Political appropriation

Reading Sir Walter Ralegh's

'Dialogue between a Counsellor of State and a Justice of Peace'

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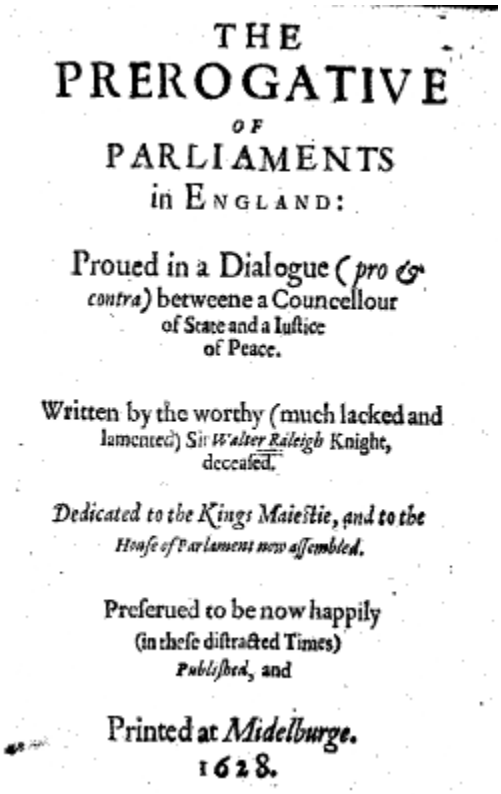
Reading the Text

Alongside his many other roles Sir Walter Ralegh was an experienced parliamentarian, who helped Elizabeth's government to manage the House of Commons. In the aftermath of the fiasco of the 1614 parliament he wrote 'The Dialogue between a Counsellor of State and a Justice of Peace' and presented it to the king.[1] Ralegh hoped to persuade James that his best course of action to secure financial stability was to call another parliament. This would require proper management and Ralegh believed he was the man for the job. To this end he hoped that the king would release him from the Tower, enabling him to be elected. In return Ralegh would help to manage the Commons, so that supply would be granted and the royal finances established on a firmer footing.

As befitted a text written for royal consumption, Ralegh did not challenge the royal prerogative. The 'Dialogue' supported the power of the king to act on his own, while maintaining that acting in concert with parliament gave the king greater authority and security. As a manuscript the 'Dialogue' was one of the most widely circulated political texts in Jacobean England and numerous scribal witnesses survive. During this circulation the tract underwent a curious transformation. By the time it was published in 1628 as *The Prerogative of Parliaments in England* it had become a text of parliamentary opposition.



THE
PREROGATIVE
OF
PARLIAMENTS
in ENGLAND:

Proued in a Dialogue (*pro & contra*) betweene a Councellour of State and a Iuſtice of Peace.

Written by the worthy (much lacked and lamented) Sir *Walter Raleigh* Knight, deceaſed.

Dedicated to the Kings Maieſtie, and to the Houſe of Parlament now aſſembled.

Preſerued to be now happily (in theſe diſtracted Times) *Publiſhed*, and

Printed at *Middelburge*.
1628.

Figure 1 - The title page of the published text

[1] Published with some superficial editorial changes in *The Works of Sir Walter Ralegh*, 8 volumes (Oxford, 1829), vol. 8, pp. 157-221: hereafter, *Works*. Quotations refer to this published edition, but follow Smyth's text; abbreviations are expanded and consonantal 'u' is transcribed as 'v'. Underlining in quotations matches that in Smyth's manuscript.

Anna Beer has argued that the *Dialogue* was always intended for a wider audience that the king and that it was written within an active transcriptional culture that had its roots in the Inns of Court.[2] This paper examines the annotated copy of the 'Dialogue' belonging to John Smyth of Nibley. Smyth was a Middle Temple lawyer and a member of the antiquarian textual community centred on Sir Robert Cotton's library in Westminster. He was also associated with provincial opposition to Stuart policies.[3] In it I explore how the annotations made to the text indicate how Ralegh's work was appropriated by supporters of parliamentary privilege against the king's prerogative.

John Smyth of Nibley is irrevocably associated with the Berkeley family, who he served as man-of-business for almost half a century and whose history he wrote in the *Lives of the Berkeleys* and with the area of south Gloucestershire around Berkeley castle and his home at North Nibley, which he celebrated in his *Description of the Hundred of Berkeley.* What is not appreciated is that in the reign of James I he was also a metropolitan figure, spending much of his time in London. As the Berkeley man-of-business he was responsible for preparing cases and managing their progress through the Westminster courts.[4] In the spring and early summer of 1613 he was involved in the negotiations which preceded the marriage of Theophila Berkeley to Sir Robert Coke, eldest son of the Jacobean judge Sir Edward Coke.[5] Nor were his financial and legal interests limited to the affairs of the Berkeleys – he proved himself a useful man-of-business to his clothier neighbours, the Gloucestershire gentry and to various contacts in London. In particular he was interested in the settlement of Virginia, providing the bureaucratic expertise required by a group of Gloucestershire gentlemen interested in establishing the Berkeley plantation there. This brought him to the attention of the Earl of Southampton, who recommended his appointment to the Council of Virginia.

Figure 2 - John Smyth's signature

In 1621 Smyth was an antiquarian lawyer with widespread commercial interests and a reputation for being administratively effective. Through Theophila Berkeley's marriage and his involvement in the colonisation of Virginia he was associated with two of the leaders of opposition to the direction of the government under Buckingham. Sir Edward Coke returned to parliament in 1621, having last sat in 1593 when he was speaker and Sir Walter Ralegh was newly released from his first sojourn in the Tower. In the

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[2] A. Beer, 'Sir Walter Ralegh's *Dialogue between a Counsellor of State and a Justice of Peace*' in S. Clucas & R. Davies eds., *The Crisis of 1614 and the Addled Parliament* (Ashgate, 2003), pp. 127-60.

[3] Gloucestershire C.R.O., D225/Z1.

[4] J. Broadway, 'John Smyth of Nibley: A Jacobean man-of-business and his service to the Berkeley family', *Midland History* 24 (1999), pp. 79-97.

[5] Theophila was the daughter of Sir Thomas Berkeley (d. 1611) and his wife Elizabeth, née Carey; her brother George succeeded their grand-father as Lord Berkeley in November 1613.

meantime Coke had risen to the height of Lord Chief Justice, but had been sacked for his refusal to put obedience to the Crown before his legal principles. The earl of Southampton led those peers from long-established families who disliked the increase in new creations under James I. The phenomenon of 'opposition peers' had not been seen for more than a generation; consequently, there was no one experienced at organising such a grouping. Moreover the failure of the House of Commons and James I to agree in the past was as much a problem to those who believed in the rule of king in parliament as it was to the Crown. Just as Ralegh argued that the king needed people who could manage parliament, the same need was felt by those who wanted the Commons to perform an effective role in government. A man such as Smyth, who had proved his value as an administrator and lawyer was potentially a very valuable parliamentarian, although he might not shine in debate or take the lead in initiating events. In addition to his contact with Sir Edward Coke and the Virginia Company, Smyth was also known to opposition circles through his frequent use of Sir Robert Cotton's library and involvement in the antiquarian circle that included John Selden. Moreover, in 1621 Smyth knew that his role as the Berkeley man-of-business might shortly come to an end, when George, lord Berkeley came of age the following year. Consequently, he might soon be in need of new employment and proving himself of use to the parliamentary opposition to Buckingham might help him to obtain it. When the king summoned a parliament, Smyth was returned for Midhurst in Sussex as the candidate of Viscount Montagu, cousin of the Earl of Southampton.[6] This was the only occasion that he stood for parliament.

If we compare Smyth's copy of the 'Dialogue' with the mangled version of the text that was printed in 1628, it is clear that it was much nearer to the original manuscript. I believe the preamble of Smyth's copy places it close to the text's original composition in the Tower – a contention that is supported by other evidence of Smyth's association with the Tower and its inmates. His manuscript is annotated within underlining, notes in the margin and manicules, which allow us to recover how this practical man-of-business who in 1621 was taking an active role in politics interpreted the text. On one level Smyth was clearly reading the text as a history of the Crown's relations with parliament, marking quotes from other documents, underlining names and identifying oblique references to people.

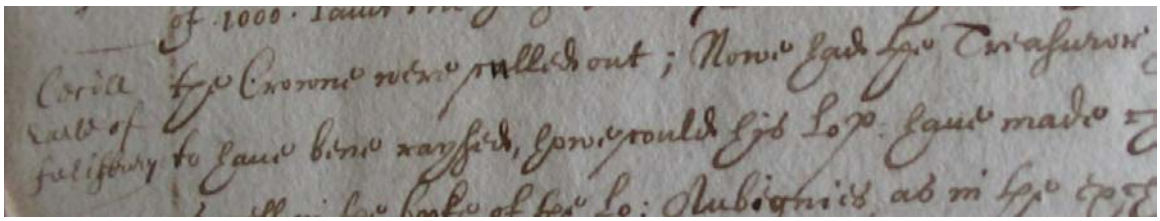

Figure 3 - Identifying references

[6] Midhurst was dominated by Cowdray Park, the home of Southampton's catholic cousin Viscount Montagu. The Virginia Company connection is the only logical explanation for Smyth's election to this seat.

This was a practical approach to making the text more usable as a reference source, highlighting dates and precedents. Similar marking-up can be seen in a copy associated with the diplomat Sir Thomas Edmondes, who became treasurer of the household in 1618.[7] This form of annotation indicates that the manuscript was used as a reference concerning the history of parliament's relations with the monarchy, but does not tell us which side the annotator supported.

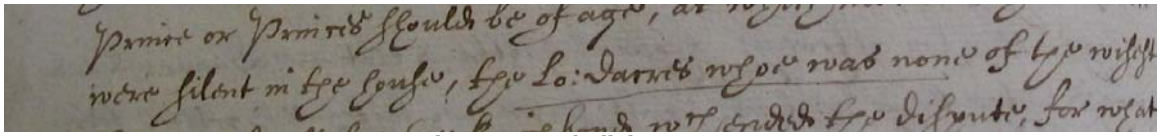

Figure 4 – Underlining names

The second group of annotations indicates a more polemical interest in the text. They are concerned with references to corrupt councilors, the relationship between their predominance and the reluctance of parliaments to grant supply and how this does not represent disloyalty to the king. The one phrase that is underlined in the dedication reflects that the love of the people for the Crown 'is lost by nothinge more then by the deffence of others in wronge doinge'.[8] These concerns have direct relevance to the proceedings of the 1621 parliament. The interpretation of this second group of annotations in conjunction with our knowledge of Smyth elucidates how the *Dialogue* was appropriated by the political opposition to Stuart autocracy.

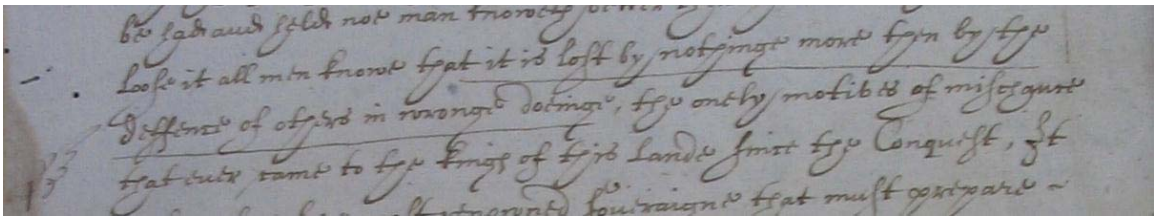

Figure 5 - Underlining with intent

On the whole this second type of underlining does not concern itself with the royal prerogative, which has been the focus of the analysis of readings of the text. Since the text was eventually printed as *The Prerogative of Parliaments*, the contemporary interest in the text has been interpreted as concerned with support or opposition for the king's prerogative. The only underlining in the Smyth copy that is indirectly concerned with this issue is the observation that 'a weake title that weares a strong sword hath comonly prevayled against the stronge title that weares but a weake one'.[9] Overwhelmingly the tenor of the underlining of the manuscript indicates that the significance of the text for the parliamentary opposition in 1621 was not its support or otherwise for the royal prerogative, but its relevance to one of their primary concerns – the reintroduction of impeachment. For an opposition that was looking for precedents for the removal of those officers of the Crown that they most disliked, Ralegh's observation that in the fourteenth century the custom was 'to change the Treasurer and Chancellor every yeare and withall to heare mens complaintes against them' was apposite.[10] In 1621 Francis Bacon was James I's Lord Chancellor and the parliament was to impeach him for corruption.

[7] B.L., Stowe 177.
[8] *Works*, p. 156.
[9] *Works*, p. 172.
[10] *Works*, p. 181.

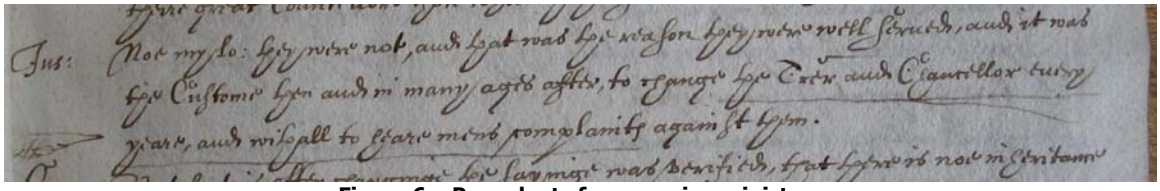

Figure 6 – Precedents for removing ministers

When read through the prism of Smyth's underlining, the 'Dialogue' becomes a clear manifesto encouraging the king to sacrifice his unpopular ministers in return for being granted a subsidy. In the account of the reign of Henry III, for example, we find: 'for the people, whoe the same yeare had refused to give the kinge any thinge, when they sawe that he had squeased those spunges of the Commonwealth, they willingly yealded to give him sattisfaction'. A few paragraphs later we read, that the king 'was resolved that they loved his person, and onely hated those corrupt Councellors that then bare the great swaye under him'. The concern that a king who allowed his ministers to be removed was dishonoured was addressed by Ralegh in relation to Richard II's chancellor, the earl of Suffolk. This section was highlighted in Smyth's manuscript by a manicule in the margin. Similarly highlighted was Ralegh's observation concerning 'the appointinge Treasurers or removinge of Councellors', that kings commonly restored officers that had been removed with the ending of the parliament. While Ralegh intended this to reassure the king that a parliament's powers were limited, to Smyth and his fellow antiquarian lawyers in 1621 it was a reminder that they needed to find a way to make their actions permanent. Hence, they revived the ancient judicial process of impeachment, last used in 1449.[11] The way in which Ralegh's reassurances to the king were reinterpreted by Smyth in annotating the text is further indicated by the only marginal comment in the manuscript that belongs to the second rather than first class of annotations. This annotation uniquely appears in the right-hand margin of the manuscript and is encircled to further highlight the comment. Ralegh had the character of the Justice observe: 'When the kinge leaves himselfe to his people, they assure themselves they are beloved of theire kinge; and there was never any assembly soe barbarous, as not to answere the love and trust of their soveraigne'. Ominously for the king and his ministers in 1621, this observation was annotated in Smyth's copy in the right-hand margin: 'yes, there has'.

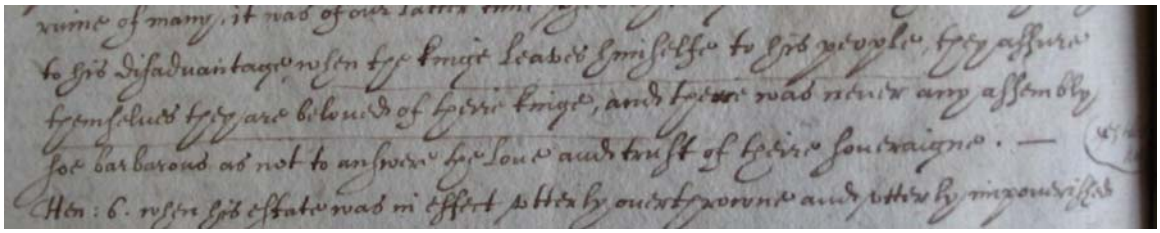

Figure 7 - Using the right-hand margin

By the time that the antiquarian lawyers of the 1621 parliament were culling his text and other sources for precedents to effect the political changes they sought, Sir Walter Ralegh was dead. We cannot, therefore, know how he would have reacted to the use that his 'Dialogue' as a defence of parliament against the king. However, I do not think he would have been surprised by the way in which his text was used. Although it was

[11] *Works*, p. 217; A. Smith, 'Constitutional Ideas and Parliamentary Developments in England 1603-1625' in A. Smith ed., *The Reign of James VI and I* (1973), pp. 160-76.

carefully presented as supportive of the royal prerogative, he would have been aware that other interpretations of his material were possible. Ralegh was too experienced a politician and too well acquainted with the scholarly circles within which such manuscripts circulated in Elizabethan and Jacobean London not to have appreciated the potential of his work. By releasing his manuscript into the community of Jacobean lawyers and scholars to which Smyth belonged, Ralegh was complicit in the creation of such alternative interpretations.

Figure 8 - Ending with a flourish

Jan Broadway

Physical Description and Provenance

The Smyth manuscript of Ralegh's 'Dialogue betweene a Councellor and a Justice of Peace of the Successe of Parliaments'[12] is copied into a prepared notebook of folio sheets of paper sewn together. The manuscript has not been bound. There has been some damage from damp, predominantly along the spine, and some losses to the edges of the paper, but the whole text remains legible. The notebook is of a type Smyth used for his own antiquarian and professional writings. Margins are drawn on both left and right of the text. The left-hand margin is used to identify the speaker (Jus[t]: or Co:) and for other marginal notes. The right-hand margin is used only once. The main text is written by a hand other than Smyth's, possibly that of one of his own clerks or a professional copyist. Catchwords are used at the foot of the page. The marginal manicules and underlining are in different ink. The marginal notes are in a different hand and are less neatly executed than the main text. They are too few and short to provide a confident ascription to Smyth. By 1621 he employed various clerks and the annotation may have been physically added by one of these.

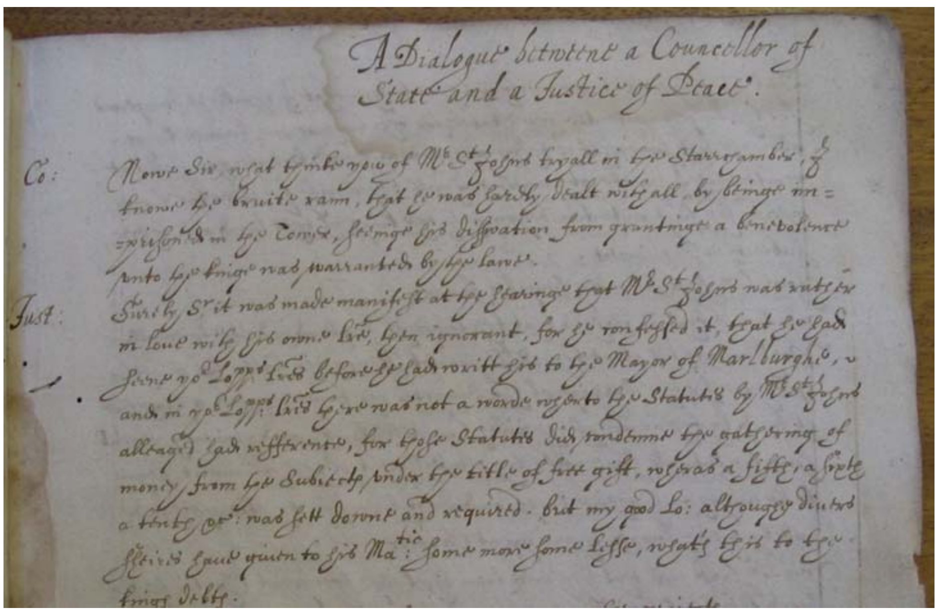

Figure 9 - The beginning of the Dialogue

The manuscript is preserved in the collection of the Denison-Jones family, along with other material that can be confidently linked to Smyth.[13] It appears that the papers were separated from the main Smyth collection through the marriage of his grand-daughter Elizabeth to Thomas Veel, an ancestor of the family. A number of transcripts of other documents relating to Ralegh, including his 'Apologie for his last action at Guyana' and his speech on the scaffold, remained within the main Smyth archive.[14]

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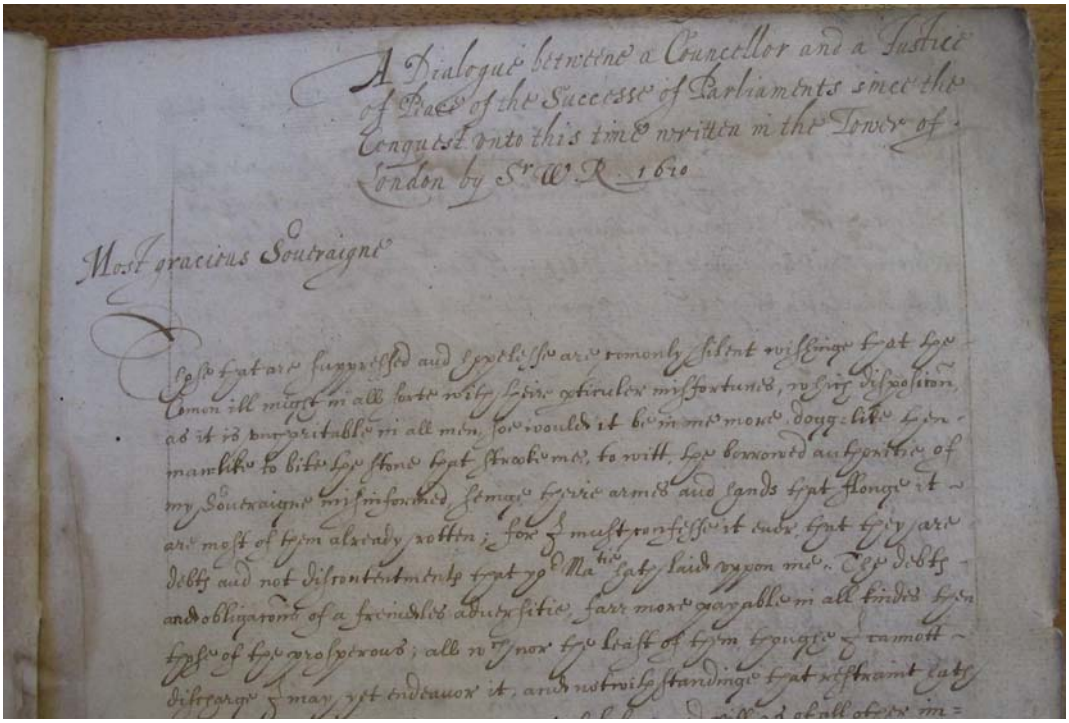
[12] Gloucestershire Record Office, D225/Z1.

[13] Gloucestershire Record Office, D225/F5, D225/F6 and D225/T2 include documents quoted in Smyth's *Lives of the Berkeleys*, vol. 1, pp. 51, 73; vol. 2, p. 435. The collection also includes Berkeley family pedigrees and documents relating to the Berkeley-Lisle lawsuit (settled 1609), in which Smyth acted as Lord Berkeley's solicitor.

[14] H.M.C. 5th Report, pp. 354-5; following the sale of the Cholmondeley Papers by Quaritch in 1888, these documents were acquired by the Folger Library, Washington.

The Preamble


A Dialogue betweene a Councellor and a Justice of Peace of the Successe of Parliaments since the Conquest vnto this time written in the Tower of London by Sr W. R. 1610

Most gracious Soueraigne

Figure 10 – The title and opening of the letter of dedication

Smyth's manuscript is entitled in the top right-hand corner before the letter of dedication:

> A Dialogue betweene a Councellor and a Justice of Peace of the Successe of Parliaments since the Conquest unto this time written in the Tower of London by S[r] W. R. 1610.

The ascription of the document to 1610 is unexpected, as the writing of the 'Dialogue' is reliably dated to the summer of 1615, following the disastrous failure of the 1614 parliament. A presentation copy of the work was presented by Ralegh to King James in the autumn of 1615. It is unlikely that the majority of manuscript copies that circulated before the text was published as the *Prerogative of Parliaments* in 1628 were derived directly from this presentation copy.[15] The 1610 date also appears on another, partial copy of the 'Dialogue' in a collection of documents relating to the House of Commons[16]:


Sr W. R. 1610

Figure 11 – The 'incorrect' date.

> A Dialogue betweene a Counsellor and a Justice of Peace of the success of Parliamente since the Conquest to this time written in the Tower of London by Sir Walter Raleigh and dedicated to king James our soveraigne Lord in Anno 1610.

[15] A. Beer, *Sir Walter Ralegh and his Readers,* Appendix 1 lists some 13 copies; this does include the Smyth copy or Gloucestershire Record Office, D6755/1/4/11; Badminton Muniments FmS/C2/6; Suffolk Record Office, 941/73/2. It is likely that there are other copies extant.

[16] Exeter College, Oxford, MS 139.

Common antiquarian practice was to append the date of starting the compilation of a text to the opening preamble. I would, therefore, suggest that Ralegh's text was initially begun following the failure of the Great Contract in 1610, was subsequently laid aside and then resurrected after the collapse of the 1614 parliament. This would explain the brief mention of the St John case in Star Chamber in the opening paragraphs as an attempt to update the text through a topical reference in 1615. The promulgation of the erroneous 1610 date in the Smyth and Exeter College versions of the text suggest that they belong in a path of manuscript transmission from Ralegh's own copy rather than those presented to the king.

The Smyth manuscript is more correct than the version that was used to produce the *Prerogative of Parliaments*, locating it closer to Ralegh's original text. The printed text incorporates some scribal errors, such as a reference to the 'parliament of the white wands' in the reign of Edward II rather than the 'white bands', to Edward III's 'chancellor' when his chamberlain Latimer was intended and to a 'pretty' rather than a petty army.[17] The assignment of dialogue to the Justice and the Councillor had also become scrambled in places, making the text more difficult to follow.[18]

[17] *Works*, pp. 175, 183, 198.

[18] *Works*, the final interjection of the Councillor on p. 180 is part of a continuous speech by the Justice; on p. 185-6, the speech by the Justice should interrupted by the Councillor after 'villainies?' and resume 'No, my lord'.

John Smyth and the Tower of London

The Tower of London loomed large in John Smyth's life during the first two decades of the seventeenth century, while Sir Walter Ralegh was an inmate. As a lawyer who specialised in preparing cases rather than arguing them in court, he spent many hours among the records that were held in the Tower. In the first years of James I's reign Smyth spent much of his time in London, locating and collating the mass of evidence that led to the settlement of the great lawsuit between the Berkeleys and the Lisles in 1609.[19] This work took him frequently to the Tower and his familiarity with the record office there was such that in 1616 he contemplated purchasing the office of Keeper of the Records.[20] His visits to the Tower were not, however, limited to the record office. For four years after the Gunpowder Plot Smyth was auditor to Ralegh's fellow prisoner, Henry Percy, earl of Northumberland.[21] It is likely that Smyth also visited another prisoner – Ralegh's friend, Lawrence Keymis.[22] Little is known about Keymis beyond his association with Ralegh, but he was described on his admission to Oxford as of Wiltshire and it is probable that he was a member of the branch of the Kemys family that had moved from Wales to the West Country in the service of the Berkeleys. At this time Roger Kemys, the head of the Gloucestershire branch of the family, was constable of Berkeley castle. He worked closely with Smyth and shared his interest in genealogy and antiquarian research.[23] Although Lord Berkeley was not a political force in Jacobean England, he was the brother-in-law through his first wife to Thomas, earl of Northampton and was closely associated with the Howard faction that dominated James' court at this time. However tentative the connection between Keymis and Lord Berkeley, it seems inevitable that he would have attempted to invoke it when he found himself imprisoned in the Tower and Smyth would have been an available and obvious conduit.

Figure 12 – Page from a notebook belonging to Roger Kemys

[19] The great lawsuit originated in the disputed inheritance of the Berkeley lands between the families of the daughter and the nephew of Thomas, lord Berkeley (d. 1417). See P. Fleming & M. Wood, *Gloucestershire's Forgotten Battle: Nibley Green 1470* (Stroud, 2003).
[20] Gloucestershire Record Office, Smyth Papers, vol. 5, f. 22.
[21] *H.M.C. 5th Report*, pp. 354-5; Gloucestershire Record Office, D8887, vol. 7, ff. 60-3, 69.
[22] Keymis had carried messages between Ralegh and Cobham. He was committed with Ralegh in 1603 and released in 1616. He took command of the Guyana expedition when Ralegh was taken ill and committed suicide when disaster overtook the enterprise. See R. Trevelyan, *Sir Walter Raleigh* (2003).
[23] Gloucestershire Record Office, D885; D421/Z11; Smyth Papers, vol. 7, f. 80.

John Smyth, the Berkeleys and the Parliament of 1621

Although Smyth was elected to stand for Midhurst in Sussex, his journal indicates his particular interest in issues that concerned Gloucestershire. These included the repair of Tewkesbury bridge and the rights of the tenants of Oldbury and Thornbury. For any respective patron Smyth's particular knowledge of the history of Gloucestershire manors, their feudal and legal rights would be his unique selling point. This knowledge was to make him invaluable to his neighbours during various legal disputes over the Crown's attempts to exploit feudal rights and non-parliamentary forms of taxation in the following reign. As befitted someone whose patron was a member of the Council of the Virginia Company, Smyth was also heavily involved in colonial matters, such as the question of free fishing. When it came to tobacco, these areas of interest overlapped. Tobacco was widely grown in Gloucestershire and Smyth was among those that had imported seed. The Virginia Company, however, wished to establish their own monopoly and had succeeded in getting the cultivation of tobacco in England officially banned in 1619.[24]

The journal Smyth kept of events in parliament enabled him to provide reports on proceedings to his patrons. We know that he wrote detailed accounts of events for Lady Berkeley. On Sunday 18th March he sat down at 6 a.m. to write an account of the previous week's events for her, while a messenger waited. After three hours and over four sides of paper he had completed only Monday through Wednesday, concluding: 'In good fayth, madam, I growe ill, as I am wrytynge of this last syde, And begynne to shake with an Ague, And theirfore must perforce leave of, And goe presently to bed, not able to hold my pen any longer ... And will give you the rest by the next'.[25] It was on such dedication and his attention to detail that Smyth's reputation as a man-of-business was based.

While the uncertainty of what Lord Berkeley would do once he came of age meant that Smyth could not be certain that his role as man-of-business would continue, he was increasingly involved with another branch of the family. The Berkeleys of Stoke Gifford were far more involved in the political and administrative life of Gloucestershire than their baronial kinsmen, being employed as JPs, MPs and deputy lieutenants. Richard Berkeley was one of Smyth's fellow projectors in the Berkeley plantation and had sat for the county in 1614. In 1621 he stood aside for his son, Sir Maurice Berkeley. The Stoke Gifford Berkeleys were active parliamentarians and possessed numerous copies of parliamentary speeches and treatises, including the 'Dialogue'.[26] They were also linked to Sir Edward Coke, whose daughter Elizabeth married Sir Maurice in 1622[27]. In the following reign they would demonstrate their opposition to non-parliamentary taxation by refusing to act as commissioners for the forced loan.[28]

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[24] 'Smyth's Commons Diary for 1621' in W. Notestein et al., *Commons Debates 1621* (Yale, 1935), vol. 5; J. Thirsk, *The Rural Economy of England* (1984), chapters 15 & 16.
[25] *Gloucestershire Record Office,* PC2004.
[26] *Badminton Muniments*, FmS/C2/6.
[27] Elizabeth was the daughter of Sir Edward Coke by his second marriage to Lady Hatton; she died in 1623, having borne her husband a daughter, Frances: *Badminton Muniments*, OP 1/3.
[28] W. Willcox, *Gloucestershire: A study in local government 1590-1640* (Yale, 1940), pp. 119.