An example of this can be found on line six of the extract 'an hundred in ancient tymes did fynde to the kinge to his warres an hundred able men', and on line seven 'Lathe and Rape be nameth of service for that so many townes in old tyme did meete together in one day to carrie the lords corne into his barne which is called in old English a lathe.' On line ten Shurland focused upon the definition of 'wapentake' with 'Wapentake came of the Danes or the Saxens. For that so many townes came by their orders then to one place where was taken a mover of ther armor & weapons'.[47] These words are mostly legal terms and their descriptions are framed by examples that relate to service to the state and property. The extracts also include Latin legal terminologies with 'indices' and 'exigents' being traced to their Latin roots, as well as the Latin, German and French origins of 'knights', 'lance knights' and 'soldiers'.[48] Alongside these etymological materials, there are two extracts which focus upon spoken French used within English ceremonies: 'when a man is made knight he kneleth downe & the prince strike him with his sword naked [on] the back or shoulders, the prince saying *sus* or *sois chiualier au nom de Dieu* &… the prince saith *auauncer'*.[49] The other extract relating to French is found in the left-hand margin and reads '*The last daye of the parliament*

[46] BL Hargrave MS 89, f. 1r, lines 2-10.
[47] Ibid., f. 1r, lines 6-7.
[48] Ibid., f. 1r, lines 14-15, 25-26.
[49] Ibid., f. 1r, lines 27-29.

after session the prince cominge to others… what the kinge doe allowe and to such he saith Le roy or *la royne le vault*… those that the prince liketh not *Le roy* or *la royne saduisera…'.*[50] Lines 18-21 of the extract seek to define aristocracy and democracy, with the Greek having been Romanised, as it appears in the printed editions of *De Republica* (despite other words in the printed text being written in Greek and glossed in the margins): *'*He that can live alone saith Aristotle is either a wild beast in a mans liken o[r] els a God rather than a man… One alone doth governe *Aristotcratia,* the smaller number *democratia*.'[51] Within these extracts Shurland clearly focused upon materials relating to the diversity and antiquity of language used within English law and parliament. His interest in etymology suggests an engagement with common law arguments relating to the antiquity of legal language, in particular the study of Anglo-Saxon by common law antiquarians who sought to establish the pre-conquest origins of English law.

Common Law Antiquarianism.

As a student of law, it may at first seem odd that Shurland chose to focus so singularly upon etymology in *De Republica*, especially given that Smith had so much more to offer on the subjects of government and law. Yet Shurland's focus upon etymology was not unusual given the overall rising interest in etymology during the early modern period, especially amongst the legal profession. Hannah Crawforth examines how literary authors such as Donne, Sidney, Spenser, Jonson and Milton deliberately engaged with lexicographers, etymologists and Anglo-Saxonists 'at a time when the national vernacular was inseparable from that of national

[50] Ibid., f. 1r, lines 36-40.
[51] Ibid., f. 1r, lines 18-21.

identity'.[52] Donne's use of legal vocabulary in his sermons delivered at the Inns of Court, she argues, was not only to please and flatter his audience, but was also used as a device in which technical legal language drew analogies between English systems of justice and the holy trinity, and in which judge's interpretations of the law were likened to interpretations of scripture.[53] Crawforth also notes Spenser's 'rootedness in an older period in the history of English', a movement, she argues, in which Spenser and other literary scholars applied a philological treatment to their literary works, seeking to present Middle and Old English texts as precedential evidence of Anglo-Saxon Protestantism.[54]

This use of ancient language to set a historical precedent did not only appeal to advocates of Protestantism, but also to those who promoted the ancient and immemorial authority of English common law through antiquarianism and the study of etymology. In his survey of the first Society of Antiquarians that began about 1572 and disbanded about 1604, Richard Schoeck notes that of the forty-three listed members, twenty-four of them were common lawyers and a total of thirty-six members had connections to the Inns of Court.[55] Many of those members rose to eminence as judges or sergeants, and include such names as William Camden, Richard Carew, Sir William Cecil, Sir John Davies, Sir John Doddridge, William Fleetwood, William Lambarde, Sir Walter Raleigh, Thomas Sackville, John Selden, Sir Henry Spelman and Sir James Whitelocke to name just a few. Within this survey Schoeck records the many scholarly and literary contributions that these members made to the study of Anglo-Saxon language and history. The dominance of common lawyers within the Society was

[52] Hannah Crawforth, *Etymology and the Invention of English in Early Modern Literature* (Cambridge: Cambridge University Press, 2013).
[53] Ibid., 129.
[54] Ibid., 8, 16.
[55] Richard Schoeck, "The Elizabethan Society of Antiquarians and Men of the Law," *Notes and Queries,* vol 199 (1954): 417-421.

significant for Schoeck who argued 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'.[56]

Edward Coke's legal antiquarianism was, in part, informed by the work of Anglo-Saxon historians such as Laurence Nowell (1530-70) and William Lambarde (1536-1601), who collaborated on their studies of Old English laws.[57] In 1568 Lambarde published *Archeion,* a translation of the Old English law codes (copies of which were owned by both Bacon and Coke) in which Lambarde argued in favour of the Germanic, Anglo-Saxon roots in legislation relating to the legal right of tenure.[58] In this way Lambarde's work supported Coke's own views on the pre-conquest origins of English law. However, Coke sought to push back even further than the Anglo-Saxons, tracing English Law back into time immemorial. In his biography on Coke, Allen Boyer notes that 'Not only did Coke own all the books on Anglo-Saxon history which Parker had published… His manuscripts at Holkham include a long list of charters, collections of Anglo-Saxon laws'.[59] Coke may have rejected the idea that English law had a medieval genesis, favouring instead the timelessness of an immemorial conception, but that is not to say he did not acknowledge the importance of Anglo-Saxon antiquarianism and its place in arguing for a pre-conquest English common law, of which etymological analysis was an important body of evidence.

[56] Ibid., 421.
[57] Rebecca Brackmann, *The Elizabethan Invention of Anglo-Saxon England: Laurence Nowell, William Lambarde, and the Study of Old English* (Cambridge: D. S. Brewer, 2012), 218.
[58] William Lambarde, *Archaionomia: De priscis anglorum legibus libri* (London: Ioannis Daij, 1568).
[59] Allen Boyer, *Sir Edward Coke and the Elizabethan Age* (Stanford: Stanford University Press, 2003), 140.

Common lawyers such as Coke and Lambarde wanted to establish the ancient authority of English law through the study of ancient legal language. Considering both the Society of Antiquarians' focus on Anglo-Saxon study and Coke's arguments for artificial reason, it seems entirely appropriate that Shurland's focus on extracts from Smith were of an etymological as well as legal and political nature. Within his notebook Shurland focused upon the language of Anglo-Saxon laws, but also the Anglo-Norman language. As noted above, he was interested in the French origins of words such as 'knight', 'lance knights' and 'soldiers' as well as the ceremonial use of spoken French in ancient English customs. Shurland's interest in the etymology of legal language did not necessarily mean that he himself subscribed to the philosophies of the common law, but his etymological focus was certainly grounded in the tradition of common law antiquarianism.

Shurland and the Common Law Mind.

In reading Smith in Shurland's legal notebook, there is a temptation to scour those extracts for evidence of Shurland's own legal philosophies. Did his interest in pre-conquest legal terminology hint at a common law mindset like that of Coke or Starkey? Or did his interest in French language customs point towards a more civil-minded legal philosophy? To try and push Shurland into either camp would be a mistake, one that relies too heavily on the idea that there existed a stark division between common and civil lawyers. Ideas of a strict common law isolationism within the Inns of Court are now thought of by modern historians as being outdated, however it cannot be denied that there existed a strong sense of English legal exceptionalism amongst English common lawyers, who frequently viewed the common law as superior to continental law.

We cannot know to which legal philosophy, if any, Shurland subscribed, but what these extracts from Smith illustrate is that he read Smith as though he were a common law antiquarian, extracting Anglo-Saxon etymologies that could serve as a precedent of legal language, placing English common law as both preceding and thus predominant to civil law. But Shurland was also interested in many languages of law, not just Anglo-Saxon. His choice of extracts explores the etymological roots of legal, martial and political terms from a variety of languages that span both common and civil legal terminologies. In doing so he reveals what is perhaps a more complex way of thinking about English law – not the antiquarian dogmatism of Coke, but rather a more nuanced and far more neutral stance such as that assumed by Thomas Smith. Shurland was clearly drawn to materials that supported common law ideals of artificial reason and immemorial custom through the antiquarian study of etymology, however he balanced that interest with extracts and legal materials that include civil laws and post-conquest laws and language. Shurland was reading Smith with an awareness of common law antiquarianism, perhaps he even subscribed to the ideas of common law exceptionalism, but he was carefully mediating that mindset with an appreciation for Roman law. It is through his subsequent treatment of Thomas More's *Utopia* that evidence of a distinctly common law mindset becomes more apparent.

Thomas More's *Utopia*.

On ff. 3r-3v, immediately following a legal form of indenture and preceding the law readings of Sir John Popham, are a series of extracts taken from Thomas More's *Utopia.* The extracts are written in English and closely follow the Raphe Robinson translation, which was first published in 1551. The extracts begin at the top of f. 3r and continue to the bottom of f. 3v, the script is small, cramped and at times so closely written as to be almost illegible. The

heading at the top of the page reads 'Sir Tho[mas] Moore ex etherpia & his epistell to Peter Giles a city[zen] of Antwarpe an eloquent & merrie man'.[60] The extracts were taken from the source text in chronological order: seven extracts are from the Epistle to Peter Giles, eighteen extracts from Book I and six extracts from Book II. Proportionally more extracts were taken from Book I of *Utopia*, which focuses upon dialogues relating to contemporary sociological and political problems, than from either the opening epistles or Book II, which is dedicated to the fantastical descriptions of Utopia. The overwhelming attention paid to the structured dialogue of Book I and the topics of law contained therein, suggest that Shurland's interest in the extracts were of a professional, rather than a purely literary, nature. These forms of dialogue were compatible with Shurland's own legal education at the Inns of Court. Cathy Shrank views the open-ended complexity of *Utopia,* as well as More's teasing ambivalence of position, as an invitation for readers to engage in further structured dialogue outside of the text.[61] George M. Logan also stresses the importance of structure over subject in Hythloday's account of the conversation at Cardinal Morton's table. What mattered was not the content of the argument so much as the method in which the argument was constructed.[62]

This approach would have been familiar to law students within the Inns of Court who frequently participated in structured student-led debate in the form of moots. Baker notes, in his research into legal education in London, that moots were 'vocational exercises in pleading', and further to this, that within the moot exercises there were 'no final judgement in a moot…no trial and no established facts…and the only decision required from the bench –

[60] BL Hargrave MS 89, f. 3r.
[61] Cathy Shrank, "All Talk and No Action? Early Modern Political Dialogue," in *The Oxford Handbook of English Prose 1500-1640,* ed. Andrew Hadfield (Oxford: Oxford University Press, 2013), 36.
[62] George M. Logan, *The Meaning of More's Utopia* (Princeton: Princeton University Press, 1983), 44.

unless the parties staked all on a demur – were the interlocutory rulings on points of form'.[63] The point of a moot was to stretch the boundaries of argument and case law through hypothetical debate. Thus, the hypothetical subject of the case was secondary to the forms of argument exercised. More's *Utopia,* with its mixture of real-world issues and fictional resolutions, mirrors this style of vocational dialogue. More himself was a lawyer and had participated in the same moot exercises as Shurland and his peers. It is possible More's framing of *Utopia* was done so with these same legal exercises in mind. I propose that Shurland was reading and copying More's *Utopia* from the position of a common lawyer in training, and that his interest in these extracts reflected a synthesis of formal moot exercise with humanist literature. This allowed Shurland, from the perspective of a common law thinker, to push the boundaries of hypothetical argument relating to variety of jurisprudential themes.

Abundant Style and Artificial Reason.

Throughout the extracts from *Utopia,* Shurland seemed to delight in the variety of adjectives that humorously describe the features of men and monsters. The first of these extracts, found on lines 22-27, describes the changeable natures of men as being 'crabbed' and 'sour', 'narrowe betwine the shoulders that he can beare noe jeste nor taunte' and of men who 'dread of every quick & sharpe word'.[64] Throughout these extracts Shurland ignores context entirely and there is no indication that these words relate to the description of man's natures. As with his treatment of Smith, Shurland was not interested in the wider subject matter of the text at hand, but only in the variety of words and the diversity of language on display.

[63] Baker, *Legal Education*, 10.
[64] BL Hargrave MS 89, f. 3r, lines 20-27.

These he appears to have gathered in his legal notebook as a *copia* of language in the same way that humanist scholars collected words and phrases in their commonplace books. Shurland concluded the entry with a proverb, 'some are so safe, as the proverb saith, will be out of all danger & gunshotte.'[65] The same proverb appears in Erasmus's *Adagia* as '*extra telorum jactum'* and relates to those who take no side in a dispute.[66] This whole passage is copied almost verbatim from Robinson's translation, and in his notebook Shurland was showcasing, in English, an abundance of style and the application of proverbs.

The same interest in abundant style is found again in the extracts on lines 37-44 of the notebook, which list at length the types of monsters found in the wild deserts of the world: from 'savage, wild & noisome' beasts and serpents to 'barking scillas, reveninge celenes & lysrigones devourers of people' which, More concluded, are harder to find than citizens ruled by good laws.[67] Shurland may have been drawn to the legal commentary in this jest, but his main interest was evidently in the variety of language and the strangeness of the words on display. There are more proverbs picked from *Utopia* elsewhere in Shurland's selected extracts: lines 32-33 contain the proverb 'they ned not nor ought not of me to be praysed unless I would seeme to see fourth the brightness of the sunne wth a candel', which appears in Erasmus' *Adagia* as '*Lumen soli mutuum das'.* On lines 84-85 is written 'a certain parasite or scoffer which resemble a foole macke sometyme the proverb true which saith he that shooteth oft at the last shall hit the marke', which appears in the *Adagia* as *'Quis enim totum*

[65] Ibid.
[66] Robert Bland, *Proverbs, Chiefly Taken from the Adagia of Erasmus, with Explanations. Vol I* (London: T. Egerton, 1814), 81.
[67] BL Hargrave MS 89, f. 3r, lines 37-44.

diem jaculans, non aliquando conlineat?'[68] Here in these extracts we see two main points of interest, that is the collecting of words or abundant style, and proverbs.

What use would these extracts have had for a law student such as Shurland? The most immediate answer would be the rhetorical value inherent in such a style, especially for one whose profession relied upon skill in oratorical persuasion. Winston's examination of the educative backgrounds of the law students at the Inns of Court in the 1560's describes them as being 'among the first generation fully educated within a humanist framework, one that emphasized classics, rhetoric, and service to the commonweal.'[69] By the late sixteenth century, the grounding of law students in the humanistic tradition was well established, while still being relatively new within the context of the Inns' ancient history. We must be careful, however, not to over emphasize the influence of this humanist grounding amongst the Inns of Court student body, after all the majority of law students at the early modern Inns did not have a formal university education.[70] Shurland, however, did attend university in Cambridge and so he did have a formal humanist education. Those influences can clearly be seen within his legal notebook as he placed literary extracts of a humanist tradition side-by-side with readings on statute law, and it seems that he read those extracts as both a humanist and a common lawyer. Arthur Kinney identified Hythloday's speeches in *Utopia* as deliberative rhetoric that prompted both delight and a response from the audience. Kinney further draws attention to the Elizabethan fashion to 'regard the florid, middle style of Gorgias and Isocrates

[68] Ibid., f. 3r, lines 32-33 & 84-85; Bland, *Proverbs,* 201.
[69] Winston, *Lawyers at Play,* 50.
[70] In 1561 only 13 per cent on Inns men had previously been to university, this figure rose to 42 per cent in 1581. See James McBain "Legal Training and Early Drama," in *The Oxford Handbook of English Law and Literature,* ed. Lorna Hutson (Oxford: Oxford University Press, 2017), 94.

as normative' concluding that 'This wonderous act of copia through the employment of varying ideas and expression…is furthered in the various textbooks of the humanist school rooms.' [71] Shurland's notebook is evidence that a student of law was deliberately placing examples of *copia* and proverbs alongside legal forms and fair copies of readings, thus extending certain humanist methodologies that he learned at university into his formal legal education.

So far, the extracts and *copia* in general have been discussed in relation to their rhetorical value for a lawyer in training. But can we also read these extracts from the perspective of a law student who inhabited a common law mindset? Alongside the collection of strange words and proverbs, Shurland also selected extracts that discussed themes of law, justice and equity. Stephanie Elsky identifies within More's *Utopia* a deliberate constraining of authority through common law practices.[72] She argues that Hythloday's insistence that Utopia had few laws, but many customs, aligns with the principles of an English common law mind. There are remarkable similarities between the humanist codification of proverbs and the common law, such as their unwritten nature, their immemorial origins and their shared transmission through repeated usage or what Erasmus called a customary language. In relation to proverbs, language and law, both the humanist scholar and common law thinker shared a codified mindset that, accordingly to Elsky, placed the commonplace and the common law side-by-side.[73]

[71] Arthur Kinney, *Rhetoric and Poetic in Thomas More's Utopia* (Malibu: Undena Publications, 1979), 202.
[72] Stephanie Elsky "Common Law and the Commonplace in Thomas More's *Utopia," English Literary Renaissance,* vol 43, no. 2 (2013): 181.
[73] Ibid.

Shurland perhaps found in the abundant style of More, and by proxy in the proverbs of Erasmus, a style of thought and speech that had much in common with his own common law modes of thought. He embraced it as a style that naturally privileged custom and allied itself with the common people while simultaneously being effective only in the hands of skilled practitioners. This once again recalls a deliberate awareness of artificial reason in his own legal education. This awareness is signalled in the extract on lines 53-59, in the description of George Temse, the Provost of Casselsee:

> In which he toke great dedication & the same person as apt & mete to have an administration in the weale publique he did lovingly embrace, his speche was fine, eloquent & pithy, in the law he had profound knowledge, in wit he was incomparable & in memory wonderfull exellent, thes qualleties which in him were by natur singular, he by learning & use made perfect.[74]

This extract from More describes Coke's common law definition of artificial reason, as he wrote in his commentary upon Littleton 'Reason is the life of the law, nay the common law itself is nothing else but reason; which is to be understood of an artificial perfection of reason, gotten by long study, observation and experience, and not of every man's natural reason'.[75] Through More's *Utopia,* Shurland collected commonplaces of dialogue that he could use to enhance his rhetorical learning within a curriculum that was itself largely centred upon exercises of dialogue. He placed these commonplaces alongside larger extracts that dealt with jurisprudential themes, and which deliberately referenced perfect or artificial reason. More's humanist text was reassembled within Shurland's legal notebook for practical use, but also to

[74] BL Hargrave MS 89, f. 3r, lines 53-59.
[75] Edward Coke, *The First Part of the Institutes of the Laws of England or a Commentary Upon Littleton,* ed. Charles Butler (Philadelphia: Robert Small, 1853), 97. a.97 b.

engage with wider themes of common law thought. In his notebook Shurland picked apart and re-assembled More's *Utopia* in a way that allowed him to engage with a specific kind of common law thought in which humanist ideas of *copia* worked in concert with ideas relating to artificial reason.

Crime, Punishment and the Common Law.

Throughout the extracts Shurland concentrated upon several jurisprudential themes, including crime, poverty and its impact upon society, capital punishment, systems of law and lawyers. The extracts relating to these themes are arranged in the notebook in a piecemeal fashion from lines 60-85. For More, the dialogue on crime and punishment in *Utopia* transcended the belief that crime was the result of individual moral failings, he believed instead that crime was the inevitable outcome of a catalogue of societal wrongs, which drove good citizens to desperate acts. Chief of these complaints were the enclosure acts and the withdrawal of land from cultivation to sheep farming, although More also condemned idle noblemen and the vast numbers of unskilled retainers and soldiers that they kept.[76] A further moral dimension was put forth by More as Hythloday argued passionately against the injustices of the English judicial system, what George Logan describes as being both 'immoral and inexpedient' with no justification on either religious or moral grounds.[77] The Tudor age experienced what Andreea Boboc calls a 'regular thief genocide' with an estimated 72,000 thieves hung during the reign of Henry VIII, and as Morton points out, this did nothing to discourage theft.[78] More's thief, far from being a villainous figure, is presented to the reader

[76] Thomas More, *Utopia,* ed. trans. George. M. Logan (London: W.W. Norton & Company, 2011), 19.
[77] Logan, *The Meaning of More's Utopia*, 49.
[78] Ibid., 53.

as a composite of social ills, trapped between poverty and injustice.[79] This, Cormack argues, expands the dialogue out from the themes of theft to becomes a wider dispute on the nature of English justice.[80]

The crises of poverty, crime and injustice that troubled More in the early sixteenth century were by no means any less diminished in the late Elizabethan and early Stuart periods, when Shurland was composing his notebook. In 1577 William Harrison wrote on beggars in his *Description of England* 'there is not one yeare commonlie, wherein three hundred or four hundred of them [beggars] are not devoured and eaten up by the gallows'.[81] London tripled in population during the sixteenth century, and with that growth crime increased at an alarming rate.[82] Both Parliament and local authorities cast about for solutions to the ever-increasing problems of crime, from passing laws to levy poor taxes (1563) to the construction of new prisons, bridewells and the implementation of increasingly harsh penalties for minor offences, such as whipping and branding.[83] A public obsession with crime is evidenced within contemporary literature and theatre. Arthur Kinney writes: 'Elizabethan literature is full of cozeners: Thomas Nash's Jack Wilton; Ben Jonson's Subtle, Edgeworth, Knockem, and Cutting; even Shakespeare's Falstaff. They appear throughout Middleton's plays and in many of Dekker's.'[84] Further to this was the rising popularity of the conny catching pamphlets, such

[79] Andreea Boboc, "Work and the Legal Person in Thomas More's Utopia," *The University of the Pacific Law Review,* 48 (2016), 53.
[80] Cormack, *A Power to do Justice*, 114.
[81] Arthur Kinney, *Rogues, Vagabonds and Sturdy Beggars: A New Gallery of Tudor and Early Stuart Rogue Literature* (Massachusetts: University of Massachusetts Press, 1990), 15.
[82] Ibid., 16.
[83] Ibid., 18.
[84] Ibid., 33.

as Robert Greene's *Notable Discovery of Coosnage,* whose accounts of true crime were intended to both educate and titillate the Elizabethan appetite for criminal narratives.[85]

Both More and Shurland lived and worked as lawyers during times of exponential urban growth and a growing cultural fascination with crime. The first extract within Shurland's notebook that centres upon the theme of crime is found on lines 60-65:

> the punishment for theft in England is to extreme & cruel, yet is not
> suficient to refraine & withold men from thefte for simple thefte is
> not so great an offence, that it ought to be punished with death but some meane
> or craft shall be provided whereby they in necesitie shold get there livinge, for
> in this point the world is like – evel schoolmasters which be redier
> to beat then to teache ther schollars.[86]

In focusing upon this extract it seems Shurland may have shared More's views upon the injustice of such extreme and seemingly ineffective punitive measures. However, Shurland did not copy any extracts relating to the wider societal issues that gave rise to such desperate criminal acts. Where More cast his net wide to discuss the many causes and conditions of poverty and crime, Shurland focused instead upon the parts of *Utopia* relating only to crime and punishment. Using these extracts Shurland assembled a simpler narrative in his notebook, one in which hanging was unjust and society would be better served by a rehabilitated criminal trained in a useful craft. Here Shurland was reading and transcribing

[85] Robert Greene, *Notable Discovery of Coosnage* (London: Iohn Wolfe, 1591).
[86] BL Hargrave MS 89, f. 3r, lines 60-65.

More as a lawyer first and foremost, leaving the wider societal issues of enclosure and unemployment for others to concern themselves with. Shurland appeared to be engaging in criticism against the processes of common law, favouring instead an equitable solution. And yet this admiration of an alternative system of law is modulated by the immediate insertion of an extract highlighting the worse state of France, a land that was infested with 'a muche sorer plage' of idle swordsmen whose hands and minds 'waxed dull' through want of meaningful employment.[87] Shurland appears to advocate reform, but cautions that these models of reform are not to be found in countries that practice civil law. The implication here is that there was certainly room for reform, but that reform must be done within the existing system of English law.

From within these extracts it becomes clear that Shurland did not favour Roman law. Lines 74-83 of the extracts are all related to a wider comparative description between Roman and Persian law: 'The Romans doe condemne them which are convicted of haynous trespasse into mynes to digge for metal for to be kept in chaines all the days of their lives…[They] that be slack in ther worke are pricked forward with stripes, they are apparailed all alicke and the tip of one ear is cutte'.[88] Shurland recognised that there was a problem within the existing English common law system, but the solution evidently was not in adopting civil laws, which in comparison appeared far crueller and less effective. The similarities with Hythloday's earlier suggestion of reform through labour or useful crafts are clear, but these comparative extracts also reveal a contradiction in More's argument - the Utopian system was ideal on paper, but fundamentally flawed once viewed outside of the imaginative and experimental

[87] Ibid., f. 3r, line 68.
[88] Ibid., f. 3r, lines 74-83.

space of the page. In juxtaposing these two extracts within his notebook Shurland was demonstrating the futility of supplanting one cruel system of punishment with another of equal cruelty. The original complaint of the English system being 'to extreme & cruel' was not to be remedied by ushering in civil law. Shurland, like More, reached a moral impasse in which a serious problem was identified, yet any attempt to implement an alternative brought only complexity and frustration. Here Shurland was not interested in uncovering a solution to the problem of crime in England, but in attending to those parts of More's dialogue that exposed the weaknesses of the common law while simultaneously acknowledging that it was comparatively superior to any other. This mode of thought suggests that while Shurland questioned common law exceptionalism, that questioning did not equate to a rejection of the common law.

Kill All the Lawyers.

Within the extracts there are four passages relating directly to lawyers: two extracts are short descriptions of the lawyer who sat at Cardinal Morton's table in Book I of *Utopia*, and two extracts are longer passages describing the crafty tricks of lawyers from Book II. On f. 3r, lines 72-73 of Shurland's notebook the lawyer's professional mannerisms are mocked, 'The common fashion & trade of disputes are men diligent in rehearsing than answering us, thinking that memorie worthie of the chief praise'. A proverb on lines 84-85 is further used to insult the lawyer as a 'certain parasite or scoffer which resemble a foole macke sometyme the proverbe true which saieth he that shooteth oft at the last shall hit the marke.'[89] In these extracts lawyers are not praised as skilled rhetoricians, but are instead dismissed as parasites

[89] Ibid., 89, f. 3r, lines 72-73, 84-85.

and regurgitators of stock arguments. The lawyer is especially criticised for his lack of rhetorical skill as he is said to value quantity of speech over quality. This may be a wry moment of self-reflection, Shurland was after all using his notebook to gather a *copia* of words, phrases and proverbs, however it is also likely that through this extract he was casting a critical eye upon the less skilled and less committed members within the Inns, such as those 'revellers' who occasionally drew the ire of the 'plodders'. Roger North, a law student at the Inns during the 1670s, noted that 'gentlemen embark on the law just at the caprice of their friends…without even considering the bent of their genius, or whether they are blessed with the qualifications adapted to the nature of the profession'.[90] Shurland's notebook is largely a serious and carefully arranged legal workbook, and his associations within the Inns of Court strongly suggests that he was himself a serious-minded lawyer. It is reasonable to infer from his choice of extracts that he did not necessarily look down upon all lawyers, but he did recognise a woeful lack of skill within his own professional class.

Extracts that level criticism upon lawyers continue on lines 145-154 with the following:

> The magistrate is neyther hawtie nor fearfull, father they be called & licke
> fathers they use themselves, they utterly exclude & banish all attorneys
> proctors & sarjants at the lawe which craftily handle matters & subtelely
> dispute of the lawes, for they thinke it most mete that everie man shold pleade
> his owne matter, & tell the same tale to the judge that he wold tell to his
> man of lawe, so shall ther be lesse circumstances of words, & the truth shall

[90] Baker, *Legal Education*, 16.

> sooner come to lighte: while the judge with a discrete judgement doth waye the words of him whome noe lawyer hath instruct with deceit and while he helpeth & beareth out simple wite against the false & malicious circumventions of craftie children.[91]

Here the magistrate and the judge are lauded as champions of justice and the true representatives of the people, while lawyers are accused of using trickery and the complexity of legal language to obfuscate simple matters of law. On the surface this passage appears to be yet another attack against lawyers which was in line with popular anti-lawyer sentiments of the time. During the latter years of the sixteenth century and the early seventeenth century, anti-lawyer sentiment was 'a commonplace in both literary sources and in contemporary literary plays.'[92] In light of a 'suddenly visible… newly large, urban class of legal men' there was a surge of anti-lawyer sentiment within the population, reaching a peak during the 1610s and 1630s.[93] Winston provides an impressive catalogue of works containing hostility towards the legal profession, a list far too copious to include here in its entirety, but which includes Ben Jonson's *Volpone* (1606), Christopher Marlowe's *Dr Faustus* (1592), John Day's *Law Tricks* (1608) and most famously William Shakespeare's *Henry VI Part II* in which Dick the Butcher cries 'The first thing we do, let's kill all the lawyers' as a suggestion of how to improve the country.[94] Prest suggests that this anti-lawyer sentiment was in part a

[91] BL Hargrave MS 89, f. 3v, lines 145-154.
[92] James A. Sharpe, *Crime in Early Modern England 1550-1750* (London: Routledge, 1998), 208.
[93] Jessica Winston, "Legal Satire and the Legal Profession in the 1590s: John Davies's *Epigrammes* and Professional Decorum," in *The Oxford Handbook of English Law and Literature, 1500-1700,* ed. Lorna Hutson (Oxford: Oxford University Press, 2017), *125.*
[94] Ibid., 125-126.

diversion of hostility away from the ruling elite, that lawyers were the scapegoat of a disaffected society.[95]

If the public viewed lawyers with hostility and distaste, how would law students such as Shurland and his peers have viewed themselves? Edward Gieskes argues that lawyers saw themselves as a force of order and good governance, citing works by writers such as Thomas Smith, John Fortescue, Christopher St. Germain and Thomas Littleton, in which lawyers were greatly lionised. 'The conflict of these rhetorics' Gieskes argues 'evokes the depth of division between lawyer's self-perception and the way early modern culture perceived them.'[96] The suggestion here is that the early modern lawyers could not, or would not, direct criticism towards themselves. But is this entirely true? W.B. Gerald and Eric Sterling note the Utopian's view of the law reflected More's own frustrations with English law and lawyers.[97] More's caricature of the disdainful and self-serving lawyer at Cardinal Morton's table, and his Platonic vision of the perfect commonwealth as having no laws and thus no lawyers, suggests that he did indeed feel frustrations towards his own profession. More was himself a serious-minded lawyer who took the responsibilities of his profession seriously, and who operated a highly successful legal practice. Helen White attributes More's barbed gibes as expressions of irritability at the inevitable irrationalities that arise in any profession, stating that lawyers were more than capable of critical self-reflection and had no qualms at striking out against their own profession.[98]

[95] Wilfrid Prest, *Rise of the Barristers,* 287.
[96] Edward Gieskes, *Representing the Professionals: Administration, Law, and Theatre in Early Modern England* (Delaware: University of Delaware Press, 2006), 142.
[97] W. B. Gerard & Eric Sterling, "Sir Thomas More's *Utopia* and the Transformation of England from Absolute Monarchy to Egalitarian Society," *Contemporary Justice Review,* vol 8, issue 1 (2005), 82.
[98] Helen White, *Social Criticism in Popular Religious Literature of the Sixteenth Century* (London: Routledge, 2006), 54.

Within the extracts we find not only the condemnation of lawyers, but also praise for the skilful and necessary work done by magistrates and judges. The lawyer represents not the whole legal profession, but rather an *unskilled* branch of that profession who had neither the proper education nor the wisdom to administer justice. Shurland returns once more to the common law theme of artificial reason, and the necessity of skilful learning and wisdom in the correct administration of justice. Further to this, within the extracts, laws were not written statute, but simple unwritten customs that the people could represent for themselves within the court of law. The Utopian ideal of having little or no laws was not just rooted in Platonic philosophy, but those ideals also reflected the strongly held common law belief that English law was customary law, immemorial and shaped by judges whose wisdom and application preserved only those laws that benefitted the common people. English common law is unwritten law. Thomas Wolf writes that the Utopian system was upheld by 'basic, strictly observed, but unwritten customs, which are recognised by everyone, because they are regarded as good tradition. They take precedence over written law.'[99] What More described as no law in Utopia was in fact the model of English common law. By focusing upon that specific extract Shurland was participating in a dialogue that lauded the common law and artificial reason while simultaneously condemning those of his profession who simply regurgitated legal arguments without fully understanding them.

Shurland's extracts also communicate a frustration against the complexity of English statute law. On lines 41-44 Shurland wrote 'for a people well instructed fewe laws will suffice & the plainer & groser made & published onely to the extent that by them everie man shold be put

[99] Thomas Wolf, "Social Utopia and Political Reality in Thomas More," *Law Review,* vol 3 (1971*)*: 328.

in rememberance of his dewtie'.[100] The law, then as now, was rife with excessive codifications and complexity, which in turn invited the 'crafty' circumlocutions of those laws. Shurland returns to the theme on line 160 with the statement that some lawyers will 'find some hole open to creape out of' when arguing a case of law.[101] Such tactics were the speciality of lawyers such as Coke, who obsessively studied the minutia of law so as to win cases through technicalities. Lawyers who relied upon these tricks where seen as 'parasites' who frustrated justice. In these extracts Shurland presents the lawyer's craft as working against society and in opposition to equity and justice. For a legal professional who idealised common law philosophies of justice and fair representation, Shurland would certainly have been attracted by More's fictive solution which advocated not for the abolition of laws, but for the supremacy of the common law in which judges, those 'well instructed fewe', held ultimate legal authority. Here the extracts at once communicate a preference for unwritten, common law while simultaneously venting frustration at the same complex and often overwhelming body of law that allowed for injustices to occur.

The Common Law and the Power of Kings.

Throughout the extracts there are five separate passages centred upon the theme of kings. While More used the characters of Hythloday and 'More' to balance both praise and condemnation towards princes within *Utopia,* the extracts Shurland placed in his legal notebook were wholly of a critical nature. In viewing More's *Utopia* from a common law perspective, in particular More's reining in of the royal prerogative and the sanctifying of customary law, Margaret Hastings explores the idea that More drew influence from the works

[100] BL Hargrave MS 89, f. 3r, lines 41-44.
[101] Ibid., f. 3v, line 160.

of Sir John Fortescue. She argues that 'More must have read the *Governance of England,* heard about Sir John Fortescue from his father, and perhaps also from the older members of Cardinal Morton's household.'[102] This theory is also put forth by Richard Marius in his biography of More as he asks 'Did More read Fortescue, or were Fortescue's opinions simply in the air, as it were, to be absorbed by anyone who studied the law with certain propensities of mind? We can only say much in More calls Fortescue to mind.'[103] In Chapter I of *The Governaunce of England*, Fortescue marks the distinction between two styles of rule within commonwealths. The first is a '*regimen politicum et regale'* that is the king ruling alongside parliament, and the other was just '*regale*', which Fortescue warned led to tyranny.[104] More's *Utopia* represented the ideal commonwealth, in part, because it valued the council of many wise men trained in the law over the absolute authority of a single prince.

The quantity of material in the extracts within Shurland's legal notebook that are concerned with the proper behaviour of kings demonstrates that he too was engaging with the same politically charged issues surrounding regnal absolutism. The first such passage appears on lines 45-50 and reads:

> From the prince as from a perpetual well springe, comith amonge the people
>
> the flood of all that is good or evil.
>
> The most part of all princes and more delight in all warlike matters & feats of chi-
>
> valrie than in good feats of peace, & imploy much more studie, how by right or by

[102] Margaret Hastings, "More and Fortescue," *Moreana,* vol 36 (1972), 61-63.
[103] Richard Marius, *Thomas More: A Biography* (Harvard: Harvard University Press, 1999), 33.
[104] John Fortescue, *The Governance of England: The Difference Between and Absolute and a Limited Monarchy,* ed. Charles Plummer (Oxford: Clarendon Press, 1885), 110.

wrong to enlarge there dominions, then how well & peaceablie to rule, & gov-

ern that they have allredy.[105]

This description of kings places them in opposition to the figures of the good judges and magistrates, those fathers of the people, that appeared in earlier extracts in Shurland's notebook. The monarch described here looks inwards, they abuse learning or 'studie' by directing their efforts towards personal gain at the expense of the commonwealth. This same concern is found again on lines 90-97, with 'The Kingdom of France is almost greater than that it may well be governed of one man, so that the king & his counsell shall not neede to studie howe to get more.'[106] This is then followed by a commentary on the 'Accarons' who, having conquered other lands, struggled to maintain peace. A further criticism is levelled at kings who 'fayne war' to gather in taxes and then call for peace once they have amassed sufficient wealth. The distinction is clear, common law judges worked tirelessly to serve the commonwealth while kings were viewed only for their potential to do harm. The metaphor of the prince as a wellspring is one later used by James I in his own absolutist rhetoric, yet here it is used as a warning to caution that from those wellsprings flows evil as well as good.[107]

The next extract concerning kings is found on lines 98-109. Here the extract recalls a theme that was an upmost priority for Coke and his fellow common lawyers, that of the interference of kings in common law judicial process. The extract is long, yet worthy of full quotation as each line is pointed sharply towards themes of royal authority within an English common law commonwealth:

[105] BL Hargrave MS 89, f. 3r, lines 45-50.
[106] BL Hargrave MS 89, f. 3v, lines 90-97.
[107] S.L. Houston, *James I* (London: Longman, 1973), 33.

> The fines of olde motheaten laws being by every man transgressed have a shew of to forbid many thinges under great penalties, and afterward to dispense for mony with them; the better that the prince is forsoth, the deerer he selleth them; as one that is loth to graunt to any privat person any thinge that is against the profit of his people indainger the judges of the realme to pronounce the lawe on the kings side for it is a good praise to hand the kinge indisputable prerogative – that a kinge though he wold can doe nothing unjustly bye comminality choseth the kinge for ther owne sacke & not for his sacke: who aught to tack more care for the wealth of his people then for his owne wealth and should to tend his people rather than himself. And if any kinge were so smally regarded yea so behated of his people that he could not kepe them in awe but by open wronge, by poling & shaving & by bringing then to beggerie, sewerlie it were better for him to forsake his kingdom than to hold it by this means, whereby though the name of a king be kepe, yet the majestie is loste.[108]

The term 'olde motheaten laws' may at first be read as a criticism against the common law, however, within the context of the extracts it can equally be read as a defence of the common law as a customary inheritance of the people. Old laws that have been tested by successive judges from time immemorial could never have been considered 'motheaten' by a common law thinker. Those customary laws were viewed as relevant, fresh and useful from their first conception to their most recent contemporary usage; they were always in use and necessary to the needs of society. That is the spirit of customary law, those laws exist because they

[108] BL Hargrave MS 89, f. 3v, lines 98-109.

continue to be useful. The term 'motheaten laws' point to those laws that were no longer favourable to the people, laws that had fallen out of customary usage and were no longer part of existing common law. For More the resurrection of those laws to serve the individual needs of the king would be tyranny, an act of mock precedence, in opposition to the proper customs of the realm and against the interests of the commonwealth. The extract cautioned once again the need for a king to care for his people before his own personal well-being while blaming the king's mismanagement of the realm for societal ills. The prerogative of individual kings is challenged, and stark warnings issued to those who step out of line. When a king forces judges to act against the customs of law, and against the good of the commonwealth, he strips himself of any vestiges of majesty. On lines 112-113 the point is forcefully drawn to a close with the line 'one man to live in pleasure & wealth all other wepe & smart for it, that is the part not of a kinge but of a jaylour.'[109] The barbed comment on wealth is juxtaposed with the suffering of the people, and serves as a reminder that the king is meant to care for his people, not become the source of their suffering.

In placing these extracts in his legal notebook, Shurland was clearly interested in materials that lauded judges and the common law while cautioning against the tyranny of kings. Such politically charged concerns would not have been irrelevant to a student of law. Shurland and his peers were not isolated from political affairs and common lawyers frequently played a prominent role in parliament. According to research conducted by Prest 'lawyers comprised the largest identifiable status or occupational group in the Commons'.[110] Prest notes that throughout the 1620s the most visible of those men were William Hakewell, John Glanville,

[109] Ibid., f. 3v, lines 112-113.
[110] Prest, *Rise of the Barristers*, 253.

Edward Littleton, William Noy, John Selden, Christopher Shurland, Henry Sherfield and most importantly Edward Coke.[111] Christopher Shurland was Edward Shurland's nephew, and he moved in the same parliamentary and legal circles as some of the most prominent lawyers of the age. Edward Shurland was close to his nephew, he willed him much of his estate, and they both attended Gray's Inn.[112] If they followed the convention found throughout the pension books of Gray's Inn, then they almost certainly shared chambers. Shurland moved in circles that exercised a robust opposition to absolutism by the authority granted to them by the common law. Common lawyers and MP-lawyers alike publicly resisted any threat that they perceived, real or imagined, towards the authority of judges, parliament and the common law.

Shurland's interest in these themes may very well have been in response to the succession crisis, which was ongoing during the years in which his notebook was composed. The proposed succession of James I in particular signified far more than a cosmetic change of figurehead, he posed a threat to the political framework of what historians such as Paul Raffield and Patrick Collinson call the 'monarchical republic' of Elizabeth I.[113] In this system, the Inns of Court functioned as 'microcosmic republics' which were 'self-regulating, autonomous institutions'.[114] They operated this way due to the freedoms given to them by Elizabeth I, by her willingness to work with parliament and to view the commonwealth as a composite of monarchy, aristocracy and democracy. The succession crisis placed this

[111] Ibid.
[112] PROB 11-114-59; Fletcher, *The Pension Book of Gray's Inn: 1569-1669.*
[113] Paul Raffield, "The Monarchical Republic, Constitutionality, and the Legal Profession," in *The Oxford Handbook of English Law and Literature 1500-1700,* ed. Lorna Hutson (Oxford: Oxford University Press, 2017), 166; Patrick Collinson, "The Monarchical Republic of Queen Elizabeth I," in *Elizabethan Essays* (London: Hambledon Press, 1994), 31.
[114] Raffield, "Monarchical Republic", 166.

privileged position of the Inns in jeopardy. Shurland was a lawyer in training that had direct connections to prominent legal and political figures who stood in opposition to the absolute authority of kings, and his legal notebook contains extracts that focus entirely upon praising the authority of judges and warning of the tyranny of kings. Shurland offers no direct commentary upon his own political views, however his choice of extracts strongly suggest that he shared the same legal ideologies as many prominent common lawyers, and that he too placed the authority of common law judges above that of the monarchy. His use of More's *Utopia* within his legal notebook was that of a common lawyer staunchly opposed to royal prerogative.

Shurland's Reading of Plato.

'In the background of *Utopia,* no other book is as important as Plato's *Republic'* writes Logan in his introductory material to More's *Utopia.*[115] As well as the *Republic,* Plato's *Laws* also heavily influenced More's vision of the Utopian constitution.[116] More, like Plato, envisioned a society based upon both empirical and imagined evidence, which would be possible so long as men lived as they were supposed to, instead of how they did.[117] As discussed in the extracts relating to poverty and crime, good ideas on social reform seemed to be far more effective when confined to the imaginary space of the page. Plato's place within the wider intellectual culture of the Inns of Court can be found within the many surviving notebooks of law students who attended the Inns. Ian Williams's research on notable members of the Inns has uncovered such material: 'One of Egerton's commonplace books included material from

[115] More, *Utopia*, 101.
[116] Wolf, *Social Utopia,* 326.
[117] Ibid., 335.

Plato, Aristotle, Cyprian, Aquinas and Joachim Hopper' while Coke's commonplace books contained materials under the heading 'De Legibus' 'Cicero, Isidore, Thomas More's Utopia, and St. German's Doctor & Student.'[118] Most of these texts, Williams concludes, would have been as familiar to educated non-lawyers as they were to common lawyers, and that Plato, along with a variety of antiquary philosophers and writers, were part of their broader shared educative experience.[119] By placing More under the heading '*De legibus',* Coke likely considered More's works to be part of his law library, which raises the question as to whether Coke viewed *Utopia* as a serious legal text (if so then he was happy to incorporate satire, fiction and even folly into his professional legal library). In lifting extracts relating to Plato from More's *Utopia,* and placing them within his legal notebook, can we infer that Shurland too was reading More's Platonic materials from a professionally motivated common law perspective?[120]

Shurland's notebook contains four extracts that either reference Plato directly or discuss broader Platonic ideas. The first extract is on lines 86-89 and reads: 'Plato judgeth that weale publique shall attaine perfect felicitie, eyther in philosopher kinges or els that kings give themselves to the studie of philosophie.'[121] This extract is contained within the material relating to the role of kings within the commonwealth. The same theme is found again on lines 117-128 with the extract 'Plato by a goodly similitude declareth why wise men refrain to medle in the commonweal & to kepe them selves safe seeing they cannot remedie the follie

[118] Ian Williams, "Common Law Scholarship and the Written Word," in *The Oxford Handbook of English Law and Literature,* ed. Lorna Hutson (Oxford: Oxford University Press, 2017),74.
[119] Ibid.
[120] Robert Applebaum, "*Utopia* and Utopianism," in *The Oxford Handbook of English Prose 1500-1640,* ed. Andrew Hadfield (Oxford: Oxford University Press, 2016), 253-267.
[121] BL Hargrave MS 89, f. 3r, lines 86-89.

of the people.'[122] The suggestion here is that a king should restrict himself to philosophical matters and that he should know the limits of his power in relation to the commonwealth. In his account of the 1607 Bancroft case, Coke reported a heated exchange between himself and James I: 'Then the King said he thought the law was founded upon reason, and that he and others had reason as well as the judges...but his majesty was not learned in the laws of his realm of England', in response to this, James I accused Coke of treason, to which Coke fired back 'The King is under no man, but he is under God and the Law'.[123] Common law judges believed that through artificial reason they were above the King in matters relating to law. Inherent knowledge of the law in itself was not sufficient.

Shurland's extracts here are cautionary and serve to check the ambitions of kings who believed themselves to wield as much authority in the law as common law judges. Fortescue wrote that the kings of England, unlike the kings of France, could not change the laws without the assent of his subjects, that the people must be ruled by the laws that they desired, that 'thai were ruled bi God roialy and politikely vndir Juges… and that it was bettir to the peple to be ruled politekely and roialy, than to be ruled only roialy.'[124] The carefully selected extracts relating to Plato were clearly grounded within a common law mode of thinking, for the good of the commonwealth kings should concern themselves with philosophical pursuits, and they should find ways to manage the general wellbeing of their subjects, however they should not meddle in the making of laws, of which they had no formal training and no authority. For lawyers who embraced a common law ideology, they saw themselves occupying a privileged position of authority within the commonwealth, one that required them to rein in the

[122] Ibid., f. 3v, lines 117-118.
[123] Alan D. Boyer, *Sir Edward Coke,* 298.
[124] Fortescue, *On the Laws and Governance of England*, 110.

ambitions of their monarch. Shurland's reading of *Utopia,* and his focus upon specific Platonic passages, further demonstrate his alignment with a politically motivated common law ideology.

Conclusion.

Archivists and legal historians have largely ignored the non-legal texts within Edward Shurland's legal notebook. This neglect is perhaps due to the relative anonymity of the notebook's author. The presence of both Smith and More in the notebook, however, make this an extremely interesting and potentially valuable manuscript to study, and can reveal much about how these texts were being read and used by a legal professional. The extracts that Shurland copied from Smith and More engage directly with wider jurisprudential themes such as crime, poverty and justice, and they do so through materials and methodologies that are both legal and humanist in nature. Shurland used these non-legal texts to supplement his legal education and his largely legal notebook also functioned as a kind of commonplace book in which he could gather extracts to expand his skills in rhetoric and oratorical delivery through abundant style, etymology and proverbs.

Shurland supplemented his legal education through texts that acted as forms of dialogue which were remarkably similar to those practiced in moot exercises. Through these texts he could explore complex arguments relating to common law ideas of artificial reason, common law antiquarianism, issues surrounding absolutism and comparative arguments between common and civil laws. In his extracts from Smith, Shurland seemed to favour a more balanced approached between arguments relating to both common and civil law, while through More his choice of extracts were firmly rooted in common law theories surrounding

penal reform, the authority of judges and the limitations of kings. Far from being irrelevant to the wider legal notebook, these extracts drawn from political and humanist sources engaged directly with serious and contemporary arguments concerning the common law, civil law and the powers and obligations of those operating within the legal profession in early modern England.

The main outcomes of this chapter's research are twofold: first it reveals the complexity of legal thought from the perspective of a serious law student within the Inns of Court. Here the notebook supports modern legal scholarship in the rejection of Pocockian ideas of common law isolationism, and instead supports Baker and other legal historians in their arguments for the complex interplay between common and civil law ideologies. Yet this notebook also gives a small measure of power back to Pocock's theories of common law exceptionalism within the Inns, Shurland's notebook absolutely communicates a balance of thought between the common law and civil law, but there is also a strong thread of common law exceptionalism present within his choice of extracts. His focus upon Anglo-Saxon etymology in the extracts from Smith along with the overall rejection of Roman law in his extracts from More, points towards the kinds of pre-conquest romanticism of English law that was popular with the more dogmatic antiquarian common lawyers such as Coke. Shurland's choice of extracts perhaps best communicate the complexity of legal thought within the Inns of Court; he was aware of and able to engage comparatively with arguments for and against common and civil law, but ultimately, he was a serious-minded common lawyer who, in the end, viewed English law as superior to any other.

The second main point that I argue in this chapter is that Shurland used humanist methodologies and texts to supplement mainstream and established learning practices within the Inns of Court. Shurland's notebook is a typical example of the kinds of legal notebook kept by many law students, it contains copies of readings and legal writs and it is largely written in Law French with a smattering of Latin and English. The non-legal texts are perhaps less typical but certainly not uncommon in this kind of educational notebook. Shurland used humanist methods of commonplacing to gather extracts and proverbs, he had a focused interest in abundant style, language, rhetoric and dialogue and he engaged with these interests through legal, political and humanist texts. His methodology was one that drew together moot practice with literary dialogue and commonplacing practices such as those described in Erasmus's *De Copia* with the commonplacing of legal terminology. He found common ground between abundant style and artificial reason, and his fashioning of Latin verse using legal maxims as a means to explore the complex arguments of common and civil law suggests a deliberate mixing of legal formality with literary play. The non-legal texts in Shurland's legal notebook serve an auxiliary function as part of his wider legal education, they engage with contemporary arguments of law, justice and equity and were written by a man whose understanding of those arguments was shaped by a keen awareness of the tensions that existed between common and civil law thought. Shurland's notebook may not tell us whether Shurland himself staunchly inhabited a 'common law mind', however it strongly suggests such a mindset existed, and that Shurland used his notebook and the non-legal texts within to occupy that mindset as he navigated a series of complex arguments surrounding English common law.

Chapter 3

Diverse Discourses: Play and Legal Education.

Introduction.

At the Cambridge University Library there is a small quarto notebook measuring 199 x 155mm, containing 136 pages and which is written in English, Law French and shorthand.[1] The notebook, which is listed in both *A Catalogue of the Manuscripts Preserved in the Library at the University of Cambridge* and John Baker's *Catalogue of English Legal Manuscripts in Cambridge University Library* as 'Divers and uncertayne discourses del ley', is largely a collection of readings and moots given at the various Inns of Court and is dated between 1611 to 1614.[2] Its present binding in dark brown goatskin with marbled paper sides is dated to 1967.[3] On f. 2r is written 'by mee Thomas Waldridge'.

Present within this otherwise serious and practical legal notebook are a series of humorous stories titled 'Joco Seria. Of Divers Subjects'. These stories are largely bawdy and low brow, and as such could easily be dismissed as being no more than frivolous distractions. The Joco Seria are evidently records of play, yet in this chapter I argue that the author of this notebook, and his social circle, were participating in a structured mode of play that equally served serious, legal, educative, and restorative functions. The notebook was a practical, material object around which distinct (and geographically organised) groups of young men

[1] CUL Dd.5.14.
[2] *A Catalogue of the Manuscripts Preserved in the Library at the University of Cambridge: Volume I*, 259; Baker, *A Catalogue of English Legal Manuscripts in Cambridge University Library*, 30.
[3] Ibid., 31.

could structure legal exercises, such as moots, alongside play activities. Through close material and textual analysis of the notebook, this chapter contends that modes of play, that are in many works of secondary literature associated with disorder and violence, were in fact strictly moderated and structed around legal activities and learning practices. Through these Joco Seria the law students could practice legal argument, invention, rhetoric and oration (along with other practical skills such as penmanship and Law French) while simultaneously engaging with a series of complex jurisprudential themes concerning ideas of justice, morality and penal reform.

Many of the Joco Seria centre upon themes of scholar's melancholy, isolation and physical and mental illness brought on by overmuch study. Within these stories the remedy to these illnesses is commonly friendship, community and play. The Joco Seria, I argue, show that the author and his social group were aware of, and were deliberately practicing, humanist pedagogical methods of restorative play. In this notebook we see a complex application of play as a serious and pragmatic tool of learning, but also as playful release from academic pressure. This chapter explores the complex role of play within a distinct group at the Inns of Court, and demonstrates the ways in which a serious law student used his legal notebook as a focal point around which social and professional bonds could be strengthened and in which so-called low forms of play were used as a remedy to the overwhelming pressures associated with intense legal study.

The Manuscript.

There is no record of a Thomas Waldridge in the Middle Temple Records.[4] There was a Thomas Walrich or Wolryche (d. 1668) of Trinity College, Cambridge, who was admitted to Inner Temple in 1615, however Baker argues that it would have been impossible for him to have been the author of the notebook, not only because the names listed in the notebook are largely those of Middle Templars, but also because Walrich's admission to Inner Temple was later than the dates in which the notebook was composed.[5]

The hands present on f. 2r are further evidence that Thomas Waldridge was likely not the author of the notebook. Above Waldridge's autograph there are written several lines of Latin verse in two different hands. The first line, written closely at the top of the page, is from Ovid's *Metamorphosis* and reads 'Heu quam difficile est crimen non prodere vulta' or 'Alas how difficult it is not to betray a crime in the face'. This line is written in a similar style as Waldridge's autograph, the author wrote with neat upright letters, he used a Cyrillic 'e' and also used multiple pen strokes to write minims. Beneath this line there are two more lines of verse, written in the same style as the Ovid but in an entirely different hand. These are: 'Mallem perdere schema quam offendere senatum' or 'I would rather lose style than offend the senate' and 'Patres conscripti vel potius circumscripti' which is a play on words similar to 'Conscript fathers, or rather, closed in' in English. Both these lines were written in a hasty slanted hand, the word 'conscripti' was initially spelled incorrectly and scored out, the author used contractions and superscript, he favoured an epsilon 'e' and used a single stroke when writing minims. This hasty hand is used throughout the entire notebook manuscript, strongly

[4] CUL Dd.5.14, f.2r.
[5] Baker, *Catalogue of English Legal Manuscripts*, 31.

suggesting that although a man named Thomas Waldridge wrote his name on the first page of the notebook, and jotted a single line of Ovid, he was most likely not the author of the notebook's wider legal contents. Very little is known about the notebook's author, Baker argues that he was most likely a Dorset Middle Templar since many of the names that appear throughout the notebook, and who were evidently part of the author's immediate group of associates, were gentlemen of that county.[6] Throughout this chapter he is referred to as the author.

No further information regarding the identity of the author can be found, however we can confidently attribute the notebook's contents to a single author, and from those contents some biographical information can be gleaned. A palaeographical comparison between two thematically divergent samples of text within the manuscript, that of legal notes on f. 3r, titled 'Divers & uncertayne discourses del ley', and humorous jests on f. 70r, titled 'Joco Seria, Of Divers Subts', show that the author was responsible for the legal as well as the playful contents of the notebook.[7] Of note are distinctive letterforms such as the sloped ascender on miniscule 'd' and 'b', the epsilon 'e', the looped 'l', the long 's' and the superscript terminal 't' abbreviation. The majuscule letterforms are also distinctive, of note are 'D', 'M', 'N' and 'R'. The formatting between the two types of texts are the same, with the title centred at the top of the page and the main text aligned to the right, leaving a generous marginal space to the left for annotation. There is also a shared methodology of practice and recording between the legal and the humorous parts of the manuscript, which are analysed in detail later in the chapter.

[6] Ibid.
[7] CUL Dd.5.14, ff. 3r, 70r.

The contents of the manuscript are mostly copies of readings and moots give at the Inns of Court and Chancery. On ff. 1r-7r are legal notes titled 'Diverse and uncertayne discourses del ley' which include a series of moot exercises dated between 1611 and 1612.[8] Following this, on ff. 8r-69r there is a record in Law French of Anthony Benn's reading on the statute of H8.6, dated 2nd March 1611, of which the opening speech was recorded in English.[9] This is unusual as readings were typically recorded in Law French, and indeed the main body of Benn's lectures are written in Law French. The reading is interspaced with moots given at Clement's Inn, New Inn, Clifford's Inn and Middle Temple; these moots are recorded in Law French and shorthand. Benn's reading would have been delivered as a series of lectures over the course of the term, thus the first part of his reading ends on f. 13v and is followed by ten blank pages before content titled 'Moote case le 3 de March 1611' appears on f. 19r.[10] There then follows a series of moot exercises dated the 4th and 5th of March 1611 before on f. 32r the author returns to Mr Benn's reading dated 6th March 1611 at Middle Temple.[11] There are several more blank pages from ff. 32v and starting on f. 38r there are notes from the Year Book dated Elizabeth 31 (1589) written in shorthand.[12] The chronological dating of the moots and Mr Benn's reading suggest that these entries were written at, or close to, the date that the readings and the moots were delivered and were not copied from written sources at a later date. Shorthand was designed to allow for quick, contemporaneous note taking and its presence in the notebook suggests that the author was taking notes during moot exercises and readings. The portable size of the notebook would have also facilitated this practice.

[8] Ibid., ff.1r-7r.
[9] Ibid., ff. 8r-69r.
[10] Ibid., ff. 13v-19r.
[11] Ibid., f. 32r.
[12] Ibid., ff. 32v, 38r.

On f. 48r the legal notes in shorthand end, and there then follows several blank pages.[13] From f. 70r-76v there is written, in English, a series of twenty-nine humours anecdotes, headed by the title 'Joco Seria. Of Divers Subjects', with the final two stories being written in shorthand.[14] In contrast to the legal records throughout the rest of the manuscript, the Joco Seria show a keen interest on behalf of the author in human nature, sociability, playfulness and jurisprudence. The tales range in theme from the prescience of death to the hubris of scholars, and they contain a colourful cast of characters that are both fictional and based on real personalities, such as Dr Grey, John Foxe and Richard Mulcaster. On f. 76r there is written, in English, a short anecdote reminiscent of the Latin verse on f. 2r, that reads 'A spruce Roman riding upon a jade was asked by ye Censor his reason answered *Ego me ipsum curo statius vero equum.',* which is an incomplete approximation of a jest that in full should read 'Ego me curo, equum statius servus meus' or 'I look after myself, the servant looks after my horse.'[15] The Joco Seria are often crude, bawdy and defamatory, they are inventive and competitive in nature, and they appear to be derivative of common printed jest books such as *A Hundred Mery Tayls* and *The Jests of Scogin.*[16]

After several more blank pages the volume is reversed, and the dating of the reversed contents becomes somewhat disordered. On ff. 89r-93r are readings given by Mr Trattman at Clifford's Inn dated 8th August 1614.[17] On ff. 93v-99v are a series of readings from Mr

[13] Ibid., f. 48r.
[14] Ibid., ff. 70r-76r.
[15] Ibid., f. 76r; *Appuleii opera omnia cum notis integris Petri Colvii, Joannis Wowerii, Godeschalci Stewechii, Geverharti Elmenhorstii et aliorum, imprimis cum animadversionibus hucusque ineditis.* Francisci Oudendorpii ed. (Lugduni Batavorum: S & J Luchtman, 1823), 211.
[16] *A Hundred Mery Tayls* (London: R. Copland, 1548); John Scogan, *The Jestes of Skogyn* (London: T. Colwell, 1570).
[17] CUL Dd.5.14, ff. 89r-93r.

Jenckenson at Barnard's Inn dated in the 9th, 12th and 6th of August 1614.[18] On f. 100r the title at the top of the page is of the reading of Mr Reynell and is dated the 8th August 1614, this is immediately followed by the reading of Mr Jenckenson on the 6th August 1614.[19] These alternating readings given by Mr Reynell and Mr Jenckenson are repeated in short paragraphs to f. 103v.[20] From ff. 103v-114v there is a reading given by Mr Wootten dated March 14th 1613.[21] Then, on f. 115v the contents of the notebook return to their correct orientation with the reading of Mr Benn dated Friday 13th March 1611, followed by a series of moots dated chronologically between the 17th March 1611 on f. 119v to December 1st 1614 on f. 135r.[22] There does not appear to be any reason why the author of the notebook would reverse a small section of the contents in the middle of the notebook. It adds no clarity and the reversed materials are not especially remarkable that they need to be isolated or distinguished in this way. It is noted by Baker that the manuscript CUL DD.5.14 was at one stage bound with CUL Dd.5.12 and CUL Dd.5.13.[23] In 1967 the composite manuscripts were recognised as being separate books and were thus unbound from CUL DD.5.14.[24] An examination of those manuscripts show that they were produced from different batches of paper, CUL Dd.5.12 has a bunch of grapes watermark and CUL Dd.5.13 has a much larger watermark, possibly pillars or a coat of arms.[25] The subject matter of both these manuscripts are entirely unrelated to CUL Dd.5.14 and they are written in different hands, strongly suggesting that these now separate manuscripts were not written by the author of CUL Dd.5.14. It is reasonable to

[18] Ibid., ff. 93v-99v.
[19] Ibid., f. 100r.
[20] Ibid., f. 103v.
[21] Ibid., ff. 103v-114v.
[22] Ibid., ff. 115v, 119v-135r.
[23] Baker, *Catalogue of English Legal Manuscripts,* 259.
[24] Ibid., 31.
[25] CUL Dd.5.12; CUL Dd.5.13.

assume that, having been subjected to a previous binding and rebinding, the reversed materials in the notebook may have been inadvertently rebound reversed and out of order.

Were one to re-orientate the reversed contents at the end of the notebook and place them at the end of the notebook, after f. 135r, then they would fit correctly into the chronology of the notebook. However, an examination of the notebook's paper invalidates this hypothesis. The same batch of paper was used throughout CUL Dd.5.14 with the paper having the same weight, texture and colour, with the chain-lines consistently measuring 20mm and the wire lines 1mm. The same single-handled, quartrefoil pot watermark with thick handle, bell-shaped base and a distinctive knot in the wiring where the base meets the body of the pot is found in the same position in the gutter throughout the notebook and it does not change location or orientation in the reversed parts of the notebook. This positioning of the watermark, along with the general size of the book and uniformity of the paper type strongly points towards the notebook being a blank paper book rather than a collation of loose leaves. This does not explain why the author reversed a portion of the text within the notebook, and why those reversed materials are dated several years later than the surrounding materials. It is possible the author, having reached the end of his notebook, returned to write in those spare blank pages at a later date and thus reversed them to give them chronological distinction.

This notebook has largely gone unnoticed by legal historians and Inns of Court scholars. Baker notes the presence of the Joco Seria within his *Catalogue of Legal Manuscripts*, and his expertise has allowed him to identify many of the named figures associated with the notebook. Any further analysis of the notebook and its non-legal contents, however, lie

outside of the scope of his project, although Baker has printed two of the stories from the Joco Seria in 'Brasenose and the Middle Temple'.[26] It is possible that the anonymous nature of the manuscript, and the fact that it has no relation to any noticeable or famous members at the Inns of Court, has not made it a worthwhile prospect for many scholars. The legal parts of the notebook are typical examples of the day-to-day learning practices conducted at the Inns, and the Joco Seria have previously only been read as humorous but otherwise unremarkable instances of jesting. Detailed analysis of the notebook as a whole textual object reveals a far more complex usage of the notebook and its content. Rather than reading the Joco Seria in isolation, I treat them in the wider legal context of the material and textual notebook space in which they were written. This work, I believe, broadens our current understanding of the relationship between learning practices and play at the early modern Inns of Court.

Through close analysis of the notebook, this chapter identifies a select group of law students who, through Inns of Court admission procedures, formed contractual fellowships in which their shared geographic cultural identities influenced their study of law as well as their social play activities. This chapter explores the environmental impact of the Inns as both physical and institutional spaces upon the law students and examines not only how these groups were shaped by the Inns themselves, but how they in turn shaped their own legal educations. I argue that the notebook manuscript was not simply a record of their learning and play practices, but that it was instrumental to the function of those practices. The notebook was a communal, practical object that was situated at the heart of legal moots, readings and play. Within its pages the author, together with his social group, could practice rhetoric, invention

[26] John Baker, "Brasenose and the Middle Temple," *The Brazen Nose* vol 16 (1975), 56-57.

and argumentation through student-led sessions of mooting and jesting. Through these activities the law students could forge bonds of friendship and community through a style of learning that incorporated bawdy modes of restorative play alongside serious legal study. Analysis of the notebook uncovers evidence of social methods of learning and play that challenge the persistent narrative within Inns of Court scholarship in which serious members of the Inns, those 'plodders', rejected rebellious or disruptive modes of play. Contrary to this, I argue that many embraced these so-called disruptive modes of play and used them to support their legal education.

The shared methodology found between the recording of legal exercise and humorous anecdotes within the notebook suggests that this group perceived communality between their legal practices and play activities. These blurred lines that seem to exist between mooting and jesting complicates modern assumptions that serious law students at the early modern Inns of Court held themselves apart from seemingly lower forms of play. Play is frequently viewed by many modern scholars as being disruptive or oppositional to serious legal study.[27] I propose that, within the notebook, and between members of the social group associated with that notebook, that bawdy play and jesting were conducted parallel to and in concert with their serious legal educations. Biographical evidence from the Minutes of Parliament mark these men as serious and committed law students, and I propose that their play was conducted in a manner that supplemented rather than detracted from their legal educations. Analysis of the Joco Seria reveal that they were more than simple jests derived from common jest books, many of the tales are inventive and original, several purport to be

[27] For detailed discussions on disruptive play at the Inns of Court See Prest, *Inns of Court* and Winston, *Lawyers at Play.*

testimonies of true events, and many deal with serious subjects. This chapter focuses upon those tales that appear deal with overtly jurisprudential or pedagogical themes. Jests and stories of a legal nature facilitated discourses in which difficult questions surrounding law, justice and equity could be considered from many different perspectives. I propose that these story telling sessions were deliberately structured to function like moot exercises, where themes of legal philosophy, rather than statute law, could be discussed in a playful manner.

Lastly, this chapter turns to examine the function of play in the notebook as a restorative release from the pressures of legal study. Through the analysis of stories that focus upon scholar's mental and physical suffering, and the role of play and friendship in restoring those scholars to proper health, I argue that the social group involved in the Joco Seria were aware of the need to balance work with play in order for them to continue their studies in a healthy and constructive manner. Early modern medical theories and pedagogical manuals both advocated for play alongside serious learning, and so the Joco Seria are evidence of a far more complicated method of social play between members at Middle Temple in which a careful balance was mediated between bawdy jesting and serious legal learning.

Geographic Fellowships at Middle Temple.

The author of the notebook was anonymous, however, the names of those members that participated in moots and the telling of Joco Seria are recorded within its pages. Several members of the group that participated in the moot exercises also have their names recorded alongside the jests and anecdotes given in the Joco Seria. The same names appear frequently beside materials that are dated from 1611 to 1614, demonstrating that the author was associated with these select individuals over a period of at least four years while at Middle

Temple. In defining the author's social group I am focusing only on these names that are recorded as participating in both the moot exercises and the more exclusive sessions of social jesting. The names that are listed alongside the moot exercises only could easily have been acquaintances of the notebook's author, however there is no evidence of them having any further social connections. I am also including in the author's social group those men at Middle Temple who participated in the jesting but not in the mooting, as their inclusion in social play activities suggests a measure of comradery that may not necessarily exist between members participating in mooting activities alone. The bonds of friendship between these members are further evidenced by the locations in which the Joco Seria sessions are recorded to have taken place. These locations suggest friendship, relaxation and intimacy and include: 'at my chamber', 'at supper', at 'Pat Noster Rowe' (a street synonymous with booksellers), in the chamber of Mr Gallop, 'at Mr Gibbenses att dinner' and 'in ye Temple Garden'.[28] The men that are recorded as being within this social group at Middle Temple are: Ellis Swayne, Thomas Gallop, Anthony Gulson, Richard Grovesey, Mr Dennis, Mr Clotworthy, Mr Fisher, Mr Clarke, Mr Gibbensen (possibly John Gibbes), Robert Browne, Mr Bull and Mr White. The men from this group that are recorded in the notebook as also participating in moot exercises alongside the author are: Mr White, Thomas Gallop, Robert Browne and Mr Bull. Many of the names associated with the author are to be found in the *Register of Admissions to the Honourable Society of the Middle Temple* and in the *Minutes of Parliament of the Middle Temple*.[29]

[28] CUL Dd.5.14, ff. 70r, 71v, 72v, 74v.
[29] H, Sturgess. ed. *Register of Admissions to the Honourable Society of the Middle Temple* (London: Butterworth & Co, 1949); C.T. Martin, ed. trans. *Minutes of Parliament of the Middle Temple: Vol I* (London: Butterworth & Co, 1904).

Biographical information from these records reveals that these members had much in common besides their shared mooting and jesting practices. The first common fact linking these members is that they mostly originated from the West Country. Members listed in the register of admissions as originating from that area are: Ellis Swayne of Pymperne, Dorset admitted 1607, Thomas Gollop, Dorset admitted 1609, Mr Clarke possibly Edward Clarke on Minchinbarrow, Somerset, admitted 1606-07, Robert Browne of Frampton, Dorset, admitted 1607, William Bull of Wells, Somerset, admitted 1610 and Mr Gibbenson who may have been John Gibbes of South Perrott, Dorset, admitted 1595.[30] The Dorset connection is especially strong through the Swayne family, who were directly involved in the administration process of Middle Temple, with Ellis's grandfather Richard being treasurer, reader and a committee member in charge of discipline.[31] In the Middle Temple records there was a six-year period in which Richard Swayne requested the admission of ten Dorset men, and through the admissions process these young men were bound with other members from Dorset, on five of these occasions these entrants were bound directly to Ellis Swayne.[32] It is possible that the author of the notebook was one of these bound members. This was not a group formed by chance, but through an institutional practice of admittance in which young men from the same county areas were recommended, admitted and bound to students from the same geographic locations, fostering what Michelle O'Callaghan refers to as 'contracts of fellowship' within the Inns of Court.[33]

[30] Sturgess, *Register of Admissions,* 89, 93, 88, 95, 31; The other members of the social-group that are listed in *Register of Admissions* but are not from the West Country are: Anthony Gulson of Howby, Leicester, admitted 1608; Mr Dennis possibly Henry Dennys of Eastborn, Sussex admitted 1609; Thomas White, lately of Clifford's Inn, of Clonmell, Ireland, admitted 1606 and Henry Fisher, St Clement Dane's Parish, London, admitted 1600.
[31] Sturgess, *Register of Admissions,* 37.
[32] C, Hopwood. *Middle Temple Records: Minutes of Parliament, Vol II* (London: Butterworth & Co, 1904), 479, 481, 488, 498, 501, 515, 516-517, 519, 538, 553.
[33] O'Callaghan. *The English Wits,* 10.

The members of the social group that gathered to share anecdotes and to participate in moots almost all share not only a geographic connection, but a sense of shared cultural identity that was linked specifically to their place of origin. Five of the tales given in the Joco Seria are directly related to Dorset or Dorsetshire men. In the first tale, titled 'Of Death', the opening line reads 'In Dorsetshire' before introducing the character named the 'Goldern Argentyne' who lived under 'Bell Hill'.[34] Bell Hill is one of the highest hills in the county and would have been familiar to a West Country audience. The tale titled 'Of ye knowledge that many have of yeyr end and the tyme' concerns Ellis Swayne's grandfather, Richard Swayne, who foresaw his own death and promptly returned home to put his affairs in order before dying at his appointed time.[35] The setting of the story titled 'Of Foxe that thought himself glasse' is 'magdelen colledge in D[e]von' and the tale 'Of Lidforn Lane' recounts a proverb that originated in the town of Lidford in Devonshire.[36] The tale titled 'Of Doctor Grey' describes the character of the same doctor that also featured in 'Of Death'.[37] Doctor Grey was based upon a real figure, that of Walter Grey of Bridport, Dorset. Dr Grey was buried in Swyre, Dorset in 1612 and was styled in the parish register as 'Esq. and Professor of Medicine'.[38] Bridport and Swyre are both close to the town of Strode, the home of Thomas Gallop.[39] South Perrott from where the Gibbes originated, Frampton where Robert Brown lived and Pimperne which was the home of Ellis Swayne were also close to Bridport.[40] It is likely that the author's social group either knew Dr Grey, or knew his reputation. The character of Dr Grey in the Joco

[34] CUL Dd.5.14, f. 70r.
[35] Ibid.
[36] Ibid., ff. 70v, 72r.
[37] Ibid., ff. 70r-70v.
[38] Hutchins, J. *A View of the Principal Towns, Seats, Antiquities, and Other Remarkable Particulars in Dorset. Compiled from Mr Hutchins's History of that County* (np: Gale Ecco, 2010)
[39] Google Maps, "Dorset", Accessed August 12, 2019: https://www.google.com/maps/place/Dorset Bridport and Swyre both approximately five miles.
[40] Ibid.; Bridport to South Perrott approximately 11 miles; Bridport to Frampton approximately 14 miles; Bridport to Pimperne approximately 34 miles.

Seria was greatly exaggerated, he carried a pistol about his neck, could divine death, led a gang of obedient yet troublesome youths and participated in the theft of gold plate from his dying clients.[41] The absurdity of these exaggerations suggests that the members of the group were indulging in an inside joke that only a Dorsetshire audience would fully appreciate. Within the Joco Seria we can clearly see distinct influences that are linked to geographic groups from outside of London who were bringing with them their own West County cultural experiences into the urban environment of Middle Temple.

Scholars whose interests lie in geographic or spatial influences upon member's literary output at the Inns of Court often focus upon the concentrated urbanity of London as the primary environmental generator of creative activity. Powell, in his argument for the existence of a common law mind, turned to the friendship groups of Bulstrode Whitelocke to find evidence of communal and legal group thinking. The politics of space spoke to the politics of identity, be that of the individual or the group. Powell wrote that 'The early Stuart Inns of Court were physical spaces as much as intellectual ones', and so it was these communal spaces, he argues, which shaped the professional, legal identities of society members.[42] Through the Minutes of Parliament it is possible to locate several members of the notebook author's social group within the physical spaces of Middle Temple. These records provide evidence that suggest these member's engagement with Middle Temple was serious and long-lasting, challenging popular notions that students who were associated with table talk, jesting and low-brow play viewed the Inns of Court as a mere finishing school, or a stepping stone on their way to

[41] CUL Dd.5.14. f. 70v.
[42] Damian Powell, "The Inns of Court and the common law mind: the case of James Whitelocke," in *The Intellectual and the Cultural World of the Early Modern Inns of Court*, edited by Jayne Archer, Elizabeth Goldring and Sarah Knight. Manchester: Manchester University Press, 2011, 75.

ambitious positions outside of the law. Ellis Swayne resided in the whole of a chamber on the first floor on the north side of the new buildings by Inner Temple Lane near the church towards the west. He was allocated a study, bedroom and woodhouse for life and one assignment after. The fine was only 20s, which was in consideration of what he has spent on the chamber. The lifetime allocation and assignment to what would presumably be a son or close relative, demonstrates that Swayne's relationship to Middle Temple and the legal profession was committed not only for his own lifetime but also that of the following generation. Further to this, Swayne was contractually comitted to undertake upkeep and even construction work upon his chamber equal to the amount forgiven from his admission fee.[43]

Inheritance of lodgings amongst family members was common at the Inns of Court, and so while the location of Thomas Gallop's chambers cannot be ascertained from the records, in 1640 his son was assigned a chamber in the 'New Building' near Pump Court. It is possible that Thomas Gallop also lodged in these chambers before passing them onto his son.[44] Robert Brown lodged in the Somaster and Moyle building which was built by Henry Somaster and Robert Moyle. [45] The building was 'on the land lying between Mr. Morris's chamber on the North and the garden of the Inner Temple on the south.' [46] This building was constructed specially to house West Country members. Once again, we can see the environmental impact of space and place upon the formation of social groups at Middle Temple. Mr Gibbes, who hosted a Joco Seria session over dinner, was greatly involved in building projects undertaken

[43] Hopwood, *Minutes of Parliament Vol II*, 632, 636, 646, 780, 795.
[44] Ibid., 898.
[45] Ibid., 482, 489, 629.
[46] Martin, *Minutes of Parliament Vol I,* 259.

at Middle Temple. On the 13th June 1608 messers Dale, Gibbes, Man, Haule, Swayne, Walrond, Wrightington and Overbury consulted on building matters at the Inn. In a parliament session held on the 18th June 1613 Gibbes and Swayne were in discussion on a new building project intended on the North side of the new building near Inner Temple Lane.[47] In 1613 Gibbes was also involved in the petition of a student concerning claims of ownership over chambers.[48] These building projects demonstrate that Gibbes and Swayne were financially invested in the growth and prosperity of Middle Temple, their contributions to the spatial expansion of the Inn was a legacy to future generations of law students. Many of the members who participated in the Joco Seria or modes of play typically associated with disruptive and disengaged students were in fact seriously committed to the future success and prosperity of Middle Temple. The commitment of these members was not only to Middle Temple, but also to the completion of their own legal educations. Of the twelve members identified in the author's social-group, seven of those were called to the bar: Ellis Swyane in 1614, Anthony Gulson in 1615, Henry Fisher in 1608, Robert Browne in 1614, John Gibbes in 1602 and Henry Clarke who was called to the Bar 1611 and was made master of the Bench in 1628 and also reader in 1628. Fifty eight percent of the author's social group were called to the bar, given that only fourteen percent of students at Middle Temple in total were called during this period, this marks those members who participated in the Joco Seria as being representative of the academic elite.[49]

[47] Hopwood, *Minutes of Parliament Vol II*, 576.
[48] Ibid., 574.
[49] From my own calculations of the 1609-1610 intake at Middle Temple. The fourteen percent figure is given by Wilfrid Prest in "Conflict, Change and Continuity", 84.

Place and space were fundamental factors in the formation of contractual fellowships at the Inns of Court, and the legal notebook provides us with the evidence to support this. Traditions associated with admissions and bindings brought together young men with shared geographical cultural identities to live, work and play together within the physical as well as institutional spaces of Middle Temple. Within the Joco Seria we can see not only the influences of the immediate urban space in which the notebook was composed, but also the wider influences of the member's home counties. They shared stories relating to the people and places that would be familiar to a group with a shared geographic background outside of London. The shared jesting that these members engaged in was low-brow, bawdy and at times libellous in nature, however, the Minutes of Parliament prove that these young men were in fact committed, serious members of Middle Temple that were amongst the academic elite.

These serious-minded law students, who joined frequently to share stories on subjects concerning idiots, criminals and bodily humour, prompt us to reassess our understanding of how these students mediated legal study and play. Many modern scholars read the accounts of a few prominent Inns men as being representative of the majority view towards play. In a speech given at Gray's Inn, Christopher Yelverton condemned play as a waste of time, believing that many 'consume the course of their youthful days in vain and fruitless studies only pleasing the present humour and feeding the daintiness of a wandering fantasy,'.[50] The Joco Seria where absolutely moments of play that pleased the present humour and which indulged in flights of fancy. Contemporary accounts such as Yelverton's are frequently cited by modern scholars as evidence of the division between serious law students and those that

[50] BL MS Add 48109, f. 12r.

preferred to play. There also persist ideas on the types of play that were suitable for Inns men to participate in. Prest wrote that 'Future lawyers and laymen alike saw their Inn as an elite academy, devoted to the cultivation of gentlemanly accomplishments and liberal studies, no less than to the common law', before highlighting the importance of dancing, revels, feastings and masques as being of an equal standing to readings and moots.[51] Prest's representation of acceptable play is of a more sophisticated sort than that found in this legal notebook. The Joco Seria were clearly not examples of gentlemanly or literary refinement, they were often lewd, many focus upon bodily humour and in several instances the stories appear to be no more than derivatives of common jest books.

How are we to reconcile these law students' serious academic status with their continued participation in the Joco Seria? Or to put it another way, how are we to place these participants of the Joco Seria within the oppositional model of 'learners' vs 'non-learners', or 'plodders' vs 'revellers', which is often presented by literary critics as being commonplace at the Inns of Court? The answer, I argue, is that we should not. These models of division amongst the student body are supported by the accounts of a few prominent members at the Inns of Court, however their views do not necessarily represent the attitudes and learning practices of the wider student body. The legal notebook examined in this chapter is an example of a serious working text that challenges the idea that serious-minded law students held themselves to be above disruptive or rebellious acts of play. From the notebook we see evidence of the ways in which environmental space and the institutional practices of Middle Temple encouraged the forming of social groups with shared geographic origins. Within these groups we see the creative and literary influences of their West Country backgrounds.

[51] Prest, "Conflict, Change and Continuity", 92.

Furthermore, we find evidence of committed and serious law students, the academic elite, whose engagement with bawdy play suggests that low-brow humour and table talk were not exclusive to the revelling classes at Middle Temple.

Shared Methodologies Between Legal Education and Play.

There is a shared methodology between the Joco Seria and the serious legal practices in the notebook that suggest a complex relationship between play and learning within this select social group. When comparing the author's records of moot exercises with the Joco Seria, we can see that the methodology, formatting and style between the two practices is nearly identical. The similarities are not restricted to the formatting and style in which these legal and playful sessions were recorded, but they also mirror each other in their practical and spatial execution. There is very little besides the content of their speech to differentiate between the way that they conducted sessions of moot exercises and sessions of jesting. The main title for the moots is 'Divers and uncertayne discourses del ley'.[52] The title of the moot cases that follow are aligned to the centre, at the top of the main text. These titles also provide information on dates, the names of the participants and occasionally the location in which the moots took place, for example: 'Moote case Feb: 27 1611 Per Mr Parker & Mr Townsend' or 'Le moote case en le mieu Temple March 5 1611'.[53] The title is then usually followed by a brief introduction of 'le case' in hand and 'le points' which are to be discussed in the moot. The moot then follows, with the text aligned to the right, leaving a generous marginal space to the left in which is recorded the names of the speakers and other miscellaneous notes. When the same speaker makes multiple points then 'idem' is annotated in the margin to

[52] CUL Dd.5.14, f. 3r.
[53] Ibid., ff. 6r, 29r.

signal their continued speech. Other annotations include Year Book numbers, dates and other small textual markers such as 'Per le statute', and finally comments on the points of law being argued. Although the title suggests that a moot is argued between two members, in fact many members contribute to the cut and thrust of the argument. In the moot case between Parker and Townsend there are also contributions from Mr Browne, Mr Lowe, Mr White, Mr Beerecraft, Mr Warnett and Mr Hutchins.[54] During this moot there are also instances of reply in which Mr White and Mr Beerecraft exchange short points of argument and case law back-and-forth.

The formatting of the moot debate in many ways resembles dialogue within a play manuscript. The theme of the moot is structured but it is also open to the reactive and inventive arguments of present members whose contributions shape the flow and direction of the moot exercise. The moot exercises within the notebook are recorded as taking place over several years. The moots on ff. 119v-135r take place at regular intervals from March 1611 to December 1614.[55] It must also be noted that the moot cases deal in hypotheticals, the points of law and ruled cases they bring into the argument are real, but the moot case itself deals with a fictional situation. Within these hypothetical cases there are conventional fictional props that are commonly used, such as 'Black Acre and White Acre' to represent lands in a hypothetical property dispute. An advantage of hypothetical cases is that they also allow for participants to argue around situations that are often absurd in order to test the limits of the law. Moot cases were serious and vital communal exercises in the arguing and application of law, they offered members opportunities to apply their learning in mock cases,

[54] Ibid., ff. 6r-7v.
[55] Ibid., ff. 119v-135r.

to test their memory and their understanding of law, and to hone skills of oratory and rhetoric in the immediate and often pressured moment of legal argument, but they were also exercises of fiction.

The Joco Seria are titled 'Joco Seria of Divers Subjects', echoing the title given to the moot exercises in the notebook.[56] The titles of the individual Joco Sera are arranged in the same manner as the moot exercises, that is, aligned to the centre of the page above the relevant body of text. These titles provide the name of the speaker as well as other members who were present, the date and the location of the story telling session such as 'By one Mr Clarke at Mr Gibbenses att dinner Feb: 7th 1611 compleate' and 'By Mr Robt Browne the 7th of April in the ye Temple Garden to younge Mr Bull & my selfe', although the majority of the Joco Seria are headed only by the title of the story.[57] The main body of the text for the Joco Seria is aligned to the right, leaving the left-hand margin free for annotations. These annotations are largely the names of the speakers, but they also provide information on dates, locations and present members in lieu of the title. There are also annotations commenting on the theme of the story, such as 'Audaces fortuna iubat' or 'Mr Gallop: Good souldiers against yeyr wills'.[58]

The tales within the Joco Seria are grouped thematically, with each consecutive speaker delivering a story that contributed to or expanded upon that theme. For example, the first five tales are on the subject of death, which are told within the chamber of Ellis Swayne on the 27th of November 1611 with Anthony Gulson, Richard Grovesley and the author of the

[56] Ibid., ff. 70r-75v.
[57] Ibid., ff. 74v.
[58] Ibid.

notebook being present.[59] The title of the first story, as told by Ellis Swayne, is 'Of Death' which describes a wealthy man who, feeling unwell, sent for Dr Grey who diagnosed imminent death, and within quarter of an hour the wealthy man had died.[60] With this story the theme of the session is established, and the same characters and events are expanded upon in the tales that follow. The next story, titled 'Of ye knowledge that many have of yeyr end and the tyme' is annotated with 'idem et eode temp' indicating that this story followed immediately after 'Of Death'.[61] This tale is brief and concerns Ellis Swayne's grandfather who predicted his own death and then shortly afterwards died. The next story, marked as being 'By Richard Grovesey at ye same tyme & place', is only six lines in length and recounts the story of a man who put his legal affairs in order before shutting himself in his room with a bible before promptly falling dead.[62] The next story is given by Anthony Gulson at 'ye same tyme' and describes a fit and healthy ninety-two year old man who, predicting his own death, got his affairs in order before sitting down in a wainscot chair to die sitting upright.[63] The final story of this session, told at the same time and place, is once again given by Ellis Swayne and is titled 'Of Doctor Grey' – the story is longer than the others at fifty-nine lines, and tells the story of Dr Grey who predicted the death of a local duke, swindled him out of his plate, beat a pedlar with the handle of his dagger, stole his cloak and was at length taken before the magistrate before making his escape.[64]

Each speaker who gave a story at this session was working within the established theme of death, they told stories that were very similar and yet each member was adding details and

[59] Ibid., f. 70r.
[60] Ibid.
[61] Ibid.
[62] Ibid., f. 70v.
[63] Ibid.
[64] Ibid.

embellishments to create new tales. There was an element of reactive and creative competition between these men as each story appears to outdo the last in inventiveness and humour before Ellis Swayne closed the session with what is, arguably, the most absurd and entertaining story of them all. With the Joco Seria we have a select group of lawyers gathered in a single location within Middle Temple, they establish a theme and then each member contributes reactively and inventively to the story-telling session. Some of the stories may have been recounted from memory, which is the case later in the Joco Seria when a story relating to the theft of a brood goose is also found in jest books of the time, such as the previously mentioned *A Hundred Mery Tayls* and *The Jests of Scogin.* Other stories are recounted form personal experience, and others are evidently the result of spontaneous invention. Here the social group have come together to share stories, but they are doing so in a manner that closely mirrors their mooting practices. The Joco Seria, like the moots, also take place over a sustained period of time, from the first tale which is dated the 27th November 1611 through to the 22nd July 1612. These sessions of play recorded in the notebook are not a single spontaneous moment but were a structured and organised series of meetings that took place over an eight-month period.

The author of the notebook recorded these Joco Seria using the same method that he used to record the moot exercises, he gave the Joco Seria a nearly identical title to the legal parts of the notebook, and his placing of the Joco Seria within his legal notebook, alongside serious legal studies and records of moot exercises, suggests that he viewed the Joco Seria as serving a similar function to the legal content. The Joco Seria do not deal with points of law, but they are opportunities for these men to gather in a less formal setting to engage in playful yet structured sessions of competitive storytelling, where they could practice skills of argument,

memory, invention, oratory, rhetoric and also wit. These skills would have been essential to those aiming at a legal profession.

Shorthand.

Another methodological similarity between the legal parts of the notebook and the Joco Seria is the use of shorthand. During the years in which the legal notebook was composed, there were three systems of shorthand in use. Timothy Bright's 1588 *Characterie; An Arte of Shorte, Swifte and Secrete Writing by Character* was grounded in the classical tradition of shorthand.[65] Modelled on 'Cicero's invention' (which is now attributed to his secretary Tiro), Bright's system of characters would allow a person to record 'orations, or publike actions of speech…verbatim.'[66] The characters, some five hundred in total, had to be learned 'by heart'. Such a system was labour intensive and limited to the words found in Bright's table. In 1590 Peter Bales wrote *The Writing Schoolemaster* or *The Arte of Brachygraphie*, that was designed to record 'divine or humaine knoweldge' and was aimed at students of 'Divinitie, Phisicke, Law, or Philosophie' and 'men of state'.[67] This system relied on the student referencing a large table of words arranged alphabetically, from which they would find the appropriate symbol to represent the first letter of the word they wished to write, and from there affix 'tittles' and 'pricks' in one of twelves places around that character to complete the whole word. This system allowed for far greater flexibility when compared to Bright's, but once again relied up the student possessing a prodigious memory and was limited to the words listed in Bales' table.

[65] Timothy Bright, *Characterie; An Arte of Shorte, Swifte and Secrete Writing by Character, Invented by Timothie Bright, Doctor of Phisike* (London: John Windet, 1588).
[66] Ibid.
[67] Peter Bales, *Writing Schoolmaster* (London: Thomas Orwin, 1590).

For a lawyer in training who had to navigate the complex language of law in English, Law French (which itself was a uniquely legal language) and occasionally Latin, the limitations found in both Bright and Bales's systems of shorthand presented many problems. It is perhaps for these reasons that the author of the notebook used the John Willis system of shorthand. First printed in 1602, Willis's *The Art of Stenographie* was a phonetic system in which words were abbreviated and then expressed first through a great character, which stood for the first phonetic syllable, and then a by a series of small characters, tittles and pricks which were affixed to that great character in order to complete the word.[68] In the preface to the first edition Willis argued that his system of 'speedie writing' was 'necessarie, for the noting of Sermons, Orations, Mootes, Reportes, Disputations and the like', making a particular note that his system was concerned not only with English words but also 'any other tongue'.[69] If a word could be spoken, it could be written in Willis's shorthand. The nature of his system could even allow for the writing of nonsense words.

The notebook's author used Willis's system of shorthand to write in several languages. The primary usage of shorthand in the notebook was for the recording of legal notes in Law French; however, the author of the notebook also used shorthand to record the final two Joco Seria, given in English by Mr White on the 22nd July of 1612.[70] Mr White's anecdotes were recorded by the author using a system that was specifically designed for state business; this shared methodology between the immediate recording of legal discourse and the recording

[68] John Willis, *The Art of Stenographie, teaching by plaine and certaine rules, the capacitie of the meanest, and for the use of all professions, the way of compendious writing. Whereunto it is annexed as very easie direction for stegan'ographie, or, secret writing* (London: W. White, 1602).
[69] Ibid.
[70] CUL Dd.5.14, f. 75v.

of Joco Seria suggests that the author saw communality between legal exercise and play. The first instance of shorthand in the notebook appears on ff. 38r-39r where there are written notes, in shorthand, on the statute of 31 Elizabeth.[71] Immediately following this, on ff. 39v-48r are a series of notes on divisions, once again in shorthand.[72] The marginal notes to accompany these passages, including referencing to the Year Books, are also written in shorthand. The second sustained use of shorthand to record Law French is on ff. 124r-125v.[73] Here there are notes on ten separately titled moot cases that are individually dated as taking place from the 18th of July to the 20th August 1612. These ten cases in shorthand appear chronologically in the middle of a larger collection of moot cases that are written in Law French. The moot cases as a whole are dated from the 17th March 1611 (at Middle Temple) on f. 119v to the Hilary Term of 1613 on f. 128r.[74]

Given that Willis's shorthand system allowed for the exact and direct writing of any language, one would assume that these ten passages of shorthand would, essentially, be phonetically close to the moots in Law French that are written using the Roman alphabet. That was, after all, how Willis intended the system to be used. And yet, direct comparison between the moots written in shorthand and those written using Roman letters reveals an unusual mixing of languages. In the shorthand, articles, demonstratives, prepositions and other function words are expressed with characters that signify an English rather than French pronunciation: 'Le' is written with the character for 'th', 'si' is written with the defective character 'wthith' for 'whither', 'de' is expressed with an 'o' to signify 'of', and words such as 'that' and 'which' are

[71] Ibid., ff. 38r-39r.
[72] Ibid., ff. 39v-48r.
[73] Ibid., ff. 124r-125v.
[74] Ibid., ff. 119v-128r.

written with defective characters ‘T’ and ‘W’ signifying English rather than French pronunciation. This is significant as while many words in Law French are often written in English such as ‘Black Acre et White Acre’, ‘le Wednesday en le premier Sept’ or ‘le second lease’, articles and function words were always written in French. Another instance of English being used to express French words can be found in a small marginal note: Throughout the various moots written in Law French there is the frequent annotation in the margin ‘Le premier point’, however in shorthand this is written with the characters for ‘th f pnt’ or ‘the first point’.[75] In working through the shorthand characters there are more characters signifying English pronunciations of words than there are French.

Why did the author of the notebook choose to express French words with English sounding characters? It is likely that the shorthand in the notebook was used as intended, that is, to record speech at the time it was given and not later from memory or copied from a text. One argument for the author’s use of English sounding characters may be explained by the need to maintain writing speed. The system would have been learned in English, and characters that stand in for the most common function words would become second nature to the author, and thus is would make sense for him to express those common words using the same symbol, no matter the language being used. Thus, Willis’s shorthand system was multilingual in a variety of ways, first by its ability to express the phonetic sounds of any language, but also by the ability of common character arrangements that are sounded in English to function as the same word in any other language. In this way ‘th’ *becomes* ‘le’ and is to be read back that way. This may simply have been the author’s own personal methodology for writing Law

[75] Ibid., f. 124v.

French using shorthand, or perhaps it was the work of a novice who had not yet achieved the fluency needed to write in other languages.

This amateurism is also hinted at by the number of crossings out throughout the readings and the moots that are written in shorthand, and also by the occasional slip into the use of Roman letters on ff. 46v-47r to record Latin terms.[76] The experimental nature of the shorthand is further evidenced by its limited use within the notebook. Only a small part of Mr Benn's reading is taken in shorthand, and the author quickly return to Roman letters to complete the task. The same can be seen with the moot exercises that extended over a period of several years. Midway through that period of mooting the author spends almost a month working exclusively in shorthand before reverting back to writing Law French in Roman letters. From the use of shorthand we can also infer that the notebook was being taken into readings and moot exercises to be used in the moment that speech was delivered, and so the notebook was not only an object in which points of law were retrospectively jotted down, but was actively used as part of reading and moot exercises to hone the auxiliary art of stenography, a skill that is still used in courtrooms today.

Jurisprudential Themes Within the Joco Seria

Here the chapter now turns to examine a series of Joco Seria that are related to overtly jurisprudential themes. I argue that many of the Joco Seria were directly related to the study of law, not only methodologically but also thematically. In the telling of these stories the notebook's author and his social group did not only practice argument, oratory and the

[76] Ibid., ff. 46v-47r.

recording of legal discourse but they also engaged with wider themes such as legal philosophy, criminality, law, justice and equity which would have been just as important to their legal professional development as learning law. The first two of these stories are short and centre on the theme of execution. 'Of Lidford Lane' recounts a proverb that is linked to the town of Lidford, Devon, that reads 'Hange him first & judge him afterwards'.[77] This is immediately followed by a tale titled 'Of Hallifaux', told by Mr Clotworthy, which describes a guillotine device known as the Halifax gibbet. Its use was described thusly: men, who 'any fault committed in veine deserving death', were put 'upon a block with a pully pullainge up a thinge like ye gron of an axe they let it fall againe & cut of there heade.' [78] The pairing of this story with 'Of Lidford Lane', in which judgement is said to have been passed after execution, might suggest that Mr Clotworthie viewed the Halifax gibbet as being a harsh and unjust method of punishment. The gibbet law, of which Halifax was famous for practicing, was described by William Bently in his 1761 *Halifax and its Gibbet Law placed in a true light*, as being 'by some persons in that age, judged to be too severe'. [79] According to A. V. Judges the law in Halifax was a relic of an ancient Anglo-Saxon custom in which 'Sixteen jurors, selected by the four local constables, recorded in writing their verdict of the guilt of the accused; and further without the intervention of a magistrate, they gave their "determined sentence"', meaning that accused men were summarily executed without trial, often on the same day or following market day.[80]

[77] Ibid., f. 72v.
[78] Ibid.
[79] Samuel Midgley, *The History of the Town and Parish of Halifax* (Halifax: E. Jacobs, 1789) ,417.
[80] A. V. Judges, ed. *The Elizabethan Underworld – a collection of Tudor and Early Stuart Tracts and Ballads* (London: Routledge, 2002), 59.

These anecdotes, relating to real and ongoing methods of execution, would have been of primary interest to men whose professional mindset was rooted in the common law. Proponents of the superiority of the common law drew authority from the ancient origins of those laws, arguing that unjust or faulty customs would be abandoned by societies who recognised their redundancy. The Halifax gibbet law seems to be the exception that proved the rule - it was an ancient custom that somehow survived the test of time, but that custom was considered unjust and excessive by society and was eventually abolished thirty-nine years later in 1650. The law students, in discussing the Halifax gibbet through the Joco Seria, may have been expressing the overall tone of public opinion concerning summary beheadings for petty theft in those decades leading up to the abolition of that law, but it is also worth noting that they themselves, as future lawyers, judges and members of parliament would have been in positions later in their careers where they themselves could directly contribute to the abolition of such laws.

The next Joco Seria to deal with a legal theme is titled 'Of wearing gold and silver' and is a remarkable tale in which the resolution to a debate in parliament concerning sumptuary laws is proposed through a clever use of precedent.[81] The tale recounts an argument raging in parliament about the wearing of gold and silver, with some arguing for punishment and others to let people wear whatsoever they pleased. A man called Martin is said to have 'told this pretty history' in which a king, not having absolute power to raise and army, instead passed a law in which any man can call another a coward if he failed to do his duty by his king. Thus, by passing this single law the king was able to compel men to freely join his army. Had he passed a law that forced conscription to his army then he would have met with resistance.

[81] CUL Dd.5.14, f. 73r.

This precedent, Martin argued, could then be applied to the matter of wearing gold and silver. Instead of passing complex sumptuary laws, parliament should simply pass a law that allows one man to call another an ass, thus compelling men through shame to put off the wearing of gold and silver. This tale is amusing and witty, but also touches upon political and jurisprudential matters concerning the authority of kings and parliament to pass laws on the common law power of precedent, on the varying complexities of law and the power, or indeed the lack of power, of those laws to compel men to a course of action in which notions of right and wrong are contested. Should we read this tale as an example of clever legislation, or perhaps as a mockery of law makers? This tale at once introduces a variety of serious and complex legal issues, and then playfully resolves them with a clever albeit absurd solution, marking this tale as an excellent example of *joco* and *seria*.

This tale is followed by two more Joco Seria in which thieves are discovered through clever means of detection. The first of these is titled 'Of a poore woman that had lost her brood goose' in which a woman, whose goose had been stolen, petitioned the parson of the parish to help her recover it.[82] He assured her that he would take the matter in hand and on the following Sunday brought a stone with him to church which he showed to the congregation, telling them that 'he would nowe throw the stone at him that did it', causing the culprit to duck down in his seat. The tale ends with the goose being restored to the rightful owner. This tale is nearly identical to one that appears in the 1567 jest book titled *A Hundred Mery Tayls*.[83] In this version, titled 'Of him that had his goose stole' the victim is a man who petitions the local curate to help him retrieve his stolen goose, and so during the Sunday service the curate

[82] Ibid., f. 73v.
[83] *A Hundred Mery Tayls,* np.

bade everybody to sit down, and when they were sat he berated them for not sitting. The congregation protests that they are sitting, to which the curate replies 'he that stealeth the goose sitteth not' to which the thief angrily retorts 'yes that I do'. This tale appears to be the inspiration for the Joco Seria, although the Joco Seria contain several changes and embellishments. The tale in the notebook is longer than the jest book version, with slightly more emphasis given to describe the petition for aid. The male victim has been changed to a female one, perhaps to better suit the humour of an all-male Inns of Court audience, and the parson's trick changed from a somewhat unbelievable application of reverse psychology to a threat of violence. The pleasure derived from both stories is the clever means by which the parson discovered the culprit, and the equitable ruling that follows as the thief is charged with returning the goose and nothing more.

This same theme is repeated in the story that follows, told by Thomas Gallop at the same time and titled 'How a master found that a servant had stolen from him' in which a master detects a thief by gathering his household together and informing them that the culprit has a feather on his nose, to which the thief quickly moves his hand to wipe the feather away.[84] These stories are playful and somewhat ridiculous, involving an unlikely yet successful trick to identify a criminal, culminating in the administration of justice. When this tale is compared to 'Of Halifax', relating to a law in which the accused were executed without trial, these stories demonstrate the application of sound judgement and a fair resolution. The jurisprudential nature of these stories would not have been solely of interest to those in the legal profession, but they are clearly tales in which those whose occupation lay in the administration of justice would take particular pleasure. These tales, in a more serious vein, also advocate for equitable

[84] CUL Dd.5.14, f. 73v.

rulings and a flexibility of judgement that was often frustrated in the common law courts. These tales evidently suggest that these common lawyers in training saw value in a balance between the common law and equity.

The final set of Joco Seria that centre around legal themes are told in the Temple garden between the author of the notebook, Robert Browne and Mr Bull on the 7th April 1611. Unlike the previous stories, which focus upon figures in authority, these five short stories are all from the perspective of criminals as they face execution or corporal punishment. The first story involves a Welsh man who refused to be tried by God and his country, arguing that it was because they might hang him, and so he instead insisted upon being tried by the twelve apostles. The judge, stating that the apostles would not present themselves in court, is told by the Welshman that he would happily wait until they did. [85] The second story involves a man who, having been sentenced to having his hand burned, quips that he felt very well as the hand to be burned was his 'stone hand' or clumsy hand, implying his good hand has been spared for future acts of thievery.[86] Both of these stories take delight in foolish wit, but that delight is modulated by harsh reality as although the criminal may have the last word, that cannot save him from torture or death. The third story involves a man who was sentenced to hang for stealing a mare, complaining that he was to die for the sake of a two-penny halter as the mare itself was worthless.[87] Here the thief's lamentation revisits the theme of excessive punishment as he briefly muses on the tragedy of dying for such a paltry sum. The fourth story concerns a man in a cart on his way to Tyburn to be hung, he sees a friend at the roadside and tells him that he hoped to be shot in the neck with an arrow. His friend, mishearing 'arrow'

[85] Ibid., f. 74v.
[86] Ibid.
[87] Ibid.

for ‘narrow’ laments that had the rope been wider then his friend would not have been hung.[88] The mistake is amusing, but uncomfortably so as a man begs a friend for a speedy dispatch from his suffering only to be denied mercy by a misunderstanding. The long drop was not in use during the early modern period, and so hanging was a slow death by strangulation. The final story, marked as being told by Mr Bull, involves a man who was willed by the judges to give thanks and pray to the king. The condemned man says that he would happily give praise to the king but will not give praise to those that caught and tried him.[89]

In all these stories the criminals are witty and sympathetic characters whose good-humoured attempts at avoiding punishment, or their jesting with judges, are doomed to failure. The humour in these tales is remarkably dark and these playful stories are closer in tone to *joco-tragica*, with the comedy being painfully situated within a brutal setting. The jesting nature of these stories are unlike the more serious tone found in ‘Of Halifax’, in which a method of execution is described in cold detail and framed by themes of injustice. Here the tales are light, and although they engage with themes of justice and punishment, they do so in a manner that is more on the side of ‘*joco*’ than ‘*seria*’. The law students’ views on capital punishment cannot be clearly inferred from these tales, they may have been appalled by it or they could equally have been ambivalent. Unlike Thomas More in *Utopia,* they do not directly present their personal view on the subject, however, what these tales demonstrate is that they had an interest in criminals, they presented those characters sympathetically, they delighted in tales in which equity and fair judgement prevailed, and they had previously discussed execution within the context of unjust rulings. The social group may have been

[88] Ibid., f. 75r.
[89] Ibid.

joking about the fate of criminals, but that jesting is mediated by serious discourses concerning the morality of penal law.

The social group that participated in the telling of these stories were evidently interested in exploring wider jurisprudential themes, and the playfulness of the Joco Seria allowed them to approach those themes from a variety of perspectives. The stories range in tone from serious to silly, and the telling of these tales allowed those members to be inventive and competitive while doing so. The playful nature of the Joco Seria does not discount them from being serious or intellectual acts; there is wisdom in folly. Joel Altman argues that there existed within the play and drama of early modern England a strong tradition of rhetorical enquiry that allowed author and audience alike to explore fundamental questions concerning love, justice, sovereignty and nature.[90] The origins of these dramatic and playful acts of inquiry were, Altman argues, rooted in the study of formal rhetoric. The same intellectual grounding can be seen within the Joco Seria: their structuring around moot style arguments mirrored that of formalised academic debate. There is a frequent shifting of viewpoint that allowed the participating members to share anecdotes that were *in utrumque partem,* on both sides of the question, as can been seen in the Joco Seria that are told from the varied perspectives of law makers, victims and criminals. The themes of the stories are concerned with justice and equity, but also injustice and excessive punishment. There are tales that sympathise with both victim and perpetrator, stories that laud lawmakers and stories that view them with scepticism or outright hostility. Through the stories that deal with jurisprudential themes we can see the diverse nature of play within the social group as they participate in a social

[90] Joel. B. Altman, *The Tudor Play of Mind: Rhetorical Inquiry and the Development of Elizabethan Drama* (London: University of California Press, 1978), 2.

performance that was grounded in both legal and humanist traditions of discourse, and in which themes of justice, law and equity were explored via a methodology that was at once serious and ludic.

The Joco Seria as Restorative Play.

In examining the balance between serious exercise and play within the Joco Seria, the focus has mainly been upon the legal and professional functionality of the Joco Seria, their shared methodology with mooting, or with their serious moral engagement with jurisprudential themes. This chapter now turns to examine the playful, joyful and sometimes bawdy side of the Joco Seria, suggesting that the social group of law students did not participate in jesting for entirely serious purposes, but also as an escape from the pressures of their legal educations. The jesting and table-talk in which they participated have commonly been viewed by modern Inns of Court scholars as rebellious or even violent in nature.[91] In Winston's study on lawyers and play she highlights certain types of play activity that worked in opposition to learning, such as flyting, libels and contests of wit with intent to ridicule.[92] Table-talk, jokes and witty tales at the expense of others are marked by Winston as combative and disruptive to the community, even suggesting they may inevitably overspill into physical violence.[93]

The Joco Seria contain jests at the expense of many contemporary figures including Richard Mulcaster, John Foxe, Walter Grey and Edward Bande. O'Callaghan also touches upon the violent nature of speech acts as ritualised forms of verbal aggression, comparing bawdy table

[91] See David Woolley, "The Inn as a Disciplinary Body," in *History of the Middle Temple,* ed. Richard O Havery (Oxford: Hart Publishing, 2011), 343-344.
[92] Jessica Winston. *Lawyers at Play,* 20.
[93] Ibid., 18.

talk like these with arenas in which social competence is formed.[94] The Joco Seria are filled with bodily humour, libels, competition and jokes at the expense of real people, however the violence observed by Winston and O'Callaghan in other play activities within the Inns of Court do not appear to be present in the play acts of this group. The men who participated in these jesting sessions were likely good friends and they came together in both private and public areas within Middle Temple to dine and share jests, stories and libels as part of a friendly competition rather than as acts of ritualised aggression. The kinds of play activity described by Winston and O'Callaghan are harmful, while the Joco Seria, I contend, appear to have more in common with early modern theories on the moral and restorative powers of play. By participating in the Joco Seria, the social group sought to inject a measure of balance into their educational lives, to offset the strain of legal education with play so that they could continue to function as healthy and productive law students. The kinds of play present within the notebook suggest a far more complex and nuanced style of play being practiced at the Inns of Court, a play that assumed a disruptive or violent form, but was modulated to be a restorative and uplifting experience.

The restorative value of play was especially important when it was applied as a preventative and a cure for melancholy, an ailment that was commonly associated with scholars and those in pressured learning environments. The figure of the scholar as an isolated and depressed figure was popular; early modern depictions of St. Jerome, such as Pieter Coeke van Aelst's 1530 *St. Jerome in his Study,* frequently portray him as solitary and deeply melancholic. He appears hunched over books and parchment, his hand holding a stylus or pen knife, his face gravely set, and he is often depicted as working late into the night by candlelight. St. Jerome

[94] O'Callaghan, *The English Wits,* 30.

personified the most dedicated of scholars, perhaps even an ideal, and yet his depiction was also one that invoked a sense of deep melancholy and isolation. Many depictions of St. Jerome contrast his solitude with scenes of community, as in Aelst's painting a window is placed behind Jerome, in which the viewer can see a town in the distance and people gathered around a river. Any student, now and then, who is engaged with a prolonged period of study understands a need for balance between work and play. Robert Burton, in his *The Anatomy of Melancholy* (1621), placed overmuch work and isolation as one of the chief causes of melancholy. Burton's opening verse in *The Anatomy,* titled 'The Author's Abstract of Melancholy', cautions against the dangers of solitude:

> When I lie waking all alone,
>
> Recounting what I have ill done,
>
> My thoughts on me then tyrannise,
>
> Fear and sorrow me surprise,
>
> Whether I tarry still or go,
>
> Methinks the time moves very slow.
>
> All my griefs to this are jolly,
>
> Naught so mad as melancholy.[95]

Timothy Bright's treatise on melancholy, printed in 1598, described melancholic humour as 'gross and earthie, cold and drie' and yet in balance necessary to the maintenance of life.[96] Something could be unpalatable to the sensibilities and yet still be healthful in moderation.

[95] Robert Burton, *The Anatomy of Melancholy* (Memphis: General Books, 2017), 8.
[96] Timothie Bright, *A Treatise of Melancholie* (London: Thomas Vautrollier, 1586), 5.

In Bright's view, study and exercises of the brain were to be managed in 'great moderation', concluding that 'I will not now dispute whether vehement study, or disorderly perturbations is more to be taken heed of only take you no lesse care in the one then in the other'. [97]

Within the Joco Seria there are five consecutive tales that centre upon the theme of scholar's melancholy. They are: 'Of Melancholicke Conceyts', 'Of one that was perswaded that he was an owle', 'Of one yt pswaded himself yt his nose would not suffer him to goe out of his chamber', 'Of one that feared to drowne the world by pissinge' and 'Of Foxe that thought himself glasse'[98]. Within these tales both the cause and symptom of melancholy are overwork and isolation. In 'Of Melancholicke Conceyts' Mr Dennis tells the tale of one Mr Edward Band who, following a shock, confined himself to his chambers and 'lay in the glume' throughout the vacation period. Thomas Gallop and Mr Dennis bore witness to the event, stating that they had to summon a sergeant to break down Band's door with a halberd, where they 'with grief' beheld their friend's awful condition. The cause of his melancholy, they concluded, was 'to much study'.[99] In the next tale, told by Gallop, overmuch isolation manifested itself as a pathological disorder as a scholar of Corpus Christi College, believing himself to be an owl, became terrified of leaving his room and mixing in company lest he should be attacked.[100] Another scholar, this time of Brasenose College, Oxford (the same college Gallop attended), suffered from a form of body dysmorphia and again refused to leave his chambers, until the wit and intervention of his friends cured him of his mania.[101]

[97] Ibid., 5.
[98] CUL Dd.5.14, ff. 71v-72r.
[99] Ibid., f. 71v.
[100] Ibid.
[101] Ibid.

The theme of wit and friendship as a cure to melancholy occurs many times within the Joco Seria. In 'Of one that feared to drowne the world by pissinge', as told by Gallop, a scholar succumbed to delusion by believing that were he to urinate then the flow would never cease, and the world would be drowned.[102] His suffering was cured through the clever intervention of friends, who tricked him by claiming that the city was on fire and that his ceaseless flow of piss was needed to douse the flames. The scholar fled from his rooms into the city, and on discovering that his urination was finite was cured of his disorder. The tale is bodily and low-brow but it communicates an important lesson in which a scholar was drawn, by his friends, from the isolation of his chamber and tricked into entering the communal space of the city where he was returned in both body and mind to proper health. The longest and most elaborate tale on the theme of melancholy is 'Of Foxe who thought himself glasse', again by Gallop, in which Foxe suffered from a form of melancholic mania known as glass delusion. Foxe, while at college in Devon, through 'greatness of study became melancholicke', which caused him to believe that he was made of glass.[103] So 'deeply was he oppressed with that humor' he shunned the company of friends and hid in his chambers. An occasion of mania caused him to flee his chambers into the gardens, where he met a friend who tried to embrace him, causing Foxe to cry in shock believing he might shatter. Sensitive to Foxe's condition, his friend gently led him back to his rooms, suggested that he lay in a feather bed and rest, and under the watchful eye of his friend Foxe soon became well again. The theme of the story is that of madness caused by study, and the role of communal spaces and the actions of friends in the restoration of health. In each tale insolation and overmuch study are portrayed as

[102] Ibid., f. 72r.
[103] Ibid.

unhealthy and oppressive and community, friendship and wit serve as healthful remedies to serious afflictions of body and mind.

The use of glass delusion within the Joco Seria points towards a wider public and cultural discourse of melancholy and scholarship in the early modern period. First believed to be suffered by King Charles VI of France, who wrapped himself in a blanket to prevent his buttocks from shattering, the popularity of glass delusion soon spread to become *de rigueur* amongst the wealthy, educated classes.[104] It was often seen as an affectation of martyrdom to the scholastic cause. Writers of medical treatise and literature alike expressed a fascination with glass delusion. Burton wrote on the subject in *The Anatomy of Melancholy*, along with the dangers of other fantasies, in the chapter titled 'Causes of Head-Melancholy':

> Fear of devils, death, that they shall be so sick, of some such or such disease, ready to tremble at every object, they shall die themselves forthwith, or that some of their dear friends or near allies are certainly dead; imminent danger, loss, disgrace still torment others, &c.; that they are all glass, and therefore will suffer no man to come near them: that they are all cork, as light as feathers; others as heavy as lead; some are afraid their heads will fall off their shoulders, that they have frogs in their bellies, &c. [105]

The similarities between Burton's list of symptoms and the manifestations of melancholy in the Joco Seria are striking. Other contemporary accounts mention the same delusion, such as the glass man Tactus in the academic English play *Lingua* (1607) by Thomas Tomkis. Tactus is

[104] See G. Speak, "An odd kind of melancholy: reflections on the glass delusion in Europe (1440-1680)," *History of Psychiatry* Vol 1, Issue 2 (2016): 191-206.
[105] Burton, *The Anatomy of Melancholy,* 8.

introduced to the audience *solus,* and laments on his own mania. Once the character Olfactus enters the scene Tactus raves:

> 'I sawe my fingers neere transsform'd to glasse, Opening my brest, my Breast [sic] was like a windowe, Through which I did plainly perceive my heart'.[106]

Olfactus replies to this 'See the strange workings of dull melanchollie… Making some thinke their heads as big as horses, some th'ar dead, some th'ar turned to wolves: And now it makes him thinke himselfe all glasse.'[107] Here we see similarities with Gallop's account of John Foxe, who stood in the moonlight and marvelled at himself, believing the light to be passing through his body.

The sufferers in the Joco Seria are all scholars at college or Middle Temple, they endured long periods languishing in bed, they imposed isolation upon themselves, they feared contact with others lest they shatter or die, they suffered bodily delusions such as big heads, large noses, infinite piss and thinking they were another species. This melancholy of the head was considered unique to scholars, a malady that was directly caused by study and isolation. Foxe's reputation as an obsessive scholar who ruined his health through book learning made him an ideal subject for Gallop to use in his story.

Leading pedagogues of the period advocated balance and health in body and mind for their students. Richard Mulcaster, the famous pedagogue and headmaster of the Merchant Taylor's School (who was himself the subject of a tale in the Joco Seria) authored *Positions,*

[106] T. Tomkins, *Lingua or Combat of the Tongue and the Five Senses for Superiority* (London: G.E LD, 1607) I. 7. 34-36.
[107] Ibid., I. 7. 51-59.

Wherin Those Primitive Circumstances Be Examined, Which are Necessarie for the Training up of Children, Either for Skill in Their Booke, or Health in Their Bodie, in which the importance of physical exercise and balance of body and mind are stressed.[108] Erasmus wrote in the *De Pueris Insituendis* that to achieve the best results in educating children then study and play should be intermixed, with education itself being like a game, 'Such study may hardly be distinguished from play, and is a source of enjoyment to the child.'[109] Caution was advised , however, as to the medical and moral implications of play and pleasure. Just as overmuch study could result in an excess of melancholic humour, so too could play and pleasure similarly disrupt the humoral balance. To manage this balance, practitioners of medicine thus imposed regulations upon play. These kinds of play were structured into the student's academic life in order to release the pressures and burdens of scholastic life.

The implementation of balanced play with study was likely in the minds of the participants of the Joco Seria. The kinds of play they engaged in were not immediate moments of bacchanalian release but deliberately structured long-term sessions of play that operated alongside their academic studies. The Joco Seria had set thematic subjects and their method of play, in mirroring moot exercise, was practised within boundaries of proper scholastic conduct as well as in the spirit of friendly competition. Table-talk, jesting and libel in this case were not contrary to a proper and serious Inns of Court education, they were conductive to it. The group engaging in the exchange of anecdotes and jests within the legal notebook were maintaining a proper balance in their academic lives in which low-brow and bawdy kinds of

[108] Richard Mulcaster, *Positions, Wherin Those Primitive Circumstances Be Examined, Which are Necessarie for the Training up of Children, Either for Skill in Their Booke, or Health in Their Bodie* (London: Thomas Vautrollier, 1581).
[109] J. K. Sowards, ed. *Collected Works of Erasmus: Literary and Educational Writings - 3 & 4* (London: University of Toronto Press, 1985), 292-346; Erasmus, D. "De Pueris Instituendis", 202.

play promoted a healthy mind and body, which in turn allowed for sustained and serious periods of study to continue.

Conclusion.

Notebooks such as CUL Dd.5.14 are easily overlooked by Inns of Court scholars, the author is anonymous and there appears to be no direct connection to any well-known or noteworthy members of Middle Temple (although the inclusion of John Foxe and Richard Mulcaster in the Joco Seria and their perception among the law students at Middle Temple might be of interest to historians and biographers). The legal contents of the notebook are typical of many such notebooks found throughout archives and collections of legal manuscripts, consisting of moot exercises and copies of readings. The Joco Seria, being short passages of jests and anecdotes, have as yet been largely ignored by scholars whose interests are directed towards the more well-known literary and theatrical arts practiced at the Inns, such as verse, masques, revels and dramatic composition. Jesting and table-talk are often viewed as being disruptive modes of play and are often placed in opposition to serious legal study.

Within the notebook we can see recorded the names of men who participated in mooting exercises as well as organised social gatherings in which jesting activities took place. This chapter revealed that these social groups were united via an admissions process that bound together men who originated from the same geographic location, in this case the West Country. The influence of their shared cultural identity can be clearly seen throughout the Joco Seria, demonstrating that while the group was formed within the physical and institutional space of Middle Temple, there also existed among them a strong cultural influence relating to geographic spaces that extended beyond the concentrated urbanity of

London and the Inns. These members were not simply passing through the Inns, they were representative of an academic elite whose financial contributions to building works at Middle Temple, along with their practices of generational inheritance of chambers, marks them as having serious and long-lasting ties to Middle Temple. The shared methodologies between the legal practice of mooting and the social play activity of the Joco Seria reveal that the notebook was not only a record of the legal and playful practices of this social group, but that it was itself an instrumental object in both learning and play activities. Within the pages of the notebook the anonymous author could practice practical skills such as reporting, handwriting and shorthand along with the diverse languages needed for legal practice. The notebook was at the centre of both mooting and story-telling practices, and I argue that the law students, in their use of the notebook, perceived a professional communality between legal learning and sessions of structured play.

In turning to examine the Joco Seria in more depth, there can be found themes of a serious and jurisprudential nature, themes that deal with matters of law, justice and equity conducted in a manner that drew upon the student's formal grounding in rhetoric and academic debate. Furthermore, the act of play itself was a restorative act that relieved the pressures of legal study through balancing work and play, which in turn allowed the group to function far more effectively as law students. The notebook is evidence of a complex usage in which types of play that are commonly associated with disruption, violence and rebellion were in fact working to benefit the social group. Humanist styles of learning and play were deliberately performed in concert with established legal exercises. The Joco Seria were not a rejection of serious legal learning, but a continuation of it in a form that was restorative. Here we see that play need not take the form of a gentlemanly art for it to have a positive or

uplifting effect amongst its participants, and it need not be of literary or artistic merit for it to be of value.

It is through the study of anonymous and unassuming legal notebooks such as CUL Dd.5.14 that we can find evidence to broaden our understanding of law, learning and play at the early modern Inns of Court. Too often these notebooks are dissected by legal historians and literary scholars, who wish only to extract and examine samples of law or literature, which are then read in isolation, outside of the wider legal context of the notebook. Literary texts are frequently divorced from the legal setting of the notebooks in which they were written, and in doing so we lose the opportunity to study their legal and educative potential. Through the close analysis of the notebook as a whole textual object there emerges a wealth of information that can tell us not only how the notebook was written and used, but about the social groups who placed this notebook at the heart of their legal learning and play activities. Through the *Register of Admissions* we can clearly see the formation of contractual fellowships, but it is through the study of notebooks such as these we can see the *effect* of those administrative practices, how those fellowships came together to engage in moot exercises and to attend readings, how they socialised together within the physical spaces of Middle Temple to dine and engage in play activities. The notebook allows us to see how those contractual fellowships functioned. By attending to the methodologies used by the author in his treatment of learning and play activities within the pages of his notebook we can see striking similarities not only in the recording of these practices but in how play and education where collectively and formally structured within these distinct social groups.

Finally, our current understanding of the types of play that students engaged in is expanded upon. We can see the ways that these groups organised so-called 'disordered' modes of play so that they could practice skills that were essential to their future legal careers. These structured yet flexible play activities facilitated their engagement with serious jurisprudential matters, and it allowed them to practice skills necessary to the legal profession while simultaneously serving a restorative function. On the surface the Joco Seria appear to be derivative and low-brow, but they were in fact extraordinarily efficient, complex and carefully managed modes of play that were practiced within a social group that understood the serious and restorative value of play to maintain good health and to supplement their legal educations.

Chapter 4

Exemplary Figures: Sir James Whitelocke's Academic Commonplace Book.

Introduction.

At Cambridge University Library there is an academic commonplace book, shelf-marked CUL Dd.9.20, that belonged to the celebrated judge and antiquarian Sir James Whitelocke.[1] This commonplace book differs from those previously discussed in this thesis in that it has not been formally identified as a legal manuscript, and is listed in *A Catalogue of the Manuscripts Preserved in the Library of the University of Cambridge* as being simply a 'Common-place Book, written in the 17th century'.[2] On f. 1r, under the name 'Jacobus Whitelocke' is written in the same hand 'Librum hunc in duas divismus partes partes [sic] in prima de vita et moribus in secunda de natura et rebus occultis disseritur' or 'We have divided this book into two parts, the first part discusses life and death, the second nature and secret things'.[3] There is nothing on the title page to indicate that this commonplace book contains any legal materials, and a cursory reading of the commonplace book suggests that it is purely academic in nature. Whitelocke kept other notebooks specifically for the recording of legal matters. These include a notebook for records of moot cases at the Inns of Chancery and Middle Temple, a notebook for reports of cases at the Queen's Bench, an autographed law commonplace book and a family book titled *Liber Famelicus* in which he wrote extensively about his legal career.[4] With so many clearly defined primary legal texts available to researchers of Whitelocke, it is no

[1] CUL Dd.9.20.
[2] *A Catalogue of the Manuscripts Preserved in the Library of the University of Cambridge: Volume I,* 383.
[3] CUL Dd.9.20, f. 1r.
[4] CUL Dd.5.7, CUL Dd.8.48, CUL Dd.3.69.

great surprise that his academic commonplace book, with no immediate suggestion of legal content, has largely gone unnoticed by legal historians and biographers. Damian Powell, in his thesis on Whitelocke's *Liber Famelicus*, does discuss Whitelocke's academic commonplace book in some detail, however he treats the commonplace book as purely academic and distinct from Whitelocke's legal notebooks.[5]

Although the commonplace book is largely academic in nature, it also contains a sizable quantity of legal materials that deal with explicitly jurisprudential matters. The extracts within the commonplace book are mostly taken from Cicero's philosophical works, with many entries discussing legal themes alongside Cicero's autobiographical commentaries upon law and civic duty. Throughout his life Whitelocke composed many legal notebooks: in some he kept detailed records of cases and exercises at the Inns of Court and Chancery, including notes from the Year Books and abridgements, and in his *Liber Famelicus* he discussed law in a wider and more personal context. In this chapter I argue that Whitelocke's academic commonplace book should also be included among these legal notebooks, as a work in which Whitelocke was able to explore legal philosophy, morality and justice through humanist texts and via methodologies associated with humanist learning within the universities. Whitelocke seemed fascinated by classical figures and how they stood as exempla to those who sought to dedicate themselves to both the law and the commonwealth. It is through these exemplary figures that Whitelocke could reflect upon difficult jurisprudential themes through a unique methodology that reflected his parallel education at both St. John's College, Oxford and the Inns of Court. Whitelocke's commonplace book stands as important evidence of the diverse

[5] Damian Powell, "James Whitelocke's *Liber Famelicus,* 1570-1632." (PhD thesis, University of Adelaide, 1993).

ways in which he negotiated tensions between the common law and equity through a harmonious union of humanist learning and legal practice.

The Manuscript.

Whitelocke's academic commonplace book is paper, in folio, written in Latin and consisting of 580 pages. The manuscript was re-bound in brown leather in the eighteenth century and contains an armorial bookplate dated 1715. On f. 1r Whitelocke has written his autograph along with the previously noted title in which he divides the book into two parts: of life and death, and the nature of secret things.[6] This is Whitelocke's own rewording of Cicero's division of Platonic philosophy from Book I of *Academica,* which read:

> There already existed, then, a threefold scheme of philosophy inherited from Plato: one division dealt with conduct and morals, the second with the secrets of nature, the third with the dialectic and the judgement of truth and falsehood, correctness and incorrectness, consistency and inconsistency, in rhetorical discourse.[7]

Whitelocke's commonplace book is concerned only with two parts of Platonic philosophy, not three, which suggests that there likely existed another notebook that dealt with the third division. In Whitelocke's collection of papers, now archived at Longleat House, there is a fragmentary index from another commonplace book that is remarkably similar in both formatting and content to the index from CUL Dd.9.20. It is possible that fragmentary index

[6] CUL Dd.9.20, f. 1r.

[7] Cicero, *De Natura Deorum; Academica,* trans. H. Rackham (London: W. Heinemann, 1933), 429; Fuit ergo iam accepta a Platone philosophandi ratio triplex, una de vita et moribus, altera de natura et rebus occultis, tertia de disserendo et quid verum, quid falsum, quid rectum in oration pravumve, quid consentiens, quid repugnans esset iudicando.

belonged to the missing notebook. On each page of Whitelocke's commonplace book, including those pages with no additional content, there is a ruled header at the top of the page and a ruled margin on the outside edge of the page for annotations. Whitelocke provided his own foliation numbers on the outside top corner of the page. The foliation, along with paper type, arrangement of quires, formatting, contents pages and indices strongly indicate that Whitelocke was working with a blank paper book. There is no evidence to suggest the commonplace book was later collated from loose leaves. There is a complete index at the back of the manuscript, which is divided into two parts that is thematically in keeping with the two-part division noted on the title page. Although unfinished, the commonplace book still has a large amount of material written into its pages, material that is representative of a substantial amount of work carried out over a significant time period. This style of notebook composition was in keeping with Whitelocke's other legal notebooks, which were always works in progress, to be used and added to over many years, and so were never 'completed' texts. Whitelocke had conceived the content and direction of his commonplace book from the start. The subject headings throughout the commonplace book had been arranged alphabetically and were written in advance, with the anticipation of being filled in as and when the apposite extracts were read.

The large variety of headings within the commonplace book, from '*Academica*' to '*Zona*', suggest that Whitelocke intended to gather extracts from a wide range of sources. Powell, in his examination of the manuscript, states that the sources from which Whitelocke worked were in keeping with texts that were typically studied at Oxford during this time. 'The information' Powell writes 'was gathered from the standard works: Varro's *De Lingua Latina*, Plato's *Republic*, Cicero's *De Inventione (rhetorica vetus)* and *De Oratore*, Livy's *Epitomae*,

Aristotle's *De Anima*, and so on.'[8] Powell's list is certainly representative of a typical academic commonplace book in the early modern period, however, it is misrepresentative of the actual contents of Whitelocke's commonplace book. Whitelocke provided full citations to almost every entry within his commonplace book, making it possible to trace his sources. The majority of the entries within the commonplace book were copied from Cicero's philosophical works *Academica* and *De Finibus Bonorum et Malorum*, with a few extracts taken from Cicero's speeches, *Pro Quinctio* and *Pro Domo Sua ad Pontifices.* Whitelocke did not, however, cite any materials from *Inventione* or *Oratore.* Plato's *Republic* is also not found within the commonplace book. Extracts relating to Varro come directly from Cicero's *Academica* and *De Finibus* and not from Varro's *De Lingua Latina*. Livy's *Histories* are included in the commonplace book, but not *Epitomae.* Many extracts relating to Livy were quoted from Cicero, and not sourced from Livy's works directly. There is a single extract to be found from Book I of Polybius's *Histories*, and only a few extracts are copied from Aristotle's *Ethics* and Demosthenes's *Olyanthiacs.* Lastly, there are a small number of verse extracts copied from Horace's *Odes* and Ovid's *Fasti*. Powell presents Whitelocke's commonplace book as being typical and broad, containing extracts from a wide variety of sources. On the contrary, Whitelocke's commonplace book was composed almost entirely from Cicero and Livy. While his subject headings suggest a wide-ranging academic scope, the commonplace book is in fact deliberately narrow in its choice of sources and themes. Whitelocke was not creating a typical academic commonplace book, but rather, he used the structure of commonplace books to author a re-composition of Cicero and to a lesser extent Livy.

[8] Powell, "James Whitelocke's *Liber Famelicus",* 36.

The academic commonplace book is broadly focused upon philosophical subjects, and yet there is a quantity of material within the headings, index and marginal notes, as well as through both divisions of the notebook, that are of an overt legal nature. Headings such as 'Culpa. Crimen. Noxa', 'Impunitas', 'Innocentia. Vita justita', 'Judex. Jus. Juris consultus. Jureperitus. Justitia. Iudicium', 'lex. Statua. Juris prudentia' and 'Magistratus' all relate directly to legal matters or positions of legal authority.[9] There is a clear interest in jurisprudence, which is reflected by the choice of extracts Whitelocke selected to include under these headings. These legal themes are further supplemented in the index by headings such as 'Correctio in penis', 'Crimen retortum', 'Crimen tectum', 'Etactis iudicium', 'Electio magistratum', 'Iudex attentus', 'Iudex incorruptus', 'Iudex non accusat', 'Moderatio paenae', 'Vir magistratum ornat', 'Lictor-magistratis', 'Noxa- culpa', and 'Regula- leges'.[10] Although these particular headings have no completed entries, they nonetheless demonstrate that Whitelocke had intended, from the outset, for this commonplace book to include a significant number of legal entries; entries which reflect Whitelocke's unique education at both St. John's College, Oxford and the Inns of Court and Chancery in London.

It is not possible to date the academic commonplace book exactly, however the overtly academic contents suggest that is was composed during Whitelocke's years of study at St. John's, Oxford, a time that overlaps with his concurrent studies both at New Inn and Middle Temple. Powell also argues that the commonplace book was composed during Whitelocke's student years at Oxford. This he evidences by the Erasmian style in which the commonplace

[9] 'Fault. Crime. Punishment', 'Innocence. Fair life', 'Judge. Law. Lawyer. Skilled in law.', 'Justice. Trial', 'Law. Statute. Skilled in law', 'Magistrate'.

[10] 'Correction of punishment', 'Turn back crime', 'Concealed crime', 'Out from having the trial', 'Electing a magistrate', 'Attending carefully to the judge', 'Uncorrupted judge', 'The judge not to blame', 'Regulation of punishment', 'The man adorning the magistrate', 'The attendant with the magistrate', 'Crime – fault', 'Legal principle'.

book is organised, pointing to the indices and headings to suggest that Whitelocke planned his commonplace book to cover a broad, if somewhat ambitious, range of subjects that was in keeping with the wider student practice of commonplacing in universities at the time.[11] In dating the manuscript alongside institutional practices, it must be noted that Whitelocke had a long and close relationship with both St. John's and the Inns that lasted between 1575 and 1620. It was not uncommon for Whitelocke to continually work on personal books over long periods of time; for example, he began writing his *Liber Famelicus* on the 18th of April 1609 and continued working on it until he passed it to his son Bulstrode Whitelocke at his death on the 22nd June 1632.[12] He also kept a detailed legal commonplace book along with another extensive record of moot cases and reports, the large contents of each suggest they were composed over a lifetime of legal work and study.[13] We can surmise that Whitelocke began his academic commonplace book at Oxford, but we cannot know over how many years he continued to work on it.

Whitelocke's Education.

Sir James Whitelocke was born on the 28th November 1570. He was the son of Richard Whitelocke, a London merchant who was killed in France several weeks before his birth. Details concerning Whitelocke's early life and career can be found within his *Liber Famelicus.*[14] In 1575 Whitelocke wrote that he was admitted to Merchant Taylor's school under the direction of the famous schoolmaster Richard Mulcaster. It was a time that Whitelocke recalled as being a period of great learning but also great personal and financial

[11] Powell, "James Whitelocke's *Liber Famelicus",* 36.
[12] Ibid*.,* 1.
[13] CUL Dd.3.69; CUL Dd.8.48; CUL Dd.5.7.
[14] John Bruce, ed. *Liber Famelicus of Sir James Whitelocke: A Judge of the Court of the King's Bench* (Westminster: The Camden Society, 1858).

difficulty. His mother at the time was 'destitute of frendes' and subject to 'dayly wrongs' by her new husband. Through 'extraordinary providence and patience' Whitelocke's mother was able to secure the means to bring her sons up in 'learning and civility… in as good a sort as any gentleman in England wulde do, as in singing, dancing, Greek, Hebrew, and Frenche tongues, and to write fair'.[15] On the 11th of June 1588, at the age of eighteen, Whitelocke became a probationer at St. John's College, Oxford. His tutor was Roland Searchfield, who later became the Bishop of Bristol. While at Oxford, Whitelocke continued his study of logic and the arts, but above all he enjoyed the study of history, 'in whiche' he wrote 'I toke great delite'.[16] He also continued his study of Greek and Hebrew, contracting the services of a private tutor at Grub Street named Hopkinson.[17] Powell notes that humanist ideals were central to Whitelocke's education as well as his personal identity at Oxford, although Whitelocke was reading for a bachelor's degree in civil law rather than the arts.[18] As central as the humanist arts were to Whitelocke, he wrote in his *Liber Famelicus* that he decided to aim for a legal career from an early age, and that was his primary focus at university:

> I red Aristotle in Greek, and spent my time diligently in logique and the artes… My mind had a farther reache, for I ever had a purpose to ayme at the study of the common law. My owne observations, and the experiences of my mother, of the best courses, perswaded me to draw that way as conveniently as I could, and therefore began to joyne the study of the common law with the civill.[19]

[15] Ibid., 6.
[16] Ibid., 13.
[17] Ibid., 12-13.
[18] Powell, "James Whitelocke's *Liber Famelicus",* 20.
[19] Bruce, *Liber Famelicus,* 13-14.

Whitelocke's ambition to study the law came, in part, from his own experience of witnessing his mother's legal hardships. He notes in his *Liber Famelicus* that she was 'most miserable afflicted by the law, by sutes in Chancerye and other courtes concerning that smale stay she had of the churche leases.'[20] While his brothers pursued adventurous careers overseas, Whitelocke applied himself diligently to the study of law.

This 'joyne' of the study of common law and civil law refers to Whitelocke's extraordinary decision to enrol at New Inn in 1590 so that he could study both civil and common law concurrently. To achieve this, he took advantage of the provisions of absence from St. John's. In his *Liber Famelicus* Whitelocke recounts the strength of his ambition as well as the level of secrecy necessary to achieve his aims:

> My purpose so succeeded with me as that I became admitted into New In in Michaelmas term 1590, and went into commons thear for a while, but was not known to any of the colledge to intend any sutche course, for, out of the term at London, I kept the colledge businesse, to be absent from thence.[21]

In 1592 Whitelocke was admitted to Middle Temple, where he continued his plan to undertake a parallel education in both the civil and common law. He explained his absences from Middle Temple as being made possible 'by ordinary licence, by grace, or for furthering of the college business, to be absent from thence', and by this course he was awarded a bachelors in the civil law, 'By keeping thus turns in both places, I did my exercise in the divinity school, for my degree of bachelar of the civill law, in Lent 1594… and I was presented bachelor of law… at Midsummer 1594'.[22] This kind of parallel education in the law was almost unheard

[20] Ibid., 6.
[21] Ibid., 14.
[22] Ibid., 14.

of and was not representative of the typical progression made by students from university to the Inns of Court.[23] Whitelocke was one of only eight law scholars who 'proceeded from an Oxford BCL to the Inns of Court between 1571 and 1603 and he was the single Bachelor of Civil Law to progress to the rank of bencher at the Middle Temple in the early modern period'.[24] Powell notes that 'Whitelocke's decision to study both civil and common law placed him among a handful of the thousands of men who studied law in the early modern period.'[25] In addition to his legal education Whitelocke was qualified for casual work as a common solicitor of causes. Powell notes a reference to one '"Jacobus Whitlock" as an attorney in a case listed in the Exchequer Appearance Books in 1597', demonstrating that Whitelocke was supplementing his income with legal work three years prior to his call to the bar.[26] During the years in which he composed his academic commonplace book, Whitelocke was immersed in legal practice, not only as a law student but also as a working professional. Whitelocke was an extraordinary young man, not only in his ambitious joining of the studies of both the civil and common law, but also in his devotion to the arts and his drive to place humanist reading and learning practices at the heart of his legal education. For Whitelocke there was no temporal, spatial or intellectual division between his study of law and the humanist arts.

Imitating History and Reading Philosophy.

During his time at St. John's College, when the commonplace book was most likely composed, Whitelocke was under the tutorship of Roland Searchfield, under whom he studied 'logique and the artes, but above all of historye; in whiche I toke a great delite, and especially Titus

[23] See Wilfrid Prest, *The Rise of the Barristers* and Baker, *Legal Education in London* for more information on the progression of students from the universities into the Inns of Court.
[24] Damian Powell, quoting Wilfrid Prest in "James Whitelocke's *Liber Famelicus*", 43.
[25] Ibid., 29.
[26] Ibid., 44.

Livius, in whom I was verye perfect'.[27] Whitelocke's love for both Livy and the study of history is clearly seen within his commonplace book. On f. 77r he quotes Livy's argument for the study of history under the heading 'Cognitio. Scientia. Nihil sciri. Omnia sciri':[28]

> What chiefly makes the study of history wholesome and profitable is this, that you behold the lessons of every kind of experience set forth as on a conspicuous monument; from these you may choose for yourself and for your own state what to imitate, from these mark avoidance what is shameful in the conception and shameful in the result. [29]

The same passage is quoted again on f. 169r, under the heading 'Historia. Historiographie', which is then followed immediately by this passage quoted from Polybius:[30]

> He says: That the study of History is in the truest sense an education, and a training for political life; and that the most instructive, or rather the only, method of learning to bear with dignity the vicissitudes of fortune is to recall the catastrophes of others.[31]

From Petrarch onwards, humanists viewed classical history as a repository of exemplary lessons which, in the tradition of Ciceronian historiography, was 'to be memorialized and

[27] Bruce, *Liber Famelicus,* 13.
[28] 'Acquiring knowledge' (cognitio is also a legal term for judicial enquiry or investigation), 'knowledge', 'to know nothing', 'to know everything'.
[29] CUL Dd.9.20. f. 77r, 'In cognitione reru*m* (nempe historia) illud praecipué est salubre et frugiferum, omnis te exempli documenta in illustri monumento posita intueri: inde tibi tuaeq*ue* reip[ublicae] quod imitere capias inde foedum inceptu foedum quoq*ue* exitu quod vites'; Translation from Livy, *Histories Books I & II with an English Translation,* trans. B. O. Foster (London: William Heinemann Press, 1919), Perseus Digital Library. (Accessed June 1, 2018); 'Examination. Knowledge. Knowledge of nothing. Knowledge of everything.'
[30] 'History', 'the study of history'.
[31] CUL Dd.9.20, f. 169r, 'Historiam ait esse verum disciplinam in exercitationemque ad res ciuiles eamque solam ab exempla alienorum incommoorum affectricem et magistram, ut quis possit fortunae varietatem digno animo ferre'; Translation from Polybius*, Histories,* trans. Evelyn S. Shuckburgh (London: Macmillan, 1962), Perseus Digital Library. (Accessed June 1, 2018).

imitated, or avoided'.[32] For the humanists, history provided moral and ethical guidance and direction, not only individually but also on a societal level. Donald Kelley notes that the impact of jurisprudence in this field was 'to widen the vision of history to include institutional and social materials', citing Francoise Baudouin's view that 'Historical studies must be placed upon a solid foundation of law, and jurisprudence must be joined to history'.[33] As a devoted humanist who had early ambitions to enter law, it is a logical assumption that Whitelocke's reading of history was grounded in jurisprudence. In teaching the correct method of using historical example through the composition of commonplace books, the natural philosopher Velcurio advised that his students looked to gather examples of both ethical and unethical conduct so that the individual actions of historical lives could be imitated or avoided.[34] Erasmus too valued the study of history in *De Ratione Studii,* advising that 'Above all, however, history must be grasped', and from these histories were drawn engaging episodes from which lessons could be learned 'For instance: the rash self-confidence of Marcellus undermined the Roman state, the prudent delaying tactics of Fabius restored it'.[35]

The humanist reading of history incorporated a great deal of philosophical thought and argument. That so much of the historical material within Whitelocke's academic commonplace book was drawn from Cicero's philosophical works suggests that he either saw no hard distinction between history and philosophy, or that he deliberately sought to situate historical exempla within a philosophical framework. As has been previously noted, the title

[32] Donald R. Kelley, "Humanism and History," in *Renaissance Humanism: Foundations, Forms, and Legacy. Volume 3,* ed. Albert Rabil, Jr (Philadelphia: University of Pennsylvania Press 1998), 238-239.
[33] Ibid., 260.
[34] Lisa Jardine and Anthony Grafton. "'Studied for Action': How Gabriel Harvey Read His Livy," *Past & Present,* no. 129 (1990), 70.
[35] Desiderius Erasmus, *Collected Works of Erasmus: De Copia, De Ratione Studii, Vol 24,* ed. Craig R. Thomson (Toronto: University of Toronto Press, 1978), 675-676.

page of the commonplace book identifies the contents as being divisions of Platonic philosophy, one division dealt with conduct and morals, the second with the secrets of nature. Whitelocke's focus upon Platonic rather than the far more popular branch of Aristotelian philosophy was perhaps motivated by his interest in the divisions of law in England. Paul Kristeller observes that:

> Plato's influence on Renaissance moral thought is much more limited than Aristotle's, in-spite of the well known role played generally by Platonism in Renaissance philosophy. Plato's early dialogues, to be sure, deal with moral topics and were widely read in school, mainly in the courses of Greek. Yet we do not find any system of ethics based primarily on Plato, as so many were on Aristotle, due partly to the unsympathetic character of Plato's writings.[36]

Alongside Platonism, Whitelocke also explored in depth Stoic ideals relating to civic and legal conduct. Stoicism, like Platonism, was also relatively unpopular, with most Renaissance humanists finding Stoic ethics 'uncongenial on account of its rigidity'.[37] The criticisms levelled against these branches of philosophy are remarkably similar to those levelled against the common law courts by those who favoured the sympathetic equity of the Chancery Courts. Whitelocke's focus upon Ciceronian philosophy, rooted in Platonism and Stoicism, is, I argue, a deliberate choice from which he could explore similar styles of rigid thought within English law.

[36] Paul Oskar Kristeller, "Humanism and Moral Philosophy," in *Renaissance Humanism: Foundations, Forms, and Legacy. Volume 3,* ed. Albert Rabil, Jr (Philadelphia: University of Pennsylvania Press 1998), 278.
[37] Ibid., 279.

Whitelocke the Common Lawyer.

Throughout the sixteenth and seventeenth centuries an ideological 'war' was waged between supporters of the common law and those who held equity, administered through the courts of Chancery, as superior.[38] Those who sided with the Chancery Courts and equity, such as Christopher St. Germain, William Lambarde, Edward Hake, Sir Francis Bacon and Thomas Egerton, later Lord Ellesmere and Lord Chancellor of England, argued that equity looked to the 'internal sense of the law, its soul or kernel', relying on the individual common sense and good judgement of the Chancellors to exercise conscience in their rulings.[39] Equity allowed for the judicial practice of 'recognising and enforcing exceptions to the law'.[40] St. Germain, in *Doctor and Student,* defined equity as '…a right wiseness that considereth all the particular circumstances of the deed, the which also is tempered with the sweetness of mercy', stating that equity 'followeth the intent of the law, than the words of the law'.[41] Those on the side of the common law, such as John Selden and Edward Coke, rejected equity as a system that was rife with vagaries and uncertainty, lacking the rigor and structure of the common law.[42] Chancellors, they argued, were men that 'hath had but little but superficiall knowledge of the lawes of the realme' and who 'presume moche' on their own minds.[43]

That Whitelocke was himself allied with the common lawyers is in no doubt. He wrote several treatises relating to law, such as *A learned and necessary argument to Prove that each Subject*

[38] Mark Fortier, *The Culture of Equity in Early Modern England* (Aldershot: Ashgate Publishing Ltd, 2005), 'Equity and Law', 59-86.
[39] Ibid, 59.
[40] George Behrens, "Equity in the *Commentaries* of Edmund Plowden," *The Journal of Legal History,* vol 20, 3 (1999): 25-50.
[41] Christopher St. German, *The Doctor and Student: or Dialogues between a doctor of divinity and a student in the laws of England,* ed. William Muchall (Cincinnati: R. Clarke, 1886), 45.
[42] Fortier, *The Culture of Equity*, 60.
[43] Ibid.

hath a Propriety in his Goods.[44] He also wrote papers of antiquarian interest on subjects such as the common law history of duelling.[45] Within these publications Whitelocke's position relating to the common law is clear; in *A Learned and necessary argument* he addressed the concerns voiced by himself and other common lawyers regarding the king's ability to set impositions upon trade without the assent of parliament, stating that the common law 'were our ancient and faithful protector' against such actions.[46] In another treatise upon the same theme, titled *The rights of the people concerning impositions,* he wrote 'the King hath his soveraign power in Parliament, assisted and strengthened with the consent of the whole Kingdom; and therefore these powers are to be exercised by him only in Parliament.' [47] His common law tendencies are also to be found within his *Liber Famelicus* as he discussed, once again, the planned course of action that himself and other common lawyers were to take regarding the king's prerogative in parliament, stating that 'Mr Thomas Crew was to shew the reason and judgement of the common law of the land.'[48] Powell notes that Whitelocke had a 'dogmatic assertion of common law rights, on several occasions at odds with the interests of the crown, than from any conscious desire to contest the issue of legislative sovereignty'.[49] This conflict between Whitelocke and the crown was serious enough that he was arrested and placed in the Fleet in 1613.[50]

[44] Sir James Whitelocke, *A learned and necessary argument to Prove that each Subject hath a Propriety in his Goods,* 2nd ed (London: Richard Bishop for Iohn Burroughes, 1641).
[45] Carl Thimm, *A Complete Bibliography of Fencing and Duelling* (Gretna: Pelican Publishing Company, 1998), 17.
[46] Whitelocke, *A learned and necessary argument*, 5.
[47] James Whitelocke, *The rights of the people concerning impositions, stated in a learned argument* (London: William Leak, 1659), 3.
[48] Bruce, *Liber Famelicus,* 42.
[49] Powell, *James Whitelock's Liber Famelicus*, 135.
[50] Bruce, *Liber Famelicus*, 31-34.

Whitelocke was allied with Coke, and wrote of him in his *Liber Famelicus* 'Never man was so just, so uprighte, free from corruption, solicitations of great men or frendes, as he was'.[51] The privacy of his *Liber Famelicus* also afforded him the freedom to vent honestly against prominent proponents of equity and the Chancery Courts, such as the Lord Chancellor Ellesmere, whose advocacy for the Chancery Courts was viewed by Whitelocke with much bitterness. Upon Ellesmere's death in 1616, Whitelocke wrote in his *Liber Famelicus* 'It had been good for this common wealthe if he had been out of the worlde 20 yeares before, for he was the greatest enemye to the common law that ever did bear office of the state of the kingdom.'[52] It is tempting to infer from Whitelocke's personal and professional allegiances with prominent common lawyers, from his staunch advocacy for the common law, and his enmity towards Ellesmere, that he too positioned himself in opposition to equity and the Chancery Courts. This supposition does not, however, consider the position of those members of the legal fraternity who occupied the middle ground, seeking balance between equity and the common law. In his defence of equity, the legal writer and lawyer William West (c.1548-1598), wrote upon the relationship between Chancery and the common law, stating that the Court of Chancery 'brideleth the rigour of the common law' while also arguing that law and conscience 'must ioyne hands in the moderation of extremity'.[53] Mark Fortier notes that William Lambarde, in his *Archaeon,* 'sees equity and law as, essentially and from their beginnings, at odds with each other, in an opposition, however, that can be harmonious and productive.'[54]

[51] Ibid., 50.
[52] Ibid., 53.
[53] Fortier, *The Culture of Equity.*
[54] Ibid.

This same consideration of balance between equity and law can be seen throughout Whitelocke's academic commonplace book. Through a variety of extracts he was able to consider the values and limitations of both civil and common law traditions. Precedents and ideologies relating to both systems of law were discussed and understood through the reading of classical texts, in particular Cicero and Livy, and through the examination of exemplary figures. By gathering extracts from philosophical and historical texts, Whitelocke explored a variety of legal issues such as justice, absolutism, equity, civic duty and legal reform from the perspective of a man schooled in both civil and common law codes. His arrangement of extracts under specific headings allowed him to compose his own legal dialogues in which the complex tensions between civil law and common law ideologies could be carefully considered from many sides of the argument, without necessarily forcing a definitive ruling on either side. This specific use of historical exempla amongst the legal classes was not uncommon. In writing on the influences of Cicero upon Sir Edward Coke's legal life, Allen Boyer draws particular attention to the use of *exempla* or *judica* amongst Elizabethan lawyers, citing both Erasmus and Thomas Wilson as leading proponents. Boyer notes that Wilson in particular advocated for a focus upon 'laws, judgements, common opinion and old customs – the raw material in which the common law judge worked' as materials to be gathered for commonplace books.[55]

Yet the classical figures chosen by Whitelocke were often difficult subjects, men whose questionable morals and challenging ideas relating to law and justice did not offer a clearly defined roadmap of exemplary behaviour. As with the humanist model of legal commonplacing, Whitelocke sought out exemplary figures who embodied virtues and vices,

[55] Allen Boyer, *Law, Liberty, and Parliament: Selected Essays on the Writings of Sir Edward Coke* (Indianapolis: Liberty Fund, 2004), 243-244.

figures who could offer behaviours to imitate and also avoid. The dual natures of these exemplary figures allowed Whitelocke to explore, and perhaps even challenge, the dominant, complex and often contradictory common law ideologies that circulated within the Inns of Court during his residency. This chapter shall examine Whitelocke's use of exemplary figures as models upon which he could hang arguments relating to law, justice, equity and civic duty. In this way his academic commonplace book served a legal function, and should be viewed not only as an academic text, but also as a legal text in which serious matters relating to jurisprudence and the law could be examined and argued from the perspective of a man who was concurrently enrolled in reading both the civil and common law, who considered the *pro et contra* arguments relating to common law and equity, and who sought to place humanist learning at the heart of his legal education.

Cicero as an Exemplary Figure.

Whitelocke's use of Cicero within his academic commonplace book reflected the overall rhetorical and philosophical reading of Cicero by humanists in the early modern period. The humanists admired Cicero as a 'universal man' whose excellence in a range of disciplines recommended him as an ideal exemplary figure. In the early fifteenth century the Italian humanist Gasparino Barzizza lectured annually on Cicero's *De Oratore,* recommending Cicero as 'the principal prose model for imitation.' This argument that was all too keenly taken up by the Ciceronians, who held Cicero's Latin prose as the paramount model for imitation, rejecting wider forms of eclectic imitation as inferior.[56] The tightly focused nature of Whitelocke's academic commonplace book certainly suggests that he too subscribed to the

[56] David Marsh, "Cicero in the Renaissance," in *The Cambridge Companion to Cicero*, ed. Catherine Steel (Cambridge, Cambridge University Press, 2013), 307.

Ciceronian school of prose imitation. Cicero was the primary model for rhetoric and oration in grammar schools and universities, with over three hundred editions of Cicero's rhetorical works published between 1460-1700.[57] Neil Ker's research on the works of Cicero drawn from Lincoln College Election lists demonstrates the proliferation of Cicero within the libraries of academic institutions in the late sixteenth and early seventeenth centuries. These lists include: Cicero's *De Philosophia Volumen Secundum* containing the philosophical works *De Natura Deorum, De Divinatione, De Fato, De Legibus* and *De Universitate,* also the *Tusculanae Quaestiones*, a series of five books on Greek philosophy, the *Primum* and *Tercium* volumes of Cicero's orations, which include his speech *Pro Domo Sua*, the *Philosophia Ciceronis,* a text catalogued as '*Comment. In Rhet. Ciceronis*' and two copies of *Omnes de Arte Rhetorica Libros Commentaria.*[58] Lists such as these reveal the importance of Cicero's philosophical works, which appear in equal and often greater number to his works of rhetoric and oratory. David Marsh writes that Cicero's philosophies offered more than a survey of Hellenistic doctrines, they also provided a model for the secular discussion of virtue and happiness in what might be called a civic forum.'[59]

For civic humanists and those whose principal interests were directed towards the commonwealth, Cicero's rhetorical, legal and philosophical works offered models of ideal behaviour. Cicero, as a lawyer and statesman, was especially a model for those who aimed towards the legal profession. As Winston notes, he was a 'paragon of philosophical and lawyerly training and civic duty'.[60] Contemporary manuals of learning urged students to

[57] Ibid., 310.
[58] N.R. Ker, "The Provision of Books," in *The History of the University of Oxford: Vol III.* ed. James McConica (Oxford: Clarendon Press, 1986).
[59] Marsh, "Cicero in the Renaissance", 311-312.
[60] Jessica Winston, *Lawyers at Play,* 125.

emulate Cicero so that they could best serve the commonwealth. Thomas Elyot in *The Boke Named the Governour* (1531) urged legal professionals to model themselves upon Cicero by combining the study of philosophy, oratory and rhetoric with legal learning 'to serve their country as magistrates, governors, and lawyers'.[61] Within legal circles, the ideal in the middle of the sixteenth century was that of the 'gentleman lawyer', one who joined liberal studies with the learning of the law so that they could better employ themselves to public service.[62] Cicero embodied the union of natural philosophy and statesmanship and he was an emblematic figure for early modern common lawyers. The synthesis of formal legal education with Ciceronian philosophy and rhetoric has been observed in great legal figures such as Sir Edward Coke, as Boyer writes, 'For Cicero, the orator was a man who combined eloquence with wisdom. For Quintilian, the orator was a man who combined eloquence with personal virtue. Coke transposed such beliefs to the realm of legal studies'.[63] Mortimer Sellers, writing on the influence of Cicero on modern legal and political ideas, observed that the early moderns were 'the most faithful apostles of Cicero', in part because their humanist modes of thought aligned more closely to Cicero's ideals of law and politics than with any other figure. Cicero embodied the humanist ideal of the learned statesman or gentleman lawyer.[64]

It is this joining of humanist learning and law that is most striking in Whitelocke's treatment of Cicero within his commonplace book. This mixing of formal legal education and the arts was typical at Oxford in this period. Students at Oxford were educated not only in the codes of civil law but also the moral dimensions of natural law through the reading of Aristotle and

[61] Ibid., 102.
[62] Jessica Winston, "The Gentleman Lawyer in John Davies's *Epigrammes",* 131.
[63] Boyer, *Law, Liberty, and Parliament,* 231.
[64] Mortimer Sellers, "The Influence on Marcus Tullius Cicero on Modern Legal and Political Ideas." Paper presented at *Ciceroniana, the Atti of Colloquium Tullianum Anni, MMVIII,* February 20, 2009.

Cicero. John Barton, in *The History of the University of Oxford,* notes the relationship between moral philosophy and law, 'It was self-evident that civil law approached more nearly to the rational ideal of the law of nature than did any other positive system', also noting that law and jurisprudence were taught within the faculty of the arts, 'At the end of the seventeenth century it was very usual for an undergraduate reading the arts course to be taken through Coke's *Institutes* as part of his grounding in moral and political philosophy'.[65] Powell notes in his work on Whitelocke's early education at St. John's that the '*Corpus Juris Civilis,* which formed the backbone of education in the civil law, was widely regarded as a general text for a grounding in the liberal arts.'[66] The legal nature of Whitelocke's academic commonplace book is not only evidence of the legal influences imported from his concurrent education at the Inns of Court, but is also evidence of the kinds of wider legal learning within the faculty of the arts at St. John's during this period. Whitelocke read civil law at Oxford, he studied the common law at the Inns of Court, and his exposure to the arts at Oxford very well may have included several prominent legal texts. Whitelocke's treatment of Cicero within his academic commonplace book reflected the numerous legal influences that he experienced during his university education. Through Cicero he was able to explore a range of jurisprudential themes, within a material space that was at once legal and humanist, and through methodologies that echo both his legal education at the Inns of Court and at Oxford.

Arrogantia and Philautia.

The majority of Whitelocke's commonplace book was sourced from Cicero's philosophical works *Academica* and *De Finibus Bonorum et Malorum*. The extracts are mainly large passages

[65] John Barton, "The Faculty of Law," in *The History of the University of Oxford: Vol III.* ed. James McConica (Oxford: Clarendon Press, 1986), 279.
[66] Powell, *James Whitelocke's Liber Famelicus,* 38.

of dialogue that have been broken into smaller paragraphs and reorganised under select headings. Amongst these materials are several extracts in which Cicero spoke about himself in the first person, offering a frank commentary upon his personal and professional life. There is a danger that those extracts relating to Cicero in the first person could be overlooked as incidental rather than exemplary. A familiarity with the source text is necessary to identify extracts in which Cicero was speaking autobiographically, rather than assuming the voice of another 'ego' within the dialogue. Rather than treating Cicero as an immaculate figure, as many of his contemporaries did, Whitelocke selected autobiographical extracts in which Cicero treated himself as a flawed individual. Whitelocke was not interested in simply lauding Cicero, but rather his approach was rhetorical in nature; he sought to interrogate Cicero from differing perspectives – as a man who possessed admirable qualities but also qualities that were to be avoided. Through his choice of extracts Whitelocke constructed a balanced account of the great orator's character. He directed praise towards Cicero's exemplary qualities but also censured his faults, and he did so through Cicero's own testimony. In assembling arguments using Cicero's own autobiographical texts, Whitelocke was enacting a literal interpretation of those manuals of law in which students were encouraged to emulate Cicero's manner of speaking and writing. Under the heading 'Patria Civitas' on f. 269r Whitelocke placed the following extract:[67]

> In my own case, just as I trust I have done my duty amidst the arduous labours and perils of a public career, at the most to which the Roman people appointed me, so it is assuredly incumbent on me also to use my best endeavours, with such

[67] 'Native city.'

> zeal, enthusiasm and energy as I posses, to promote the advancement of learning amongst my fellow country-men.[68]

The heading 'Patria Civitas' clearly indicates that Whitelocke was focused upon the commonwealth, and his choice of extract places learning parallel to the duties of public office and at the heart of civic duty. Within this extract Cicero identified within himself a strong work ethic and dedication to public office while simultaneously recognising the necessity of wider academic learning. Perhaps Whitelocke saw himself in Cicero, as he balanced his legal study with his academic interests. This extract is accompanied by the marginal annotation, 'studium in cives', which further emphasised the centrality of humanist learning in service to the state.[69] This observation was entirely in keeping with the early modern idealisation of Cicero as a moral and enthusiastic supporter of the commonwealth through his promotion of learning.

Although Whitelocke appeared to admire Cicero, he also included extracts that were of a more critical nature. Under the heading 'Arrogantia, Philautia', on f. 488v, Whitelocke placed the following extract:[70]

> Those again who would rather have me write on other subjects may fairly be indulgent to one who has written much already – in fact no one of our nation more – and who perhaps will write more if his life be prolonged. And even were it not so, anyone who has made a practice of studying my philosophical writings

[68] CUL Dd.9.20, f. 269r, 'Ego vero cum forensibus operis laboribus periculis non deseruisse mihi videor praesidium in quo a p[opulo] Ro[mano]: locatus sum debeo profecto quantumcumq*u*e possim in eo quoq*u*e elaborare ut sint opera studio labore meo doctiores cives mei. De Finibus. C. 17'; Cicero, *De Finibus Bonorum et Malorum,* trans. H. Rackham (London: William Heinmann, 1914),13.
[69] 'Citizens study', CUL Dd.9.20, f. 269r.
[70] 'Arrogance, self-love'.

will pronounce that none of them are better worth reading than the present treatise. [71]

The choice of heading under which Whitelocke placed this extract stands as an accusation - 'arrogance' and 'self-love' are vices that one would not expect an admirer of Cicero to affix to his character. Within the margin Whitelocke included the notation 'Ciceronis de se testimonium' or 'Cicero's testimony about himself'. Here Whitelocke applies legal language alongside the extract, 'testimonium' here can relate specifically to legal matters, meaning either testimony, a deposition or the statement of a witness. Whitelocke stresses that it is Cicero who implicates himself and that the testimony comes from the most reliable of sources. Within the context of Cicero's original work, the extracted passage may not necessarily be interpreted as a show of vanity, but it is Whitelocke who isolated it, placed it under an accusatory heading, and annotated it with legally charged language. It is as though Whitelocke had placed Cicero on trial, and within the space of his commonplace book he could arrange arguments for and against the celebrated orator. On the one hand he situated an extract praising Cicero as a selfless figure tirelessly working for the good of the commonwealth, and on the other he presented evidence accusing Cicero of arrogance and self-love.

This style of *pro et contra* argument was practised within the universities, but the use of legal language and accusatory headings suggest that Whitelocke may also have been bringing moot style arguments into his academic commonplace book, to practice legal argument alongside

[71] CUL Dd.9.20, f. 488v, 'Qui autem alia malunt scribi a nobis, aequi esse debent quod et scripta multa sunt plura nemini e nostris et scribentur fortasse plura si vita suppetet, et tamen qui diligenter haec quae de philosophia literis mandamus legere assueuerit iudicabit nulla ad legendum his esse potiora. De Finibus. 17. D'; Cicero, *De Finibus,* 13.

academic debate. Whitelocke was not interested in simply lauding Cicero, but rather, he wished to use the material space of his commonplace book as a platform in which he could scrutinise Cicero from a variety of differing, and difficult, perspectives. It was the complexity of Cicero's character and the contradictions within his own works that made him such a fascinating and rewarding figure for Whitelocke to interrogate.

Philosophia.

The subject of 'Philosophia. Philosophi', on f. 277r, is amongst one of the largest entries in the commonplace book, with twenty-one separate extracts taken from Cicero's *Academica* and *De Finibus.*[72] The extracts under this heading are also accompanied by comprehensive marginal notes, suggesting that Whitelocke referenced, or intended to reference, this page often. The extracts concentrate upon the divisions and parts of Greek philosophy according to Plato and Aristotle. They also include Socrates's demystification of philosophy and the works of Strato, Carneades, Epicurus and Zeno. The value and the necessity of Greek philosophy is expounded, both as a means of individual improvement but also in terms of how it could be applied in service to the state. Out of these twenty-one extracts there are three in which Cicero refers to himself in the first person and speaks of his own personal opinions and experiences relating to Greek philosophy. The first extract in which Cicero speaks about himself is noted in the margin as being from *Academica* and reads:

> Accordingly, for my own part, I adopt the great pursuit of philosophy in its entirety both, so far as I am able, as a guiding principle of life and as an intellectual pleasure

[72] 'Philosophy', 'Philosophers'; CUL Dd.9.20. f. 277r.

(and I agree with the dictum of Plato) that no greater and better gift has been bestowed by the gods upon mankind. [73]

The separation of the principles of life and pleasure in this extract perhaps relate to Whitelocke's own divided interests between legal study and his passion for humanist learning. Philosophy (and academia in general) was not merely a past-time for Whitelocke, rather, it was essential in guiding the course of his life, both personal and professional. Whitelocke wrote in his *Liber Famelicus* that his aim in life was to study the law, and that goal was arrived at not solely through the practical business of legal education at Oxford and the Inns of Court, but also through his humanist studies which provided the principle moral foundations upon which his legal career could be built.[74] The manifold ways in which humanist learning would underpin the serious business of legal learning is a theme that Whitelocke returned to frequently throughout his commonplace book. What emerges is a constant reminder that Whitelocke recognised these disciplines as being very different in nature, but equally necessary in the pursuit of public office and the continued prosperity of the commonwealth.

The next two extracts, also from *Academica*, are from Varro's part of the dialogue in which he argued that the writing of philosophy should best be left to the Greeks, and that there was no demand for, and thus no point, in Latin philosophy. Cicero presented both sides of the issue, using himself and Varro as representatives for oppositional arguments. Cicero argued for the necessity of Latin philosophy and philosophers, and Varro contended that the Greeks

[73] Ibid., f. 277r, 'Totum igitur illud philosophiae studium mihi quidem ipse firmo et ad vitae constantiam quan tum possum, et ad animi delectationem, nec vllum arbitror (ut apud Platone*m* est) maius aut melius a diis datum munus homini'; Cicero, *Academica,* 416.
[74] Bruce, *Liber Famelicus,* 13.

were the superior practitioners and thus no other kind of philosophy was necessary. Whitelocke included alongside these extracts the marginal annotations 'Philosophia Graecis literis optime explicate' and 'Graecia philosophia fons', highlighting the principal parts of Varro's argument.[75] The next two extracts run together, and act as a rebuttal from Cicero, writing in the first person, in which he countered Varro's argument with anecdotes relating to his own professional and personal experiences with philosophy:

> Is it because they get pleasure from Ennius, Pacavius, Accius and many others, who have reproduced not the words but the meaning of the Greek poets? How much more pleasure will they get from Philosophers, if these imitate Plato, Aristotle and Theophrastus in the same way as those poets imitated Aeschylus, Sophocles and Euripides? But now that I have been smitten by a grievously heavy blow of fortune and also released from taking part in the government of the country, I seek from philosophy a cure for my grief and I deem this to be the most honourable mode of amusing my leisure. [76]

This lengthy extract is accompanied by several marginal notations: 'Philosophers delight more greatly than poets', 'the delight of philosophy', 'Philosophy is appropriate for: 1 Old age, 2. Public affairs, 3. A magistrate, 4. Leisure.'[77] As with Varro, Whitelocke had identified the chief parts of Cicero's argument and annotated them into the margin. Points two and three relate the use of philosophy specifically to public affairs and the legal profession. Whitelocke's

[75] 'Philosophy explained very well by Greek Letters', 'Greece, the font of philosophy'.
[76] CUL Dd.9.20, f. 277r, 'An delectat Ennius, Pacuvius, Accius, multi alii qui non verba aut vim Graecorum expresserunt poetarum? Quanto magis philosophi delectabunt, si ut illi Aeschylum, Sophoclem, Euripidem, sic hi Platonem imitentur Aristotelem, Theophrastum. Acad. fol I H. Nunc vero fortunae gravissimo percussus vulnere et administratione reipublicae liberatus, doloris medicinam a philosophia peto et otii oblectationem hanc honestissimam iudica. Ibidem fo i. I'; Cicero, *Academica,* 421.
[77] 'Philosophi magis delectant quam poetae', 'Philosophiae oblectatio' and 'Philosophia apta est{ 1. Senectuti, 2. Rebus gestis, 3. Magistui, 4. Otio.'

annotations, in this context, then focus upon the greater pleasure that can be found through the imitation of Greek philosophy, in the same manner that pleasure is derived from the imitation of Greek poetry. Pleasure in this context was not entirely frivolous, rather Cicero viewed the pleasures of philosophy much like Boethius did in *The Consolation of Philosophy*, that is, as salve and salvation in times of grief and misfortune.[78] The main theme that Cicero centred upon within this passage related to the restorative as well as the pleasurable applications of philosophy. Philosophy for Cicero was relegated to his leisure time and had only a passing connection to his public life. Whitelocke deliberately omits from these extracts those lines in which Cicero lamented his inability to read philosophy while committed to his role in public office. The missing section reads:

> At all events I see that any of our orators that have imitated Hyperides or Demosthenes are praised. But for my own part (and I will speak frankly), so long as I was held entangled and fettered by the multifarious duties of ambition, office, litigation, political interests and even some political responsibility, I used to keep these studies within close bounds, and relied merely on readings, when I had the opportunity, to revive them and prevent their fading away.[79]

The omission of these lines suggests that Whitelocke did not share Cicero's views on the separation of public office and philosophical reading. Indeed, his repeated interest throughout the commonplace book in the union between philosophy and public office, in

[78] Anicius Manlius Boethius, *The Consolation of Philosophy* (Oxford: Oxford University Press, 1999).
[79] CUL Dd.9.20, f. 277r, 'Oratores quidem laudari video, si qui e nostris Hyperidem sint aut Demosthenem imitati. Ego autem (dicam enim ut res est), dum me ambitio, dum honores, dum causae, dum rei publicae non solum cura sed quaedam etiam procuratio multis officiis implicatum et constrictum tenebat, haec inclusa habebam, et ne obsolescerent renovabam cum licebat legend.'; Cicero, *Academica,* 421.

particular his admiration for Lucullus's ability to merge his political, legal and martial life with philosophy (which shall be discussed later in the chapter) strongly supports this hypothesis.

The next extract within the commonplace book again refers to the study of philosophy by Cicero in his later years, but this time the extract argues for the practical application of philosophy. Here philosophy is viewed as a discipline that extended beyond the pleasures of the individual and towards the greater public good:

> For this occupation is the most suited to my age, or it is one more in harmony than any other with such praiseworthy achievements as I can claim, or else it is the most useful means of educating our fellow citizens also; or, if these things are not the case, I see no other occupation that is within our power.[80]

Once more, through these extracts, we can see Whitelocke's rhetorical examination of the issue. He did not ally himself to any one position, but rather he sought out extracts from which he could compose a dialogue of opposing views. That these extracts are both sourced from Cicero's personal testimonials suggest that Whitelocke was approaching these extracts with the forensic eye of a lawyer in training. He sought to represent both sides of the wider argument from a single authoritative source, to approach the issue *in utrumque partem,* but also in the style of the humanist scholar seeking out a wide variety of examples*;* at the same time, he further sought to expose possible inconsistencies within Cicero's own testimony. On one hand Cicero argued for the practical necessity of philosophy, then he relegated it to the private sphere of individual pleasure, before later turning once more to argue the wider civic

[80] CUL Dd.9.20, f. 277r, 'Aut enim huic aetati hoc maximê aptum est, aut iis rebus si quas laude dignas gessimus hoc in primis consentaneum*que* aut etiam ad nostros cives erudiendos nihil utilius aut si haec ita non sunt nihil aliud video quod agere possimus. Ibi. 1.'; Cicero, *Academica,* 423.

benefits of philosophy in public education. In extracting these passages Whitelocke oversimplified them; within Cicero's philosophical works these arguments are situated within a wider and far more complex discussion relating to translation, philosophy and public office. Within Whitelocke's commonplace book they are removed from that context and arranged simply, to illustrate opposing points of argument relating to philosophy and the commonwealth.

Lucullus as an Exemplary Figure.

The next classical exemplary figure that Whitelocke focused upon in his academic commonplace book is the celebrated Roman general Lucius Lincinius Lucullus (c. 110-57 BC). Lucullus distinguished himself as both a skilled statesman and a successful general, with his most famous victory being against Mithridates during the battle of Tigranocerta (69 BC), for which he was awarded a triumph (a matter in which Cicero interceded on his behalf). Once he was superseded by Pompey, Lucullus gradually withdrew from public life and retreated to his luxurious country estates. It was his shrewd ability as an administrator during the Asiatic campaigns that allowed Lucullus to amass a vast wealth, which supported his famously lavish lifestyle. Cicero wrote that alongside Lucullus's celebrated public career, he also had a lesser known talent for being a scholar and patron of letters, reporting that Lucullus used his wealth to transform his estate in Tusculum into a library complex in which scholars and philosophers could take up residential study. The arts, philosophy and higher learning were not restricted to Lucullus's retirement years, as they were with Cicero, but were disciplines that he actively engaged in throughout his public life and during military campaigns. Plutarch notes, in his

martial history of Lucullus, of his 'love of literature' and devotion to liberal culture.[81] Unlike Cicero, who retrospectively distanced his philosophical works from his political and legal career, Lucullus famously sought to unite philosophical learning with civic duty. For a man such as Whitelocke, who himself placed humanist learning at the heart of his concurrent legal studies, a figure such as Lucullus must have signified an ideal cohesion between academic scholarship and the law.

In the early modern period Lucullus was not especially noted as an exemplary figure. Plutarch condemned Lucullus for his softness, voluptuousness and his extravagance. Piccolomini turned to Lucullus to illustrate the antithesis of Pythagoras's dictum that the body should be indulged only so far as it is serviceable to philosophy, 'When Pythagoras learned that one of his friends was indulging in choice food in order to become fat, he said "He is steadily constructing a more wretched prison for himself."'[82] This account is then followed by a story in which Lucullus was noted to have raised thrushes year-round, in order to enjoy delicacies out of their natural season.[83] Yet Lucullus was not only famed for his gastronomic indulgences, Machiavelli mentioned Lucullus twice in his *Discourses on Livy,* although only to note a passing observation on his military achievements.[84] Lucullus was also occasionally drafted into service as a man of learning, as Johann Lange cited Lucullus's library at Tusculum in his 1556 *Epistola Medicinnalis* to encourage the founding of Heidelberg's Bibliotheca Palatina, and Sir Francis Bacon used Lucullus as a dissenting voice in a dialogue with Seneca on stoic brevity in

[81] Plutarch, *Lucullus,* ed. trans. Bernadotte Perrin (London: William Heinemann Ltd, 1914). Perseus Tufts. 2018. Accessed Jun 1, 2018. *http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A2008.01.0117*
[82] Aeneas Silvius Piccolomini, "The Education of Boys," in *Humanist Educational Treatises,* ed. trans. Craig W. Kallendorf (London: Harvard University Press, 2008), 79.
[83] Ibid.
[84] Niccolo Machiavelli, *Discourses on Livy,* trans. Harvey C. Mansfield & Nathan Tarcov (London: University of Chicago Press, Ltd, 1998).

philosophical argument, with 'Lucullus favouring instead the artfully crafted language of the Ciceronians'.[85] While Lucullus was largely known for his voluptuous habits, and his military victories, his contributions to the arts had not been entirely forgotten.

Whitelocke's source for extracts relating to Lucullus are from Book II of Cicero's *Academica,* which is titled *Lucullus: Antiocus's Attack of Scepticism Expounded and Answered*. *Lucullus* takes the form of a rhetorical and philosophical dialogue between Cicero and Lucullus, which was reported to have taken place during Cicero's consulship, framing the debate within both a public and political context. Within the text Lucullus acts in defence of Antiocus, and in doing so stages an attack on Scepticism, which Cicero counters.[86] The opening of *Lucullus* is a biographical account of Lucullus as a scholar and a statesman, written not from the distant perspective of a historian, but by a man who knew him personally. These biographical passages relating to Lucullus appear almost in their entirety within Whitelocke's commonplace book, and his interest in Lucullus was focused upon his mixing of philosophy with his duties in public office. While the majority of the opening of *Lucullus* is copied into Whitelocke's commonplace book, it is not copied as a whole but is divided among seven separate headings: 'Admiratio', 'Artes', 'Calumnia', 'Magistratus', 'Memoria', 'Philosophia' and 'Lingua'.[87] Whitelocke appears to have been working chronologically through the source text, lifting extracts from *Lucullus* and then re-organising them under a series of distinct headings within his commonplace book. Whitelocke's academic commonplace book does not

[85] Susan Giesemann North. "Finding Nature's Order: Stoicism, Humanism, and Rhetoric in Francis Bacon's New Philosophy." (PhD thesis, University of Tennessee, 2007), 145.
[86] The surviving edition of *Academica* was in fact the first edition, with the second and perhaps 'true' edition of the text having Cicero and Varro as the sole interlocutors, not Lucullus. This is incidental, however, as the second edition is lost and Whitelocke, alongside his contemporaries, would have only read the Lucullian edition of Book II.
[87] 'Admiration', 'Art', 'False accusation', 'Magistrates', 'Memory', 'Philosophy' and 'Language'.

contain a direct copy of *Lucullus*, but rather, it was a new composition of Cicero's work that had been carefully arranged to serve a specific purpose; one in which Whitelocke could look to Lucullus as a unifying figure that validated his own extraordinary education.

Admiratio.

The first extracts in the commonplace book that refer to Lucullus are found under the heading of 'Admiratio { Virtutis / literarum.', on f. 13r.[88] In placing a celebrated general under this heading, Whitelocke was clearly drawing parallels between masculine virtue and letters. The first of these extracts is accompanied by the marginal notation 'admiration of virtue'; here Whitelocke communicated his personal admiration for Lucullus as a man of learning. The extract describes Lucullus's absence from Rome while on campaign:[89]

> But although greatly to the advantage of the state, nevertheless those vast powers of character and of intellect were absent abroad, out of the sight of both the law-courts and the senate, for a longer time than I would have wished.[90]

Here the extract emphasises Lucullus's civil obligations, which include his martial commitments abroad but also his domestic duties in the law courts and the senate. Lucullus is lauded as a public figure, and both his martial and civic talents are praised alongside his intellect. The next extract then moves to focus more upon his scholarly interests.

[88] CUL Dd.9.20, f. 13r; 'Admiration {of a man of letters.'
[89] 'virtutis admiratio'
[90] CUL Dd.9.20, f. 13r, Sed et si magna cum utilitate reipublicae, tamen diutius quam vellem tanta vis virtutis atque ingenii peregrinata abfuit ab oculis et fori et curiae. Aca qn fo 4 E; Cicero, *Academica,* 469.

> But as Philo's pupil Antiochus was deemed the chief amongst philosophers for intellect and learning, he (Lucullus) kept him in his company both when quaestor and when a few years later he became general:[91]

This extract is accompanied by the marginal notation 'Admiration of Lucullus among the learned', clearly marking Whitelocke's sustained admiration for Lucullus's academic qualities.[92] The extract is referencing Lucullus's reported practice of keeping the philosopher Antiochus in his company during his military campaign in Asia. Cicero wrote in *Lucullus* that *'*Lucullus was more ardently devoted to letters of all sorts and to philosophy than persons who did not know him supposed, and indeed not only at an early age but also for some years during his proquaestorship, and even on active service', adding of Antiochus that 'he kept him company both when quaestor and a few year later when he became general…Moreover, he [Lucullus] took a marvellous delight in reading the books about which Antiochus used to discourse to him.' [93] Lucullus valued philosophical learning and reading, and in keeping Antiochus with him during his years as questor and general, he was placing scholarship at the centre of his civic and professional life.[94]

The final entry under 'Admiratio' is a continuation of the previous extract, in which Cicero drew comparisons between Lucullus and the famed general Scipio Africanus. Once again

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[91] CUL Dd.9.20, f. 13r, 'Cum autem ingentio scientiaque putaretur excellere Antiochus Philonis auditor excellere, eum secum et Quastor habuit (Lucullus) et post aliquot annos imperator: ibi G.' Cicero, *Academica,*471.
[92] 'Luculli admiratio in doctos'.
[93] Cicero, *Academica*, trans. H. Rackham.
[94] Lucullus's study of philosophy is further emphasised through other extracts that appear later in the commonplace book, under the heading of 'Philosophia', in which the same extract relating to 'Luculli philosophiae studium' is included amongst a far larger collection of extracts taken from Cicero's wider body of philosophical works. Other extracts relating to Lucullus as the learned general, who brought philosophers and books with him into foreign arenas of military service, can be found under the heading of '*Magistratus*', which discusses the value of the study of philosophy for 'moderators', or those working in service to the state. These extracts must have appealed to Whitelocke, who wrote in his *Liber Famelicus* of the importance of humanist scholarship in his own professional life.

Whitelocke included a marginal notation, which reads 'Fondness and admiration of Lucullus among the learned', echoing his previous notations in which he emphasised his personal admiration for Lucullus's great learning.[95] The extract continues the theme of philosophical study in non-academic, professional environments: 'The histories of P. Africanus say that on the famous embassy on which he went before his censorship, he had Panaetius as absolutely the sole member of his staff.'[96] The extract here relates to Scipio who, while on official duty as a diplomat, had the Stoic philosopher Panaetius present as the sole member of his staff. It is significant that Whitelocke included both Lucullus and Scipio as exemplary models of learning - these were men whose fame and success was mainly built upon their military achievements and they were not well known for their philosophical learning.

Within his academic commonplace book Whitelocke was not interested in examining philosophers alone, but rather, men who successfully incorporated academic learning into their legal, political and military careers. Cicero, in his *Academica,* drew firm lines of distinction between the *negotium* of the law courts and the senate and the *otium* of philosophy. Whitelocke omitted these passages, favouring instead those that praised the virtue of philosophy and civic duty. Cicero did argue for the mixing of public office and philosophy in his *De Officiis,* however Whitelocke did not include this work in his commonplace book; either he did not have access to this work, or he felt the extracts he drew from *Academica* relating to Lucullus and Scipio where sufficient material to argue the merits of mixing civic duty and philosophy.

[95] CUL Dd.9.20, f. 13r; 'Luculli in doctos stadium et admiratio.'
[96] CUL Dd.9.20, f. 13r, 'P. Africani historiae loquuntur in legatione illa nobili quam ante Caensuram obiit Panaetium vnum omnino comitem fuisse. Ibi. G'; Cicero, *Academica*, 471 (adapted to fit the text copied by whitelocke).

Artes.

The next series of extracts relating to Lucullus are under the heading of 'Artes' on f. 51r. The main heading of 'Artes' is followed by two subheadings: 'Liberales { Literae', meaning the free or liberal arts such as rhetoric and logic and 'Mechanicae { Officina' meaning the mechanical arts or practical craftsmanship such as agriculture, warfare and administration.[97] The concepts of *artes liberalis* and *artes mechanicae* are rooted in classical and medieval traditions in which the liberal arts were typically elevated above the baser mechanical arts. Martianus Capella in *De Nuptiis Philologiae et Mercurii* defined the liberal arts as self-awareness of the soul, encompassing the intelligent and internal matters relating to the mind, knowledge and philosophy. He placed the liberal arts in opposition to the mechanical arts, which he argued arose from baser bodily needs or processes.[98] Cicero, in *De Oratore*, argued for unification among the arts as he stressed that the broadest possible education would produce the most able lawyers, although he was primarily concerned with the fragmentation that he perceived between the liberal arts rather than bringing together the liberal and mechanical arts. What Cicero did argue for, however, was the importance of a broad education in training for a *practical* profession, and that the liberal arts were necessary in order to master that craft. Lucullus, who so successfully brought together his philosophical learning with his martial profession, certainly represented an exemplary model of the unified arts. Whitelocke's examination of the arts within his commonplace book reflected his own personal circumstances as he balanced his education in the humanist arts with his legal education.

[97] CUL Dd.9.20, f. 51r.
[98] David Summers, *The Judgement of Sense: Renaissance Naturalism and the Rise of Aesthetics* (Cambridge: Cambridge University Press, 1987), 244.

This division can be further seen between different types of legal practice and education. Before entering Middle Temple, Whitelocke was a member of Gray's Inn, where he was obliged by financial insecurity to work as a common solicitor. During the later sixteenth and early seventeenth centuries the Inns of Chancery were associated with the less prestigious, practical 'lower branch' of law, specifically the professions of attorneys and solicitors. Christopher Brooks notes that the early moderns defined the 'lesser' aspects of law taught at the Inns of Chancery as being 'mechanical' while the elite professions of law studied at the Inns of Court, such as barristers and judges, were considered to be more 'scientific' in nature.[99] During Whitelocke's years at both the Inns of Chancery and the Inns of Court he would have been immersed in a culture of professional hierarchy in which branches of the legal profession were characterised as being either mechanical or scientific. Whitelocke himself worked in both the 'lesser' and 'higher' branches of law, as a solicitor and later as a judge. His education was one that was spread over a broad spectrum of disciplines, many of which were frequently viewed by his contemporaries in terms of opposition: the civil law and the common law, the Inns of Chancery and the Inns of Court, lower and higher branches of the legal profession, and lastly the humanist arts and the legal profession. It is through his commonplace book, and through the exemplary figure of Lucullus, that Whitelocke could not only explore such divisions, he could also work to reconcile them.

The first extract that Whitelocke placed under the heading of 'Artes' is the opening sentence from Book II of *Academica*, or *Lucullus*, and reads 'The great talents of Lucius Lucullus and his great devotion to the best sciences, with all his acquisitions in that liberal learning which

[99] Christopher Brooks, ed. *The Admissions Register of Barnard's Inn: 1620-1869* (London: Selden Society, 1995), 20.

becomes a person of high station.'[100] In the margin next to this extract Whitelocke wrote 'Literature for a noble man', emphasising the *kinds* of learning that Lucullus, in his high station, chose to undertake. [101]

Whitelocke's choice of representative for the 'Artes' and higher learning was not a great philosopher, nor a famed humanist scholar or theologian, but a general who cemented his reputation through the mechanical practice of warfare. Lucullus was also a shrewd administrator, making much of his fortune *in officina* as he did on the battlefield. In addition to this, Lucullus was infamous for indulging in excessive luxury, a vice that both ancient and contemporary commentators alike viewed as base and entirely at odds with the ideals of higher learning which transcended bodily appetites. Within the humanist framework of exemplary commonplacing, Lucullus fits the model of a figure whose extravagant and indulgent behaviours should be avoided. And yet he was also an exemplary figure for the 'Artes'; he embodied a broad spectrum of learning and he united the liberal and mechanical arts and also the mind and body. It was not Whitelocke's intention to simply insert a great thinker into his commonplace book as a static exhibit to higher learning, but rather, he sought to examine a figure that was able to pragmatically and successfully balance the liberal and mechanical arts in service to the state.

The extracts that follow this description of Lucullus further emphasise Whitelocke's preoccupation with balancing higher learning with practical professions:

[100] CUL Dd.9.20, f. 51r, 'Magnum ingenium L. Luculli magnumque optimarum artium studium, tum omnis liberalis et digna homine nobili ab eo perceptâ doctrina. Aca. Quast. Libro 40 fo 4 C'; Cicero, *Academica*, 465.
[101] 'Literae in nobili.'

> Or what can anyone remember that he does not hold in his mind? But what science can there be that is not made up of not one nor two but many mental precepts? And if you take away science, how will you distinguish between the craftsmen and the ignoramus? For we shall not pronounce one man to be a crafts man, and the other not.[102]

This extract is accompanied by the marginal note 'Differentia inter artificem et inscitem' or 'The difference between the craftsman and the ignorant man'. Parallels between this extract and common law theories relating to artificial reason are striking. In the common law mind, what elevates the craftsman from the ignoramus is higher learning; the same learning that elevates the judge from the common man who, while able to innately understand the principles of law, was unable to grasp its true meaning without a proper legal education. Whitelocke's use of 'artificem' to describe the skilled craftsman certainly evokes the common law idea of artificial reason. The above extract is taken from a larger debate from Cicero's *Lucullus* about scepticism and inaction. During this argument Cicero states that it is through the bodily senses, enhanced by artistic training, that knowledge is attained. He argued 'How many things in music that escape us are caught by the hearing of persons trained in that department of art'.[103] This mirrors Coke's common law argument of artificial reason, in which judges, with their wisdom and training, occupy the same elevated position as Cicero's metaphorical musicians. For Whitelocke this kind of skilled education went further than the law, it also incorporated the liberal arts and humanist learning, which he frequently professed to be central to his own legal education.

[102] CUL Dd.9.20, f. 51r, 'Ars autem quae potest esse nisi quae non ex vna aut ex duabus sed ex multis animi perceptionibus constat. Quam si subtraxeris qui distingues artificiem ab inscio? Non enim fortuito hunc artificem dicemus esse illum negabimus; Cicero, *Academica*, 497.
[103] Cicero, *Academica*, 493.

Whitelocke examined the same theme again in another extract which advanced Cicero's argument for the accumulation of knowledge within a practical context:

> And as one class of sciences is of such a nature as only to envisage things that are either non-existent or indistinguishable from fictitious things, or the player on the harp round off his rhythms and complete his verses? And the same result will also occur in the other crafts of the same class which are solely exercised in making and doing, for what can be affected by a craft unless its intending practitioner has accumulated many precepts?[104]

In order to make one's craft effective, one must have 'accumulated many precepts'. This is the kind of accumulative work that commonplace books were intended to perform, and Whitelocke's was no different. Whitelocke recognised a division between the liberal and mechanical arts, and through the exemplary figure of Lucullus he explored ideas relating to a pragmatic, and professional synthesis of those arts within both a humanist and common law framework.

<u>Magistratus.</u>

Whitelocke returns to Lucullus under the heading of 'Magistratus', on f. 219r, which is subdivided into the categories of 'Civilis' and 'Bellicus' moderators.[105] The first extract is from the opening address of Cicero's speech *Pro Domo Sua*, in which he stressed the need of the courts to exercise their wisdom and rule on the side of justice rather than follow the morally

[104] CUL Dd.9.20, f. 51r, 'Quam artium aliud eius modi genus sit ut tantummodo animo recernat, aliud ut moliatur aliquid et faciat, quomodo aut geometres ae cernere potest quae aut nulla sunt aut internosci a falsis non possunt: aut qui fidibus vtitur explere numeros et conficere versus. Quod idem in similibus artibus continget, quarum omne opus est in faciendo at agendo. Quid enim est quod arte effici possit nisi is qui artem tractabit multa perceperit. Ibidem'; Cicero, *Academica*, 497.
[105] CUL Dd.9.20, f. 219r; 'Magistrate', 'Civil', 'Martial'.

dubious yet legally correct letter of the law.[106] During this speech Cicero argued that laws must be reformed in order to guarantee justice within the commonwealth. The extract from *Pro Domo Sua* is accompanied by the marginal note 'Iure bonum magistratum leges rescindantur' or 'laws are justly revoked by a good magistrate'. There can be no doubt that the subject of 'Magistratus' within Whitelocke's academic commonplace book related to contemporary arguments concerning legal reform and equity. Cicero's oration, with his heavy emphasis on morality and justice, is immediately followed by several extracts that focus upon Lucullus as an example of a good magistrate. These entries are copied from the first part of *Lucullus* and concern Lucullus's governorship during his Asiatic campaign. Whitelocke begins by setting the context of these entries with the brief extract 'He (Lucullus) went out as questor to Asia, and there for a great many years presided over the province with quite remarkable credit.'[107] Lucullus here is clearly identified as the ideal model of a 'magistratus'. Whitelocke then divided the next two entries into categories that he marked as being examples of both martial and civil moderation. The first of these extracts is labelled in the margin as 'Moderator bellicus' or 'Commander in war', and reads:

> Consequently he was so great a commander in every class of warfare, battles, sieges, sea fights, and in the entire field of military equipment and commissariat, that the greatest king since the time of Alexander admitted that he had discovered Lucullus to be a greater general than any of those he had read of. [108]

[106] Ibid.
[107] Ibid., 'Lucullus) in Asiam quæstor protectus ibi per multos annos admiribili quadam laude provinciae prae fuit Ac qu 4.C'; Cicero, *Academica*, 465.
[108] CUL Dd.9.20, f. 219r, 'Tantus ergo imperator in omnis genere belli fuit (Lucullus) praeliis oppugnationibus, navalibus pugnis totiusque belli instumentis et apparatu ut ille rex post Alexandrum maximus hunc a se maiorem ducem cognitum, quam quemquam eorum quos legisset fateretur. Ibi E'; 'Martial governor'; Cicero, *Academica*, 467.

In comparing Lucullus to Alexander, Cicero was heaping a large measure of praise upon his friend's martial abilities. Once again, Whitelocke had selected an extract that emphasised Lucullus's military prowess. This extract recalls those previous extracts chosen by Whitelocke in which Lucullus's practical, military career was given equal consideration alongside his great learning. Whitelocke does so here as he quickly followed his praise of Lucullus's martial ability with praise for his abilities as a civic administrator:

> [He] also possessed so much wisdom and justice in the work of establishing and reforming governments that Asia today continues to observe the institutions and follow in the footsteps of Lucullus .[109]

Here the extract relates to Lucullus's legal duties as a governor in Asia, in which he reformed the laws of his province with 'wisdom' and 'justice'. Lucullus's reformation of the laws, and his role as a man of justice, echoes the opening address from Cicero's *Pro Domo Sua*, in particular the marginal note that stressed the duty of good magistrates to, when necessary, enact reform or overturn existing laws for the good of the commonwealth. Lucullus's legal reforms were so effective that they remained in place after his governorship ended.

Within English common law thought it was the efficacy of laws that ensure their continued use and longevity, and it was by their wisdom, learning and sense of justice that those in legal authority were charged with not only preserving those laws, but reforming them when necessary. A key tenet of common law ideology was that ineffective laws must fall out of usage, and effective laws stand the test of time. Yet there existed in the common law many effective and good laws that, when applied exactly to certain cases, were inequitable. As St.

[109] CUL Dd.9.20, f. 219r, 'In eodem tanta prudentia fuit in constituendis temperandisque ciuitatibus, tanta aquitas, ut hodie stet Asia Luculli institutis servandis et quasi vestigiis persequendis. Ibi. E'; Cicero, *Academica*, 469.

Germain in *Doctor and Student* observed, 'to follow the words of the law were in some cases both against justice and against the commonwealth'.[110] Common law in theory allowed for reform, but many early moderns who encountered the legal system chafed against the seemingly inflexible nature of the common law. Whitelocke appeared to be engaging with those same ideas of justice and reform through Lucullus, an exemplary 'magistratus' who possessed the knowledge and wisdom to effectively enact lasting, and above all just, legal reforms.

After praising Lucullus's military prowess and judicial wisdom, Whitelocke then selected extracts from part two of *Lucullus*. These extracts are not directly related to Lucullus, but indirectly as they address the necessity of Greek literature and philosophy in the professional lives of statesmen. These extracts recall earlier entries in Whitelocke's commonplace book in which Lucullus's habit of reading philosophy, and of bringing philosophers with him on military campaign, were lauded. In bringing the same discussion under the legal heading of 'magistratus', and alongside extracts relating to Lucullus, Whitelocke was clearly interested in drawing parallels between Lucullus's martial and civil duties, the study of philosophy, and the legal profession. In the style of *pro et contra* legal debate, the next two entries in the commonplace book appear to be divided into oppositional points of argument. The first of these extracts is accompanied by the marginal note 'Philosophiae [studium] disceptatur magistratui inutilis' or 'the study of philosophy is judged useless for a magistrate', and reads thusly:

> For there are many people who have no love for Greek literature at all, and more who have none for philosophy; while the residue even if they do not disapprove

[110] St. Germain, *Doctor and Student*, 44.

> of these studies nevertheless think that the discussion of such topics is not specially becoming of a great statesman.[111]

Although the marginal note marks this extract as an argument against the study of philosophy, it is a deliberately weak one that invites swift dismissal. This is done so by Whitelocke, who immediately follows this extract with an answer that is marked by the marginal note 'Philosophiae studium magistratui adhibeatur' or 'the study of philosophy should be employed by a magistrate':

> As if forsooth persons of distinction ought to hold their meetings in silence, or else engage in frivolous conversation or discussion of lighter topics! In fact, if there is truth in the praise of philosophy that occupies a certain volume of mine, it is obvious that its pursuit is supremely worthy of all persons of the highest character and eminence, and the only precaution that need be observed by us whom the Roman nation has placed in this rank is to prevent our private studies from encroaching at all upon our public interest.[112]

Whitelocke highlights Cicero's praise of philosophy as being supremely worthy of a statesman, although this praise is modulated with a caveat against the encroachment of philosophy upon public office. From previous entries within his academic commonplace book Whitelocke had included several entries that support and reject Cicero's views against philosophy in public office. In returning to that issue again under the heading of 'magistratus',

[111] CUL Dd.9.20, f. 219r, 'Sunt enim multi qui omnio non Graecas ament literas plures qui philosophiam, reliqui qui etiam si haec non improbent tamen earum rerum disputatio non principibus civitatis non ita decoram putent. Ibi. G'; Cicero, *Academica*, 471.

[112] CUL Dd.9.20, f. 219r, 'Quasi vero clarorum virorum aut tacitos congressus esse oporteat, aut ludicros sermones aut rerum colloquia leuiorum. Etenim si quodam in libro vere est a nobis philosophia laudata, profecto eius tractatio optimo, atque amplissimo quoque dignissima est, nec quic quam aliud videndum est nobis quos populus Ro[manus] hoc in gradu collocauit nisi nequid privatis studiis de opera publica detrahamus. Ibi. H'; Cicero, *Academica*, 473.

Whitelocke demonstrates that he was sensitive to Cicero's warning, even if he did not agree with it entirely.

At the heart of the extracts that relate to Lucullus, Whitelocke always seemed to be striving for balance: balance between the common law and equity, between the low and high branches of law, between the mind and body, between practical professions and the liberal arts, between civic duty and leisure and balance between opposing points of argument. As a man who was concurrently enrolled at Oxford and the Inns of Court and Chancery, and who sought to situate humanist learning at the heart of his education while simultaneously striving to advance his legal career, the idea of harmonious balance between conflicting commitments must have been appealing to Whitelocke, and it was through the exemplary figure of Lucullus as a legal figure that Whitelocke could explore that balance within his own professional and academic life.

Manlius as an Exemplary Figure.

It is through Whitelocke's third choice of classical exemplary figure, the Roman statesman and general Titus Manlius Torquatus, that he turned to examine a far more complex and troubling relationship between moral philosophy and the law. As an exemplary figure in the early modern period, it is not surprising that Manlius was largely examined as a figure of severe and unbending authority. For Machiavelli, who viewed Livy's narrative of Manlius purely in terms of political consequence, Manlian severity was seen as a virtue worthy of emulation: 'I say that in a citizen who lives under the laws of a republic, I believe the proceeding of Manlius is more praiseworthy and less dangerous, because this mode is wholly

in favour of the public and does not in any part have regard to private ambition.'[113] Where Machiavelli examined Manlius in relation to the commonwealth, Castiglione on the other hand used Manlius as a guide, or perhaps cautionary warning, on individual codes of conduct. When Signor Gaspare asks his companion Federico if he should obey his master's order 'to the letter' or 'should I do what seems best?', Federico replied:

> I would base my opinion on the example of Titus Manlius Torquuatus, who in such circumstances killed his son because he was too dutiful, if I considered him at all praiseworthy which indeed I do not; none the less I would not venture to blame him, against the judgement of so many centuries, for without a doubt it is highly dangerous to transgress the commands of one's superior, and to trust one's own judgement more than that of those whom it is legitimate to obey.[114]

Where Machiavelli finds ruthless simplicity in Manlius's history, Castiglione offers his readers a far more complex exemplary figure. For Castiglione, Manlius's actions were morally reprehensible, and yet, ultimately, he cautions his friend against the dangers of exercising one's own judgement in defiance of orders. It is this kind of moral difficulty between equity and law that Whitelocke attended to in his own reading of Manlius.

Under the heading 'Lex:: statuta. juris prudentia.', on f. 212v, the first entry is a quote from book eight of Livy's *Ab Urbe Condita,* which was sourced from Cicero's *De Finibus Bonorum et Malorum*: [115]

[113] Machiavelli, *Discourses on Livy,* 267.
[114] Baldassare Castiglione, *The Book of the Courtier,* trans. George Bull (London: Penguin Group, 1976), 132.
[115] CUL Dd.9.20. f. 212v, 'Law: having been established. Jurisprudence'.

> Titus Manlius, in sentencing his son to death, it would seem he actually deprived himself of a great deal of pleasure, for he sacrificed his natural instincts of paternal affection to the claims of state and of his military office.[116]

The heading reveals Whitelocke's purpose to explore the tensions that existed between the common law and jurisprudence, in particular the role of judges and magistrates who often found themselves having to negotiate a difficult balance between following the letter of the law and common sense in their rulings. The extract that Whitelocke selected relates to an episode from Livy in which Manlius was leading a war against the Latins.[117] He gave orders that no man in his army were to leave his post or engage with the enemy, however in defiance of these orders his son fought against the Latins and claimed victory. Manlius praised his son's bravery, and lauded his victory on behalf of Rome, before sentencing him to death for disobeying an order. In law the ruling was entirely proper, it further served to quell rebellion in the ranks of Manlius's army and restored martial discipline, which in turn led to greater victories in the war. Yet the episode also exposes the devastating human cost of blindly following the law as a brave and promising young man who did much for his country was executed, and a father was forced to sacrifice his 'natural instincts of paternal affection' by killing his own child. The extract is extraordinary as it forces the reader to confront a seemingly impossible legal situation in which law and justice cannot be easily reconciled, and in which a ruling that benefits the commonwealth comes at an extreme, and horrifying, individual cost.

[116] Ibid., 'T Manlius cum filium securi percussit multis se privavit voluptatibus cum ipsi naturae patrioque amori praetulerit ins maiestatis et imperi. De Fin'; Cicero, *De Finibus,* 27.
[117] Livy, *Histories,* Book VIII, Chapter VII.

Following this extract, at the bottom of this page, there is a brief marginal note that references another episode of filicide within Livy: '2. Inconvenience of the laws. Liv lib 2° fol 39.'[118] The 'inconvenience' or setback likely refers to the opening of book two of *Ab Urbe Condita*, in which Livy warns of the dangers inherent within a legal system that is entirely inflexible. This specific legal warning refers to the struggle between Brutus's republican party and the pro-monarchical faction, of which the outcome sees Brutus sentencing his sons to death with a 'father's anguish'.[119] Whitelocke's use of the word 'incommoda' suggests that he viewed these episodes of filicide, and the rigid application of the law, in a negative light.

Manlius as 'Summum Bonum'.

Whitelocke's interest in Manlius's sacrifice, and other extracts relating to paternal severity in service to the state, appear elsewhere within the commonplace book and under diverse headings. Manlius first appears in the commonplace book on f. 70v under the heading 'Bonum. Summum Bonum. Felicitas. Vita Beata.'[120] This is one of the most complete pages within the commonplace book, with eighteen extracts discussing various disciplines of philosophy and their teachings from Aristo and Zeno to Epicurus, on the subject of living a good life. Here Whitelocke placed a series of extracts in which many opposing ideas relating to morality and goodness in life are discussed. Several extracts propose that supreme goodness can only come from nature and natural instinct, other extracts argue that happiness if found in 'virtue alone', others in 'knowledge and learning', and others still argue against the pursuit of pleasure and instead urge the reader to rise above animal instinct and to reach for the higher ideas of men.

[118] CUL Dd.9.20. f. 212v; 'legum incommoda'.
[119] Livy, *Histories,* Book II, Chapter V.
[120] CUL Dd.9.20, f. 70v; 'Good. The greatest good. Good fortune. The good life.'

Amongst these discussions are lengthy extracts relating to the role of pleasure, suffering and virtue in the pursuit of *vita beata.* The fourteenth extract under this heading returns to Manlius's ruling and his rejection of pleasure:

> Nature, in my opinion at all events, has created and endowed us for higher ends. I am absolutely convinced that the Torquatus who first won that name did not wrest the famous necklet from his foe in the hope of getting from it any physical enjoyment, nor did he fight the battle of the Veseris against the Latins in his third consulship for the sake of pleasure. Indeed, in sentencing his son to be beheaded it would seem that he actually deprived himself of a great deal of pleasure, for he sacrificed his natural instincts of paternal affection to the claims of state and of his military office.[121]

Within the context of this extract Manlius's rejection of his natural paternal instinct, and his sacrifice of pleasure, are viewed as praiseworthy and good. The extract equates the execution of Manlius's son to other acts of valour performed in service to the state; as being entirely divorced from any concept of pleasure, and thus 'good'. Whitelocke placed a marginal note beside the extract that gives a definition of 'pleasure' (voluptas) as 'to be free from all suffering', further emphasising his focused interest in the theme of suffering and the sacrifice of pleasure in service to the commonwealth.[122] Under the heading of 'Bonum', however,

[121] CUL Dd.9.20, f. 70v, 'Ad maiora quaedam nos natura genuit et conformavit ut mihi quidem videtur. Torquatum qui hoc nomen primus invenit aut torquem hosti detraxisse ut aliquam ex eo perciperit corpore voluptatem aut cum Latinis tertio consulatu conflixisse apud Veserim propter voluptatem. Quod vero secure percusserit filium privavisse se etiam videtur multis voluptatibus quem ipse naturae patrioque amori praetulerit ius maiestatis atque imperi. De Fi 18 B'; Cicero, *De Finibus,* 25-27.

[122] 'omni molestia vacare.{ voluptus'

Manlius and his act of filicide are situated within a wider philosophical discussion in which the pursuit of *voluptas* is presented as being potentially good and bad.

Within the extract itself Manlius is exemplary, yet the extract is situated among a series of other extracts that highlight many different philosophical arguments on the theme of goodness. Manlius's actions become part of a discourse in which the goodness of his actions are at once praised and questioned. Whitelocke does not reveal his own position within the argument, if indeed he had one at all, but he does deliberately situate Manlius's actions within that debate, and in doing so he once again exposes the moral difficulty of viewing Manlius as an exemplary legal figure.

Manlius as 'Severitas'.

Whitelocke returns again to Manlius on f. 309r, under the heading 'Severitas', with the brief extract 'Manlius Torquatus, on having his son beheaded for the majesty of law and order'.[123] Below this extract Whitelocke placed a larger extract relating to a legal act of paternal severity by Manlius's father, Lucius Torquatus, whose son was accused of accepting bribes while acting as praetor in Macedonia. Lucius Torquatus, like Manlius, was forced to act as magistrate in a case against his own child, and having heard both sides of the issue he ruled against his son, banishing him from Rome.[124] Through his introductory extract relating to Manlius, Whitelocke

[123] CUL Dd.9.20, f. 309r, 'T Manlius Torquatus filium suum seceri percussit quid ins manestalis et imperii { } de Finibus 18'; 'severity'; Cicero, *De Finibus*, 27.

[124] CUL Dd.9.20, f. 309r, 'Quid L Torquatus? is qui consul cum Cn. Octavio fuit quam eorum severitatem in filio eo adhibuit quem in adoptionem D. Syllano emancipaverat ut eum Macedonum legatis accusantibus quod pecunias praetorem in provincia accepisse arguerent, causam apud se dicere iuberet, req*u*e ex vtraq*u*e parte audita pronunciaret eum non talem videri in imperio quales eius maiores fuissent, et in conspectum suum venire vetuit. Ibi'; 'Then think of Titus Torquatus who was consul with Gnaeus Octavius, when he delt so sternly with the son who has passed out of his paternal control through his adoption by Decius Silanus – when he summoned him to his presence to answer to the charge preferred against him by a deputation from Macadonia, of accepting bribes while praetor in that province – when, after hearing both sides of the case, he gave

was deliberately introducing the theme of moral justice within a legal setting, and individual sacrifice in service to the state. By pairing Manlius with Lucius Torquatus under this heading, Whitelocke indicated that he viewed their actions as comparable, perhaps even the same. The choice of introductory extract also suggests that Manlius, and others who acted with equal severity, were both morally and legally justified. The same extract relating to Lucius Torquatus's banishment of his son is found again on f. 495r, under the heading 'Maiores. eorum authoritas imitatio', 'Ancestors. Imitation of their authority' which is accompanied by the marginal notation 'Maiorum virtus posteritati continuada', 'The virtue of [our] ancestors has been continued for posterity'.[125] Here Whitelocke states a clear interest in reading narratives of severe paternal authority in legal settings as exemplary history, as authoritative lessons worthy of imitation.

Through the commonplace entries for 'Lex', 'Bonum', 'Severitas' and 'Maiores' we can see Whitelocke's reading of Manlius, and Lucius Torquatas from continually shifting perspectives. Whitelocke was clearly selecting legally charged historical narratives through which he could explore complex and often contradictory jurisprudential themes relating to justice, morality and legal reform. As a student enrolled concurrently in both the civil and the common law, Whitelocke would have been all too aware of the heated conflict between advocates of both the Chancery Court and the common law courts, especially those arguments concerning equity and the unbending, inflexible nature of the common law courts.[126] As with Lucullus, Whitelocke was not interested in placing a simple model of exemplary behaviour into his

judgement that found his son guilty of having conducted himself in office in a manner unworthy of his ancestry, and banished him for ever from his sight.'; Cicero, *De Finibus*, 27.

[125] CUL Dd.9.20, f. 495r; Cicero, *De Finibus,* trans. H. Rackham.

[126] Christopher St. Germain's *The Doctor and Student* was one of the first treatise to argue the superiority of equity law over the common law.

commonplace book, but rather, he sought out complicated figures that could provide opportunities for sustained moral, philosophical and legal examination. Through Manlius, and Lucius Torquatas, Whitelocke could perform rhetorical arguments for equity and the common law, and like a true lawyer in training he could argue effectively on both sides of the issue, drawing evidence from a small pool of authoritative historical sources.

This same argument between the common law and chancery can be found elsewhere within the commonplace book, for example, the second extract under the heading of 'Lex' is taken directly from Book 1 of Livy's *Ab Urbe Condita* and reads 'As nothing could unite them into one political body but the observance of common laws and customs, he gave them a body of laws.'[127] Here Whitelocke selected an extract that stressed the importance of the firm foundations of customary laws. The very next extract reads, '1. Legislative governments are greater than a man. Livius Lib 2°. Fol 37.', this extract directs us to the opening passages in Book 1 of *Ab Urbe Condita* in which Livy argues that the authority of law is always superior to the authority to men, a dictum also held by advocates of English common law that could often be seen being drafted into service for arguments relating to the royal prerogative. [128] The next entry under 'Lex' then reads '2. Legum incommode. Liv lib 2° fol 39.', which, as has been previously discussed, directs the reader to Livy's cautionary argument in book two in which he warns against inflexible laws:

> The law was a thing without ears, inexorable, more salutary and serviceable to the pauper than to the great man; it knew no relaxation or indulgence, if one

[127] CUL Dd.9.20, f. 212v; Livy, *Histories,* book I.
[128] Ibid.

> exceeded bounds; and, inasmuch as man is so prone to blunder, it was dangerous to rely on innocence alone.[129]

Here the extract argues against the common law, cautioning against injustices that were inherent within an inflexible system. Whitelocke's extracts laud the common law as beneficial to the commonwealth, protecting the people from tyranny and bestowing upon them good customary laws. He then moved to immediately select an extract that highlighted the dangers of the common law. Whitelocke's commonplace book was not a space in which he promoted a single, dominant legal philosophy; it was a book in which he arranged authoritative arguments, sourced from historical and philosophical sources, that exposed the complex and frequently irreconcilable positions held by those within the legal profession. Whitelocke's choice of source texts add further layers of complexity to his commonplace book.

As has been previously noted, Whitelocke's main source from which he drew historical narratives of paternal severity was Cicero's *De Finibus Bonorum et Malorum. De Finibus* was a philosophical dialogue against Epicurean ethics, in which Titus Manlius was greatly admired by Cicero for his stoic values and personal sacrifice for the betterment of the state. Whitelocke's extracts from Livy were mainly quotations that appeared in Cicero. We know from other extracts within the commonplace book that Whitelocke had access to Livy's *Ab Urbe Condita*, so why then did he choose to cite Cicero as his source for Livy? One answer to this question may be that Whitelocke deliberately chose to read accounts of Manlius through a Ciceronian lens, from the perspective of a man who was at once a statesman, lawyer and philosopher. Whitelocke discussed overtly jurisprudential themes within his commonplace

[129] Ibid., 'the inconveniences of the laws'; Livy, *Histories,* book II.

book, and he did so as a legal philosopher rather than a historian. Were Whitelocke interested in presenting Manlius and Lucius Torquatus as a simplistic model of exemplary legal administration, then he could easily have selected Livy as his source. In directing the reader of the commonplace book (be it himself or a wider audience) to Cicero's *De Finibus,* Whitelocke intended for the reader to engage with the wider philosophical dimensions of those narratives, in which the stoic position of virtue as the unshakeable foundation of the republic was skilfully challenged with appeals for justice and equity in law.

Conclusion.

Winston's prosopographical study of 'the finest wits' at the Inns of Court during the latter years of the sixteenth century includes many of the greatest literary men of the age, such as Thomas North, Thomas Sackville, Thomas Norton, William Baldwin, Thomas Blundeville, Barnabe Googe, George Gascoigne and George Turberville.[130] This literary community, she notes, had a shared biographical character, which may have given rise to the unprecedented literary and cultural surge within the Inns of Court. They were typically in their twenties, had attended grammar school and university where they received a solid grounding in a humanist education, they sought a 'public life' via the Inns, and above all they expressed through their writings an invested interest in public service and the commonwealth. Winston's focus is centred upon literary men whose interest in the study of law was largely superficial– and yet her list of biographical characteristics could equally be applied to Sir James Whitelocke, a serious-minded lawyer and later judge, who had no connection to the literary set at the Inns of Court. Literary historians researching members at the Inns of Court have not considered a legal personality such as Whitelocke as a man of literary interest, and on the other side of the

[130] Winston, *Lawyers at Play,* 49.

academic divide legal historians and biographers of Whitelocke have largely ignored his academic commonplace book as they perceived it to have no legal value. Those scholars who have examined the commonplace book have done so in a cursory fashion; misreading the careful and deliberate synthesis Whitelocke struck between humanist methods of learning and jurisprudence. The headings and index of the commonplace book clearly indicate Whitelocke's intention to include a large quantity of legal material within the commonplace book, and a number of completed entries repeatedly discuss themes of legal philosophy, law, the commonwealth, common law and equity. Through the exemplary figures of Cicero, Lucullus and Manlius, Whitelocke composed complex, and often contradictory, rhetorical arguments under legally themed commonplace headings.

Although the commonplace book has the form of a typically humanist commonplace book, its contents suggest that Whitelocke was incorporating his legal education into an otherwise humanist material space. Within its pages Whitelocke was able to thrash out various arguments relating to the law and jurisprudence, but to what purpose? Was this simply an academic, experimental space where Whitelocke could explore tricky problems of legal philosophy, or did the commonplace book lend itself to a more practical legal application? Presently the commonplace book has been discussed in isolation from Whitelocke's other legal notebooks. There is perhaps an implied inference that Whitelocke was bringing influences of his legal education *out* of the Inns of Court and *into* the humanist environment of Oxford, where it is believed the commonplace book was composed. To date his academic commonplace book has been, in the minds of modern scholars, spatially as well as materially separated from his legal notebooks – his academic commonplace book belonged to his Oxford life, and his overtly legal notebooks to his Inns of Court life. Yet these concurrent aspects of

Whitelocke's educational life were never separate, for Whitelocke there was no division between academia and law. Like Lucullus, who brought philosophers and books of philosophy with him on campaign, Whitelocke too could comfortably bring together his academic and legal notebook collections in a professional and above all legal space. By including the academic commonplace book as a part of Whitelocke's legal notebook library, we must then ask what work would the commonplace book be doing?

The answer can be found in the case studies that have been previously discussed throughout this thesis. Lawyers such as Whitelocke were not bound by a set curriculum at the Inns of Court, they had to fashion for themselves their own legal educations. This was largely done by attending moot exercises and readings, and through the reading and copying of popular abridgments of law such as Littleton – all of which were distilled into legal notebooks for future referencing. Many lawyers sought to supplement their technical legal educations at the Inns with materials that spanned a wider set of legal skills and interests, from oratory and rhetoric to legal philosophy, politics and other subjects relating to justice, equity and the common law. Many lawyers used their notebooks as spaces in which to record these broader, supplementary materials, as has been seen in the notebooks of Shurland, Stawell and the anonymous author of the Joco Seria; these men explored their respective wider legal interests through literary and humanist materials. Typically, this kind of work has been examined within the space of a single notebook, yet it is also equally reasonable to assume that lawyers such as Whitelocke spread these supplementary legal materials between several notebooks. We know that Whitelocke had compartmentalised his legal materials into separate notebooks, he kept one for recording moot cases at the Inns of Chancery, another for cases at the Queen's Bench, a separate legal commonplace book and another notebook to record his personal

views on law and the legal profession.[131] From the archives at Longleat House there are fragmentary records suggesting he kept other legal notebooks and commonplace books.[132] I argue that his academic commonplace book was yet another instance of this compartmentalisation of referential legal materials; that his academic commonplace book was also a legal commonplace book. Whitelocke himself repeatedly advocated for the mixing of academia and law, and so this academic commonplace book must be considered as part of Whitelocke's wider legal notebook collection. Whitelocke's commonplace book was a humanist work that explored the moral and philosophical complexities of civil and common law, and it functioned as a supplementary text to Whitelocke's concurrent legal educations both at Oxford and the Inns of Court.

[131] CUL Dd.5.7, CUL Dd.8.48, CUL Dd.3.69.
[132] Whitelocke Papers, Volume XXII. 11. Microfilm, reel 22, Cambridge University Library.

Conclusion

Through the study of legal notebooks, I have identified a distinct genre of legal writing practice that was unique to law students at the early modern Inns of Court. Within these notebooks I uncovered a quantity of non-legal texts, and I questioned what purpose these non-legal texts served, if any, within these notebooks. My thesis demonstrates that the non-legal texts I studied served an important, vocational, educational and legal purpose within the notebooks in which they were written. The four individual case studies in my thesis show that the respective authors of those notebooks used non-legal texts in manifold ways, yet each of them directed that usage towards a common purpose; that is, to support and enhance their individual, self-directed legal educations. In concert with the legal contents of their notebooks, I demonstrate how the non-legal texts worked to enhance their author's professional development as lawyers, concluding that in this application these non-legal texts in fact functioned as legal texts. By identifying the non-legal texts as legal, and in demonstrating how those texts functioned as part of a legal education, this thesis has shown that law students augmented their professional development with a far wider, and often more literary, kind of reading and writing practice.

Having seen this, we must now consider the implications of this study. The first of these is the new methodology that I have established hitherto. These legal notebooks have not been read as literary or humanist texts, and their contents have not previously been studied in this way. Legal historians such as Baker and Prest have used notebooks such as these to reconstruct the formal legal practices undertaken by law students at the Inns of Court, yet they have

ignored the presence of these seemingly non-legal texts. These kinds of primary sources can also pose a challenge to literary scholars as they are usually written in Law French and contain a large quantity of dense legal material. This can make them difficult to study, yet as my research has demonstrated, close textual and material analysis of these kinds of notebook can uncover a great deal of valuable material that expands our understanding of the uses of literary and non-legal texts at the Inns of Court. Moving forward from this project, it is possible to apply this new methodology to other legal notebooks, and to other kinds of legal manuscripts, as I have demonstrated. These primary sources have much to offer the field of law and literature.

Another significant area of study identified by my research is the importance of attending to the material physicality of these notebooks. All too often these kinds of primary source materials are examined as texts but not objects. Throughout my thesis I have demonstrated the physical importance of these notebooks as functional tools in the educative lives of their authors. These notebooks allowed their authors to practice the kinds of practical skills necessary to their profession, such as penmanship, language, and the contemporaneous recording of notes. Perhaps the most significant example of this is demonstrated by the notebook containing the Joco Seria, in which the notebook itself was the central object around which communal moot exercises and structured sessions of play were performed. My research also demonstrates that through careful and close analysis of the material notebook and it pages, watermarks, palaeography and formatting a great deal of information pertaining to authorial intent (both individual and communal), arrangement, composition and use can be discovered.

In re-evaluating our understanding of legal education, this thesis has identified a common practise of using humanist methods of learning within the notebooks. I argue that the application of humanist learning methods had been adapted to fit a distinctly legal usage within the Inns, and that humanist methods were shaped in these notebooks to work in concert with established, formal legal exercises already practiced within the Inns. I propose that these notebooks are evidence of the importance of humanism in the training and development of legal professionals. This is especially noticeable in James Whitelocke's commonplace book, in which he skilfully demonstrated a harmonious synthesis between humanist learning and legal education. My research suggests that humanism may have played a far larger role in legal education than is currently understood.

My research into the impact of humanism on the composition and use of these notebooks also suggests a far more complex relationship between play and legal education. In particular this thesis complicates how we view lower forms of play, or play that has typically been associated with violence and disorder. As I have demonstrated, apparently low-brow forms of play were deliberately structured to facilitate exercises in legal argument, invention and rhetoric while simultaneously acting as a release from the strains of legal study. This application of play further complicates historic models in which the 'plodders' are placed in stark opposition to the 'revellers' within the Inns. My research suggests that these models of learning were far more fluid and not so rigidly defined. Further study of notebook manuscripts of the kind examined in my thesis might reveal more as to how serious-minded students of law elevated and adapted these lower forms of play as part of their legal education.

A possible limitation that I have identified throughout my research relates to the question of authorial intention. The lawyers of these notebooks left no written record as to the how their notebooks were to be read or used, and we can never know for certain whether the authors of these notebooks truly intended for the non-legal materials they noted down to be read in dialogue with the legal. And yet, as my thesis has demonstrated, it is nonetheless meaningful to analyse the end results of what they produced, and what the effect of those notebooks may have been (whether the authors consciously intended to create those effects when they wrote them). Regardless of authorial intent, I believe that my analysis of these notebooks has clearly demonstrated that the non-legal texts were far more than distractions or ephemeral moments of play. I show that they were deliberately placed in these notebooks to be used as legal, educative and playful texts.

Another difficulty I have identified is the largely anonymous nature of these notebooks. With the exception of Whitelocke, very little is known about their authors. A little information can be gleaned from the Inns' records, county archives or State Papers, but by and large very little is known about the authors of these notebooks. Further to this, we have no knowledge of any other writings or works produced by these students of law. The implication of this is perhaps best demonstrated by the chapter on Whitelocke; the depth of detailed analysis applied to his academic commonplace book was only made possibly by the wealth of biographical information available from his *Liber Famelicus*. The same again can be seen in my examination of the notebook containing the Joco Seria as the geographic background of the men listed in the notebook informed my analysis, which in turn revealed the strength of institutional and geographical influences on not only their social group, but also in their performance and recording of the Joco Seria. Biographical information is extremely valuable, and a limitation

of working with largely anonymous notebooks is that much of that information is simply not available to us.

My case studies suggest that the vocational and educational uses of non-legal texts within legal notebooks at the early modern Inns of Court seems to have been widespread rather than exceptional. Furthermore, the kind of notebook explored in this thesis was unique to law students and to the Inns of Court and is evidence of a distinct genre of legal writing. These students of law did not perceive themselves to be literary figures, they were not pursuing literary careers and they were not using their notebooks as a means to enhance or advertise their social or professional reputations. Their use of non-legal texts was pragmatic, but this is not to mean that is was in any way unimaginative or simplified. Through their adaptation of humanist educational practices these law students used non-legal texts in ways that were inventive, complex, considered and playful. The manifold ways in which these law students used non-legal texts in their notebooks has, until now, failed to attract critical attention from literary scholars. By defining and examining these notebooks and their contents in this way, my thesis has uncovered not only new primary sources that can expand our understanding of law and literature at the early modern Inns of Court, but also establishes a methodology by which to examine those materials, which is hoped will be applied to many more such manuscripts in the future.

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