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**THE LIBRARY OF CHARLES ARESKINE (1680-1763):  
SCOTTISH LAWYERS AND BOOK COLLECTING, 1700-1760**

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## Abstract

The thesis uses the study of an individual's book collection to examine wider themes in eighteenth century Scottish legal, social, political, and intellectual history. Charles Areskine's library was made up of the books he needed as an advocate and judge, the texts he wanted to use to better understand the law and its history, and the books he used to enhance his ability to participate in the intellectual milieu of early eighteenth century Britain.

Charles Areskine of Alva, Lord Tinwald (1680-1763) was an important Scottish lawyer and judge. Following a legal education in the Netherlands, he became an advocate and was called to the Bar in 1711. Areskine's legal career was very successful and he attained high positions in the Scottish legal establishment becoming Lord Advocate (1737-1742) and Lord Justice Clerk (1748-1763). He was appointed to the bench as Lord Tinwald in 1744. He served in parliament and developed his country estates at Tinwald in Dumfriesshire and at Alva in Clackmannanshire.

Areskine is an interesting figure in the early Scottish Enlightenment not least because he began his career not in legal but in academic circles. He was a regent at the University of Edinburgh when he was barely out of his teens and from 1707 to 1734 he was the first Professor of the Law of Nature and Nations at Edinburgh. Areskine was also a traveller, a client of the earl of Ilay, a friend to philosophers, a patron of the arts, and a book collector.

A manuscript which lists of the contents of Areskine's library survives in the National Library of Scotland as NLS MS 3283. 'Catalogus Librorum D. D<sup>ni</sup>. Caroli Areskine de Barjarg, Regiarum Causarum Procuratoris. 1731' lists 1290 titles divided into books on legal topics, which are not given any specific headings, and 'Libri Miscellanei'. Although it is clearly dated as 1731, the manuscript was continuously added to and acted as a library catalogue throughout Areskine's life. The list provides important evidence about Areskine's participation in the legal, intellectual, and cultural concerns of the early Scottish Enlightenment. Areskine's law books provide evidence for his scholarly interest in the history of law while showing the types of books lawyers turned to in order to fashion their arguments in the courts. His 'miscellaneous' books demonstrate his engagement with the wider cultural concerns of the first half of the eighteenth century.

The books that eighteenth century Scottish lawyers owned provide evidence for their interests and influence. Areskine was not unique: his book collecting was part of a wider tradition among Scottish lawyers. Areskine's legally educated patron, Archibald Campbell, had one of the largest private libraries in Britain and his colleagues on the Bench, Lord Arniston and Lord Hailes, created collections which they stored in specially built rooms in their houses.

Because so many of them survive in the Alva Collections of the Advocates Library and the National Library of Scotland, it has been possible to examine Areskine's books for clues about who owned them before he did and what happened to them after his death. Several inscriptions and bookplates survive in the Alva books which give evidence for a lively book market which was centred on the Scottish legal community. Advocates bought and sold many of their books at auctions. This study shows that books on topics of interest to Scottish lawyers changed hands and stayed in use for decades.

## **Declaration**

I, Karen Grudzien Baston, hereby certify that this thesis, which is approximately 97,340 words in length, has been written by me, that it is a record of work carried out by me, and that it has not been submitted in any previous application for a higher degree.

Signature

Date

## Acknowledgements

This thesis was made possible by Professor John W. Cairns and Dr Brian Hillyard who identified the topic and arranged for it to be the basis of an application to the Arts and Humanities Research Council for collaborative funding. It has been a pleasure to work with them and with Dr Paul du Plessis as my supervisors for the past three years. Their knowledge has greatly enhanced this thesis. I am grateful for their intellectual and moral support and for the care and attention they have given both me and the thesis. It has been an unforgettable and valuable experience and I hope to have the privilege of working with all of them again in future.

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Special thanks go to James Hamilton who has provided intellectual support, acted as a sounding board, picked up the pieces in tough times, and has proofread, discussed, endured countless presentation practice sessions, and inspired this thesis every step of the way. This thesis could not have happened without his help and it is dedicated to him.

Finally, I must recognise the support of the Arts and Humanities Research Council without which this thesis would not have been written.

## Abbreviations

Alva Coll.	Alva Collection, Advocates Library
AL	Advocates Library ( <a href="http://voyager.advocates.org.uk">http://voyager.advocates.org.uk</a> )
BL	British Library ( <a href="http://www.bl.uk">http://www.bl.uk</a> )
BLLUC	Berkeley Law Library, University of California ( <a href="http://www.law.berkeley.edu/library.htm">http://www.law.berkeley.edu/library.htm</a> )
BNF	Bibliothèque Nationale de France ( <a href="http://www.bnf.fr/fr/acc/x.accueil.html">http://www.bnf.fr/fr/acc/x.accueil.html</a> )
BSB	Bayerische Staatsbibliothek ( <a href="http://opacplus.bsb-muenchen.de">http://opacplus.bsb-muenchen.de</a> )
COPAC	Copac National, Academic, & Specialist Library Catalogue ( <a href="http://www.copac.ac.uk">http://www.copac.ac.uk</a> )
CUL	Cambridge University Library ( <a href="http://ul-newton.lib.cam.ac.uk">http://ul-newton.lib.cam.ac.uk</a> )
CUP	Cambridge University Press
EDIT16	<i>Census of Italian 16th Century Editions</i> ( <a href="http://edit16.iccu.sbn.it/web_iccu/eimain.htm">http://edit16.iccu.sbn.it/web_iccu/eimain.htm</a> )
ESTC	<i>English Short Title Catalogue</i> ( <a href="http://estc.bl.uk">http://estc.bl.uk</a> )
EUL	Edinburgh University Library ( <a href="http://www.lib.ed.ac.uk/">http://www.lib.ed.ac.uk/</a> )
EUP	Edinburgh University Press
Folger	Folger Shakespeare Library ( <a href="http://shakespeare.folger.edu/">http://shakespeare.folger.edu/</a> )
FVB	<i>French vernacular books: books published in the French language before 1601</i> (Leiden: Brill, 2007)
GAL	Grizel Areskine's Library Catalogue, 1729 (NLS MS 5161)
GUL	Glasgow University Library ( <a href="http://www.lib.gla.ac.uk/">http://www.lib.gla.ac.uk/</a> )
HBLL	Harold B. Lee Library, Brigham Young University ( <a href="http://www.lib.byu.edu">http://www.lib.byu.edu</a> )
HL	Houghton Library, Harvard University ( <a href="http://hcl.harvard.edu/libraries/houghton">http://hcl.harvard.edu/libraries/houghton</a> )
HMSO	Her (or His) Majesty's Stationery Office
ISTC	Incunabula Short Title Catalogue ( <a href="http://www.bl.uk/catalogues/istc/index.html">http://www.bl.uk/catalogues/istc/index.html</a> )
LAS	Lord Alva Shelfmark (1774)
LOC	Library of Congress ( <a href="http://catalog.loc.gov/webvoy.htm">http://catalog.loc.gov/webvoy.htm</a> )
LUL	Leiden University Library ( <a href="http://catalogus.leidenuniv.nl">http://catalogus.leidenuniv.nl</a> )
NA	National Archives, Kew
NAS	National Archives of Scotland, Edinburgh
NLS	National Library of Scotland ( <a href="http://www.nls.uk">http://www.nls.uk</a> )
OBNB	<i>Oxford Dictionary of National Biography</i>
OLIS	Bodleian Library, University of Oxford ( <a href="http://library.ox.ac.uk">http://library.ox.ac.uk</a> )
OUP	Oxford University Press
SAUL	St Andrews University Library ( <a href="http://library.st-andrews.ac.uk/">http://library.st-andrews.ac.uk/</a> )
SBN	<i>Servizio Bibliotecario Nazionale</i> ( <a href="http://opac.sbn.it/">http://opac.sbn.it/</a> )
SL	Signet Library, Edinburgh
STCN	<i>Short Title Catalogue Netherlands</i> ( <a href="http://picarta.pica.nl/">http://picarta.pica.nl/</a> )
STCV	<i>Short Title Catalogue Flanders</i> ( <a href="http://anet.ua.ac.be/submit.phtml">http://anet.ua.ac.be/submit.phtml</a> )
SS (1850)	Thomas George Stevenson, <i>Bibliotheca selecta, curiosa et rarissima</i> . (Edinburgh: Thomas George Stevenson, 1850)
SS (1851)	Thomas George Stevenson, <i>Catalogue of a select collection of law books</i> (Edinburgh: Thomas George Stevenson, 1851)

SS (1852)	Thomas George Stevenson, <i>Bibliotheca selecta, curiosa et rarissima. Part second of a general catalogue of miscellaneous English and foreign books</i> (Edinburgh: Thomas George Stevenson, 1852)
SUDOC	Système Universitaire de Documentation ( <a href="http://www.sudoc.abes.fr/">http://www.sudoc.abes.fr/</a> )
SUL	University of Salamanca Library ( <a href="http://sabus.usal.es/">http://sabus.usal.es/</a> )
TUL	University of Texas Libraries ( <a href="http://www.lib.utexas.edu/">http://www.lib.utexas.edu/</a> )
UDL	University of Dundee Library ( <a href="http://library.dundee.ac.uk/F/">http://library.dundee.ac.uk/F/</a> )
UTL	University of Toronto Libraries ( <a href="http://www.library.utoronto.ca/home/">http://www.library.utoronto.ca/home/</a> )
VD16	<i>Verzeichnis der im deutschen Sprachbereich erschienenen Drucke des 16. Jahrhunderts</i> ( <a href="http://www.bsb-muenchen.de/16-Jahrhundert-VD16.180.0.html">http://www.bsb-muenchen.de/16-Jahrhundert-VD16.180.0.html</a> )
VD17	<i>Das Verzeichnis der im deutschen Sprachraum erschienenen Drucke des 17. Jahrhunderts</i> ( <a href="http://www.vd17.de/">http://www.vd17.de/</a> )
WorldCat	( <a href="http://www.worldcat.org">http://www.worldcat.org</a> )

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## Introduction

### The Library of Charles Areskine of Alva

#### Charles Areskine of Alva

...not only an eminent lawyer and judge, but likewise a polite scholar, and an elegant speaker and writer....This gentleman was possessed of excellent talents, which were improved by culture, and set off to great advantage by a graceful persuasive eloquence in a strain peculiarly his own.<sup>1</sup>

Charles Areskine (or Erskine) of Alva, Lord Tinwald (1680-1763) was an important Scottish advocate and judge. Areskine's legal career was very successful. After acquiring his legal education in the Netherlands, he became an advocate and was called to the Bar in 1711. He attained high positions in the Scottish legal establishment becoming Solicitor General (1725-1737), Lord Advocate (1737-1742), and Lord Justice Clerk (1748-1763). He was appointed to the bench as Lord Tinwald in 1744.<sup>2</sup> He served in parliament and developed his estates at Tinwald in Dumfriesshire and at Alva in Clackmannanshire.

Areskine is a figure of interest within the context of the early Scottish Enlightenment not least because he began his career not in legal but in academic circles. He was a regent (tutor) at the University of Edinburgh when he was barely out of his teens and from 1707 to 1734 he was the first Professor of the Law of Nature and Nations at Edinburgh. Areskine was also a traveller, a politician, a friend to philosophers, a patron of the arts, and a book collector. He was already a successful advocate by the time he found favour with the powerful and influential earl of Ilay, later the third duke of Argyll, in the 1720s. Areskine maintained his scholarly interests and the evidence for this is found in the library he collected throughout his life.

#### Areskine: advocate, politician, and judge

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<sup>1</sup> John Ramsay, of Ochtertyre, *Scotland and Scotsmen in the eighteenth century*, ed. Alexander Allardyce, 1 (Edinburgh: William Blackwood and Sons, 1888), pp. 100-01.

<sup>2</sup> For biographical information see, John W. Cairns, 'The origins of the Edinburgh Law School: the Union of 1707 and the Regius Chair', *Edinburgh Law Review*, 11 (2007), 300-48 and his, 'Erskine, Charles, Lord Tinwald (*bap.* 1680, *d.* 1763)', *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/8847>> [accessed 16 January 2009]. I use the spelling of his name that that Areskine used as his signature and on his bookplates.

Statesmen in power, and judges that make conscience of their duty, seldom think either of writing books or of attending to language, further than it serves to convey their ideas. It was therefore want of leisure which prevented this accomplished man from making a figure as an author.<sup>3</sup>

Areskine had a varied, profitable, and powerful legal career. After being admitted advocate on 14 July 1711 he ‘came almost immediately into great practice’ and was known as ‘a very powerful and successful pleader’.<sup>4</sup> He was made advocate-depute by royal commission in 1714.<sup>5</sup> He continued to practice with great success and in May 1725 he was appointed solicitor-general with the privilege of speaking within the Bar.<sup>6</sup> He remained solicitor-general until 1737 when he became Lord Advocate.

Areskine had a political career alongside his legal activities. He was elected to the Westminster parliament as MP for Dumfriesshire in 1727 and 1734.<sup>7</sup> He seems to have only spoken twice in parliament. In 1735 he defended his patron Ilay’s plans for electing representative peers for Scotland and in 1737 he objected to a bill designed to punish Edinburgh for the Porteous riots of 1736.<sup>8</sup> He was elected for the Tain Burghs in 1741 but lost his seat when the election was declared void in March 1742.<sup>9</sup> He resigned his position as Lord Advocate at the same time and returned to full time legal practice.<sup>10</sup>

### **Lord Tinwald**

It is jurisdiction alone that creates a judge; but divers good qualities are necessary to accomplish him for the right exercise of the office. He ought to be skilful in the laws, by which he is to judge; a man of integrity, courage, and constancy, that he may do full law and justice to poor and rich, without fraud or guile, as our law speaks.<sup>11</sup>

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<sup>3</sup> Ramsay, p. 106.

<sup>4</sup> Ibid., p. 101.

<sup>5</sup> George W. T. Omond, *The Lord Advocates of Scotland: from the close of the fifteenth century to the passing of the Reform Bill*, 2 (Edinburgh: D. Douglas, 1883), pp. 1-2.

<sup>6</sup> Ibid., p. 2.

<sup>7</sup> Ibid. This was one of thirty county seats for Scotland between 1707 and 1832. Ronald M. Sunter, *Patronage and politics in Scotland, 1707-1832* (Edinburgh: John Donald, 1986), p. 236.

<sup>8</sup> Romney Sedgwick, *The House of Commons, 1715-1754*, 1: *Introductory, survey, appendices, constituencies, members A-D* (London: HMSO, 1970), p. 420.

<sup>9</sup> Ibid; Omond, p. 2. The Tain Burghs were Tain, Kirkwall, Dingwall, Dornock, and Wick. The seat was one of fifteen burgh seats in Scotland between 1707 and 1832. Sunter, p. 237.

<sup>10</sup> Omond, p. 3.

<sup>11</sup> Bankton, Andrew MacDowall, Lord, *An institute of the laws of Scotland in civil rights: with observations upon the agreement or diversity between them and the laws of England. In four books. After the general method of the Viscount of Stair’s Institutions*, 2 (Edinburgh: Printed by R. Fleming, for A. Kincaid and A. Donaldson, and sold by them and other booksellers, 1753), p. 479. Areskine shelved his copy at F 246.

The first vacant position on the Bench occurred in 1744 and Areskine became Lord Tinwald. He succeeded his fellow Ilay client Lord Milton as Lord Justice Clerk in 1748.<sup>12</sup> He played an active role in drafting and enforcing reform legislation like the abolition of military tenure and heritable jurisdictions.<sup>13</sup> Areskine held the second highest position in the Scottish legal establishment. He led the Court of Justiciary and deputised as Lord President at the Court of Session.<sup>14</sup> As Lord Justice Clerk, Areskine's duties went beyond judging in the courts. He was deeply involved with suppressing Jacobitism in Scotland since one of his roles was ensuring Scottish homeland security. He was in constant communication with Ilay and other officials at Westminster as he responded to perceived threats of invasion and Jacobite plots throughout the 1750s. He ran a network of contacts throughout Scotland. The threat of another invasion was real in the years after Culloden. In response to intelligence from the duke of Newcastle, Areskine

despatch't [a letter] into the remoter highlands, to gentlemen who I know will be zealous, and have the best access, to receive information & what is a doing among the deluded animals there, what their hopes of an Invasion are, or if they have received any fresh Supplys from abroad.<sup>15</sup>

Areskine reported to London on the effects that Westminster driven laws and policies had in Scotland throughout his time as Lord Justice Clerk. Areskine wrote, for example, to Philip Yorke, earl of Hardwick and Lord High Chancellor of Great Britain in 1750, to say that the

law prohibiting the Highland dress has as universally been complied with as...could well have been hoped for: education, inveterate custom, some conveniency to such as live among the mountains from that manner of clothing themselves, actually made them averse to the alteration: however, though in remote parts where inclination and hopes of impunity concur, in this, as in other crimes, there will be offenders; yet by holding a watchful

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<sup>12</sup> Omond, p. 3.

<sup>13</sup> For these see John W. Cairns, 'Attitudes to codification and the Scottish science of legislation, 1600-1830', *Tulane European and Civil Law Forum*, 22 (2007), 1-78 (p. 28).

<sup>14</sup> For examples of his deputising in 1748 and 1753 see *The acts of sederunt of the Lords of Council and Session, from the 15th of January 1553, to the 11th of July 1790* (Edinburgh: Printed by Neill and Company, for Elphingston Balfour, 1790), pp. 415, 470 where 'Ch. Areskine I.P.D.' signs Acts of Sederunt. There was no Lord President between 26 August 1753 and 02 February 1754: the Lords of Session appointed acting presidents for a week at a time during this gap. Brian Dempsey, 'The *Marriage (Scotland) Bill 1755*', in *Miscellany six by various authors*, ed. by Hector L. MacQueen (Edinburgh: Stair Society, 2009), pp. 75-119 (p. 89).

<sup>15</sup> Charles Areskine, 'Letter' (21 April 1750), ff. 141-41v. For a detailed study of the government's activities in the years after Culloden and Areskine's role as Lord Justice Clerk, see Byron Frank Jewell, 'The legislation relating to Scotland after the Forty-five' (PhD, University of North Carolina, 1975).

eye over them, I'm persuaded the statute may, in very little time, have its full and desirable effect.<sup>16</sup>

Later in the decade, Areskine sent warrants to arrest rioters in Dumfries in 1759 and as Lord Justice Clerk, presided over their trials in Edinburgh in 1760.<sup>17</sup> He also worked with English authorities to bring criminals to justice. The earl of Holderness enclosed a copy of message from the London magistrate Henry Fielding asking for Areskine's help in getting evidence against 'Page the Highwayman' in 1758. Fielding needed 'Johnston the Waiter at a Coffee House' to go to London to testify and was 'persuaded that Johnston will obey Lord Justice Clerk's Directions in the Affair'.<sup>18</sup>

Areskine was involved in important social and legal developments during his tenure as Lord Justice Clerk. These included drafting new legislation like the *Marriage (Scotland) Bill 1755* which attempted 'to abolish irregular and clandestine marriages and introduce for the first time a requirement for parental consent' and for which Areskine served as the main point of contact between Lord High Chancellor Hardwicke and the Scottish Lords of Session.<sup>19</sup> He was one of the most regular attendees at the meetings of the Commissioners of Annexed Estates between 1755 and 1760.<sup>20</sup> Areskine was a skilled negotiator and politician who managed to cooperate with different parties. After his appointment as Lord Justice Clerk, Areskine 'made great efforts to be all things to all factions, especially the English'.<sup>21</sup> Although deeply involved in legal and political duties, he maintained his reputation for learning. His patron Archibald Campbell certainly made use of his knowledge. Campbell wrote to Areskine asking for advice on legal matters saying 'let me have your thoughts of these matters & any quotations to the purpose'.<sup>22</sup>

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<sup>16</sup> Charles Areskine, quoted in Philip Yorke, *The life and correspondence of Philip Yorke, earl of Hardwicke, Lord High Chancellor of Great Britain*, ed. by Philip C. Yorke (Cambridge: CUP, 1913), p. 618.

<sup>17</sup> Alexander J. Murdoch, 'Politics and the people of the Burgh of Dumfries, 1758-1760', *Scottish Historical Review*, 70 (1991), 151-71 (pp. 167-8).

<sup>18</sup> Henry Fielding, 'Letter' (22 January 1758/9), NLS, MS 5080, f. 7. Evidence given at his trial at the Old Bailey indicates that Page had travelled to Scotland between various highway robberies performed near London with accomplices. The trial record does not mention Johnston. Page was acquitted. See 'Trial of William Page, otherwise Williams, otherwise Gage, February 1758', *Old Bailey Proceedings Online* <[www.oldbaileyonline.org](http://www.oldbaileyonline.org)> [accessed 19 November 2011], t17580222-28.

<sup>19</sup> Dempsey, p. 76 and *passim*. Dempsey includes the relevant correspondence between Areskine and Hardwicke at pp. 111-9.

<sup>20</sup> Alexander Murdoch, *The people above: politics and administration in mid-eighteenth-century Scotland* (Edinburgh: John Donald, 1980), pp. 78-9.

<sup>21</sup> *Ibid.*, p. 37.

<sup>22</sup> Archibald Campbell, 'Letter' (n.d.), NLS, MS 5087, f. 197.

## **‘Catalogŭs Librorŭm’: Charles Areskine’s library catalogue**

We should think of these libraries not so much as mirrors of the particular interests of their owners, but more as platforms or springboards from which their own ideas and perceptions of the world developed.<sup>23</sup>

The starting point for this thesis is a manuscript which records the contents of Charles Areskine’s library. The manuscript is currently in the National Library of Scotland (NLS) at NLS MS 3283. This, a shelf list of Areskine’s books with an alphabetical index, was begun in 1731. The Faculty of Advocates, which had been presented with it by the Rector of the Dollar Academy, deposited the manuscript in the NLS in 1942. The volume is bound in calf, is quarto in size, and has 222 pages.<sup>24</sup>

The identification and the date of the manuscript both come from an inscription at the head of its first leaf which reads: ‘Catalogŭs Librorŭm D. D<sup>ni</sup>. Caroli Areskine de Barjarg, Regiarŭm Causarum Procŭratoris. 1731’. The heading therefore describes Areskine as the ‘most learned lord’ – *doctissimus dominus* – of Barjarg and notes that he is the Solicitor General. Areskine had acquired lands at Barjarg in Dumfriesshire upon his marriage to Grizel Grierson of Barjarg in 1712. Their son James would later become Lord Barjarg before changing his judicial title to Lord Alva.

The manuscript is not written in Areskine’s distinctive hand. There are several different hands throughout the manuscript and it was obviously augmented over time as books were added to the collection. It is impossible to say how much part Areskine took in development of the list but external evidence suggests that he was closely involved. The manuscript is described in Areskine’s son’s library catalogue as ‘Catalogus librorum D. D<sup>ni</sup> Caroli Areskine ab Alva, e quaestoribus rerum Criminalium ordinariis primarii, perseipsum digestus M. S.’ and especially the words ‘perseipsum digestus’ may imply that Areskine himself was at the very least the organiser of the project of recording his books.<sup>25</sup> It is likely that Areskine set his various legal clerks the task of recording his book acquisitions over the years.

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<sup>23</sup> David Pearson, ‘Patterns of book ownership in late seventeenth-century England’, *Library*, 7th ser., 11/2 (2010), 139-67 (p. 159).

<sup>24</sup> *Catalogue of manuscripts acquired since 1925, 2: Manuscripts 1801-4000: Charters and other formal documents, 901-2634* (Edinburgh: HMSO, 1960), p. 221; NLS, MS 3283.

<sup>25</sup> University of Edinburgh, Centre for Research Collections, MS La.III.755, ‘Press Catalogue of the Library belonging to Lord Alva’ (1774). I am grateful to Dr Brian Hillyard for pointing out the relevance of this phrase.

It is interesting to note that Areskine's wife also had a manuscript library catalogue and that hers was compiled two years before his was begun. Grizel Areskine's catalogue also survives in the NLS. NLS MS 5161 is dated '20<sup>th</sup> August 1729' and is entitled 'Catalogue of Books belonging to Mistris Areskine of Barjarg'.<sup>26</sup> This list is written in the same hand as the earliest entries in Areskine's 1731 catalogue. Grizel Areskine's collection is discussed in Chapter VII below. Appendix D of this thesis contains a transcription of NLS MS 5161.

Professor John Cairns of the University of Edinburgh and Dr Brian Hillyard of the National Library of Scotland identified Areskine's manuscript library catalogue as an important source for a projected study about lawyers and book collecting during the early Scottish Enlightenment. They were awarded funding from the Arts and Humanities Research Council (AHRC) for a Collaborative Doctoral Research Project with the University of Edinburgh and the National Library of Scotland as partners. The grant provided for a researcher to work towards a PhD under the supervision of Cairns and Hillyard while cataloguing and analysing the contents of NLS MS 3283.

One of the goals of the project was to create a modern catalogue of the manuscript as an aid for future research. This part of the project was modelled on earlier publications by W. A. Kelly and Maureen Townley of early modern Scottish manuscript library catalogues of collections acquired by the Advocates Library.<sup>27</sup> The more comprehensive model provided by Michael Hunter et al. from their work on Samuel Jeake of Rye's seventeenth century library was also consulted<sup>28</sup> as was Hunter's manual on editing early modern texts.<sup>29</sup> The catalogue was also informed by the work of Robert Feenstra and Margreet Ahsmann and their collaborators on early modern Dutch legal bibliography.<sup>30</sup> Douglas Osler's warnings on the pitfalls of continental legal biography

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<sup>26</sup> National Library of Scotland, MS 5161: 'Catalogue of Books belonging to Mistris Areskine of Barjarg'.

<sup>27</sup> See W. A. Kelly, *The library of Lord George Douglas (ca. 1667/8?-1693?): an early donation to the Advocates Library* (Cambridge: LP, 1997) and Maureen Townley, *The best and finest lawyers and other rare bookes: a facsimile of the earliest list of books in the Advocates' Library, Edinburgh with an introduction and a modern catalogue* (Edinburgh: Edinburgh Bibliographical Society; National Library of Scotland, 1990).

<sup>28</sup> *A radical's books: the library of Samuel Jeake of Rye, 1623-90*, ed. by Michael Hunter, Giles Mandelbrote, Richard Ovenden, and Nigel Smith (Woodbridge: D. S. Brewer, 1999).

<sup>29</sup> Michael Hunter, *Editing early modern texts: an introduction to principles and practice* (Basingstoke: Palgrave Macmillan, 2007). Hunter's advice on transcription has not always been strictly followed but the book contains much else that has informed the project.

<sup>30</sup> These include bibliographical studies of legal professors in early modern Franeker, Leyden, and Utrecht. Robert Feenstra, Margreet Ahsmann, and Theo Veen, *Bibliografie van boogleraren in de rechten aan de Franeker Universiteit tot 1811* (Amsterdam: Koninklijke Nederlandse Akademie van Wetenschappen, 2003); Margreet Ahsmann and R. Feenstra, *Bibliografie van boogleraren in de rechten aan de Leidse universiteit tot 1811* (Amsterdam: B. V. Noord-Hollandsche Uitgevers Maatschappij, 1984); Margreet Ahsmann, R. Feenstra,

were also considered from the outset.<sup>31</sup> The modern catalogue which combines the transcription with records from modern catalogues appears as Appendix A of this thesis.<sup>32</sup> It is hoped that it will inspire comparisons with other eighteenth century Scottish lawyers' collections.

### **Early modern library catalogues and the manuscript of 1731**

The manuscript of 1731 lists 1,290 titles divided by size: folio, quarto and 'Octavo et infra'. Each grouping by size is broken down into books on legal topics, which are not given descriptive headings, and 'Libri Miscellanei'. An alphabetical listing of the collection follows the shelf list and is again divided by size. The books Areskine listed in his manuscript are referred to by their place in the manuscript throughout this thesis (e.g. F1 for the first listed folio, QM1 for the first 'miscellaneous' quarto).

Early modern book catalogues had several functions. Book catalogues were used from the fifteenth century on by printers, publishers, booksellers, and auctioneers as tools for their trades. They could be used by booksellers to advertise sales or to record stock. Institutional and private library lists, meanwhile, could provide models for collectors and alert them to materials they might like to read by borrowing them or acquiring their own copies. Public and private library catalogues were printed from the sixteenth century on. Such catalogues created what David McKitterick has described as 'pictures of libraries frozen at a particular moment' while warning that such pictures can 'often – perhaps usually – offer only an approximation' of the collections they depict.<sup>33</sup> Printed auction catalogues are especially problematic when they are used to try to recreate collections. Many of the sales included listings of books from multiple owners.<sup>34</sup>

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and C. J. H. Jansen, *Bibliografie van hoogleraren in de rechten aan de Utrechtse universiteit tot 1811* (Amsterdam: North-Holland, 1993).

<sup>31</sup> Douglas Osler, 'The fantasy men', *Rechtsgeschiedte*, 10 (2007), 169-92; Douglas Osler, 'The myth of European legal history', *Rechtshistorisches Journal*, 16 (1997), 393-410; Douglas Osler, 'Turning the title-page', *Rechtshistorisches Journal*, 6 (1987), 173-82.

<sup>32</sup> I am grateful to Brian Hillyard for his careful reading of the transcription in draft in summer 2011 and for his advice on editing and formatting the catalogue throughout the project. Any remaining mistakes are mine.

<sup>33</sup> David McKitterick, 'Book catalogues: their varieties and uses', in *The book encompassed: studies in twentieth-century bibliography*, ed. by Peter Davison (Cambridge: CUP, 1992), pp. 182-92 (p. 165).

<sup>34</sup> *Ibid.*, p. 166. The earliest surviving book auction catalogue dates from 1599 but sales were common well before then. The earliest surviving English institutional catalogue is that of the Cambridge University Library of 1574. Its private equivalent is Sir James Ware's catalogue of 1648. The earliest surviving English printed sale catalogue is Lazarus Seaman's of 1676. *Ibid.*, p. 163. The poet William Drummond of Hawthornden's library catalogue of 1627 is the earliest Scottish printed example. Brian Hillyard, "'Durkan & Ross" and beyond', in *The Renaissance in Scotland: studies in literature, religion, history and culture offered to John*



Printed stock lists of books on offer from booksellers could also feature books derived from multiple libraries.

Manuscript catalogues were more common than their printed equivalents throughout the early modern period. Their uses changed over time. They originally acted as inventories but by the seventeenth century the catalogue of a private library could be specifically defined as one ‘made by or for the owner that is neither an inventory nor an offer of books for sale’.<sup>35</sup> Such catalogues served the multiple purposes of recording the owner’s holdings and helping the owner or other readers find materials in the collection. They may have also been created to ‘cater to the owner’s vanity’.<sup>36</sup> Areskine’s motives for making his list are not known. He certainly used his books while writing his pleadings so it may be the case that he used the manuscript to locate citations while composing his session papers.<sup>37</sup> What is clear from its contents is that the 1731 manuscript describes the private library of a legal professional with an interest in intellectual matters. The arrangement of the books by size and the careful numbering of the titles indicate that the manuscript was meant as a tool for recording and locating the books on Areskine’s shelves. As we shall see below in Chapter VIII, this is confirmed by physical evidence found on some of the books now in the Alva Collections.

What makes Areskine’s collection such a good subject for study is the survival of so many of his books, especially in the Alva Collections, which contain his bookplate or other provenance information. Therefore, more than may be the case for other historic collections, Areskine’s collection as listed in his manuscript can be studied with the confidence that the books in his list were actually owned by him. The physical provenance evidence backs up the information found in the manuscript.

### **Cataloguing choices: early modern and modern**

Early modern cataloguers often had to make decisions regarding how to record information about their books and where they were kept. Although guides to keeping

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*Durkan*, ed. by A. A. Macdonald, Michael Lynch and Ian B. Cowan (Leiden: Brill, 1994), pp. 367-83 (p. 371).

<sup>35</sup> Archer Taylor, *Book catalogues: their varieties and uses*, 2nd edn, rev. W. P. Barlow (London: St Paul’s Bibliographies, 1986), p. 4.

<sup>36</sup> *Ibid.*

<sup>37</sup> For written pleading in the eighteenth century see Angus Stewart, ‘The Session Papers in the Advocates Library’, in *Miscellany four by various authors*, ed. by Hector L. MacQueen (Edinburgh: Stair Society, 2003), pp. 199-223 and David R. Parratt, *The development and use of written pleadings in Scots civil procedure* (Edinburgh: Stair Society, 2006), pp. 1-38.

libraries, such as Gabriel Naudé's *Avis pour dresser une bibliothèque* (1627) and John Evelyn's translation of it, *Instructions concerning erecting of a library* (1661), were widely used by book collectors, there were no set standards for recording bibliographical information. Naudé and Evelyn preferred a cataloguing system which was based on subject classification but granted that books could be organised in any way so long as 'they may easily be found'.<sup>38</sup> They emphasised that 'Order' was essential otherwise the 'collection of Books...were it of fifty thousand Volumes...would no more merit the name of a *Library*, than an assembly of thirty thousand men the name of an *Army* unlesse they be martialled in their several quarters'.<sup>39</sup> Areskine's patron, Archibald Campbell, adopted a subject system of classification in his printed library catalogue of 1758.<sup>40</sup> Another of Areskine's contemporaries, the advocate and Lord of Session Andrew Hume of Kimmerghame, divided his catalogue of 1723 into categories for theology, history, law, politics, philosophy, mathematics and medicine, 'Polymatici seu Liberatores', poetry, miscellanies, and 'De Re Rustica'. The books were not divided by size. Hume's manuscript catalogue, which survives in the NLS, was carefully laid out by his son who left space for additions.<sup>41</sup> The contrasting simple arrangement in Areskine's 1731 manuscript by basic categories and sizes was frowned upon by the likes of Naudé and his translator Evelyn<sup>42</sup> but it was adequate for those who used Areskine's books.

Early modern librarians used their own discretion and techniques when creating library catalogues. The compiler of the 1731 manuscript generally combined the author's name with a short title. This was followed by the place of publication and the date. In a

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<sup>38</sup> Gabriel Naudé, *Instructions concerning erecting of a library*, trans. by John Evelyn (London: Printed for G. Bedle, and T. Collins, at the Middle-Temple Gate, and J. Crook in St. Paul's Churchyard, 1661), pp. 74-5.

<sup>39</sup> Naudé, p. 75.

<sup>40</sup> *Catalogus librorum A. C. D. A.* (Glasgow: In aedibus academicis excudebant Robertus et Andreas Foulis, 1758). For a discussion of Campbell's collection and its arrangement see Roger L. Emerson, 'Catalogus Librorum A. C. D. A., or, The library of Archibald Campbell, third duke of Argyll (1682-1761)', in *The culture of the book in the Scottish Enlightenment* (Toronto: Thomas Fisher Rare Book Library, 2000), pp. 13-39.

<sup>41</sup> NLS MS 3552: 'Catalogus Librorum Bibliothecae Domini Andreae Hume filio sua natu maximo' (1723). For Hume, see George Brunton and David Haig, *An historical account of the Senators of the College of Justice from its institution in MDXXXII* (Edinburgh: Thomas Clark, 1882), p. 495.

<sup>42</sup> Paul Nelles, 'The library as an instrument of discovery: Gabriel Naudé and the uses of history', in *History and the disciplines: the reclassification of knowledge in early modern Europe*, ed. by Donald R. Kelley (Rochester, NY: Rochester University, 1997), pp. 41-57 (p. 47). Although I am using it here as a work on library management, Nelles is right to point out that Naudé's *Avis* is much more than that. Naudé's *Avis* was a statement of an early modern change in attitudes about libraries and how they could be used as tools for generating new knowledge rather than as repositories of old knowledge. For Naudé, the keeper of a library should have an awareness of the contents of his library which went beyond a bibliographical listing of it. *Ibid.*, esp. pp. 41-2.

small number of entries, the publisher or printer was named. Some of the possible reasons for this extra information will be considered in Chapter IV below.

Most of the entries in the manuscript give the authors' names in varying forms. The inclusion of standard forms of the names was essential to the current project so that accurate sorting, indexing, and statistical reckoning could take place. The main difficulty was in deciding how to deal with Latin name forms. P. S. Morrish has described the problems faced by 'baroque librarians' – and shared by their modern descendents – when they came to make catalogues.

Whilst reference to books by the names or epithets of their reputed authors was normal, the actual form of name might not match that on the title page. Greek and Hebrew authors might be Latinized or Anglicized, avoiding typographical problems. Latin title pages were especially difficult because of the characteristic inflexion of that language. Early printers had tried to treat Latin title-pages as grammatical units, reserving the nominative case for such words as 'liber', 'tomus secundus', or 'edition nova', the author appearing in the genitive....Another approach put an author's Latin name in the nominative for a heading but adjusted the title to make grammatical sense even though that might not represent what appeared on the title page....A third method, treating the title page as an assemblage of grammatically discrete data, put Latin names in the nominative for a heading but otherwise transcribed the title as it stood, notwithstanding any grammatical offence.<sup>43</sup>

The modern version of Areskine's catalogue gives standardised forms of the authors' names in the printed catalogue and in the 'author index' which accompanies it. Where possible, these standardised forms have been taken from the Library of Congress Online Authorities Catalogue.<sup>44</sup> Where the Library of Congress lacked information about the relevant authors, the catalogues of the National Library of Scotland and the Advocates Library were used. The NLS and the Advocates Library will eventually complete their own standardisation procedures thus making the Areskine catalogue fully compatible with the Library of Congress authorities in future versions of their online catalogues.<sup>45</sup> Meanwhile, cross-referencing to recognise alternative forms of the authors' names, especially Latinate forms, was provided where necessary in the final catalogue's index for bibliographical use.

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<sup>43</sup> P. S. Morrish, 'Baroque librarianship', in *The Cambridge history of libraries in Britain and Ireland, 2: 1640-1850*, ed. by Giles Mandelbrote and K. A. Manley (Cambridge: CUP, 2006), pp. 212-37 (p. 225).

<sup>44</sup> Available at <<http://authorities.loc.gov/>>.

<sup>45</sup> I am grateful to Brian Hillyard for this information.

The information from the manuscript was comprehensive enough for most of the books in the list to be positively identified in modern catalogues and/or national imprint surveys. The unidentified titles usually derive from gaps in the information provided. An example of this can be seen in the two unnumbered entries that follow OM 192. The two entries here are simply labelled ‘It.’, an indication that the items were in Italian. Beyond this it is difficult to identify what ‘Eighteen Manuscripts written on fine Vellum of different sizes’ and ‘A Heap of Pamphlets & c.’ might have been without further information. External evidence does however offer some clues about them. The Edinburgh bookseller Thomas George Stevenson sold some of Areskine’s books in a series of sales in the early 1850s. Stevenson’s catalogue of 1852 listed seventy six volumes of pamphlets as part of the sale of law books.<sup>46</sup> David Fate Norton and Mary Norton have provided these in an appendix to their work on the libraries of David Hume and his nephew Baron Hume and they state that not all of the items have firm links to the Hume collections.<sup>47</sup> Some of the pamphlets may very well have been Areskine’s. There are for example, a set of pamphlets dealing with heritable jurisdictions, a subject he was interested in and involved with, and a collection of trial reports from the years when Areskine practiced as an advocate.<sup>48</sup> However, without the titles, it is impossible to determine which of the pamphlets came from the Hume libraries and which came from the Areskine library.

Assuming the information given at the heading of the manuscript is accurate — and there is no reason to doubt it — the library catalogue was started in 1731. It was not complete at that date and was added to over time. Entries were made in different hands and in different inks. On some pages the entries were made in progressively smaller writing as the space was filled on the page. This suggests that the manuscript was bound early on or that a pre-bound notebook was used: it was not possible to insert more pages in the volume when more space was needed. It seems the catalogue was used continuously during Areskine’s lifetime. At least five titles, including Lord Kames’s

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<sup>46</sup> Thomas George Stevenson, *Bibliotheca selecta, curiosa et rarissima; part second of a general catalogue of miscellaneous English and foreign books, including another portion of the libraries of the Hon. Charles Erskine of Tinwald, Lord Justice-Clerk; James Erskine, Baron of Exchequer, afterwards Lord Barjarg and Alva; and James Erskine, esq. of Aberdona; also selections from the...libraries of W. B. D. D. Turnbull, esq., and Thomas Maitland, Lord Dundrennan; now on sale* (Edinburgh: Printed by MacPherson & Syme, 1852). See Chapter VIII below for the Stevenson sales.

<sup>47</sup> David Fate Norton and Mary Norton, *The David Hume library* (Edinburgh: Edinburgh Bibliographical Society; NLS, 1996), appx 2.

<sup>48</sup> *Ibid.*, pp. 142, 147.

*Elements of criticism* (OM 263) and George Campbell's *Essay on miracles* (OM 274), were published in 1762.<sup>49</sup> One title, Hugh Blair's *A critical dissertation on the poems of Ossian: the son of Fingal*, was published in London in 1763 and appears in the manuscript at QM 121 bound or shelved with an unidentified edition of James Macpherson's *Fingal*. Neither of these are dated in the manuscript but nor are they the last entries in the miscellaneous quarto section of the manuscript. Areskine was buying, reading, and adding to his catalogue right up to his death in April 1763.

That not all of Areskine's books were listed in NLS MS 3283 is a point that needs more exploration and explanation. This raises the possibility that other catalogues and books with Areskine links may be found. The curious lack of books about mathematics and the natural sciences, subjects Areskine was certainly interested in, is puzzling. Many of the titles he could be expected to have owned do appear in his son's library list of 1774. It may be the case that Areskine had already passed books which would be useful for his sons as they embarked on their university educations to them before he started recording his books in his catalogue.

Areskine's 1731 library list allows us an opportunity to examine his small but comprehensive selection of legal and miscellaneous texts. Areskine's library served a variety of functions. Collectors assembled their libraries for different purposes, and Areskine's division of his books into those dealing with legal topics and those which he thought of as 'miscellanies' shows his participation in the intellectual inquiries of the early Scottish Enlightenment and in the wider world of early eighteenth century book collecting. Areskine needed to create a collection of books which he could use for legal practice and he wanted to have books to enhance his study of the history of law from an evidently humanist perspective. Areskine's library contained a majority of legal texts, while his other acquisitions related to his interests in the natural sciences, mathematics, technology, history, and improvement.

Areskine's books represent the collecting activities of a foremost member of Edinburgh's legal profession in the early to mid-eighteenth century. His library was made up of the books he needed for legal practice but it also included texts related to the development of the Scottish Enlightenment. Areskine and his library must be considered within the contexts of his place and time.

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<sup>49</sup> The other three books were reports of judges' decisions and trial reports at F 236, F 239 and O 300.

## **Areskine's books: historiography and legal history**

Franz Wieacker's monumental work, *A history of private law in Europe*, has dominated legal history since its publication in 1952 and in its revised edition of 1967. Wieacker's narrative of the progress of legal history uses a compelling system of division that places jurists into categories relating to intellectual trends and thereby divides legal authors into schools of scholars. These legal scholars then engaged with ideological and methodological controversies as law progressed to a state of codified perfection in the nineteenth century.

Wieacker's vision of legal history was an attempt to resolve the differences in opinion that had emerged in the research of German scholars of competing schools by looking at the evolution of private law in Germany

in the social and intellectual context of the past five centuries, in constant interaction with the legal culture of the rest of Europe, starting with the development of legal studies in Italy in the High Middle Ages and then pervading Western and Central Europe.<sup>50</sup>

Wieacker was aware of the limitations of his approach. Hamstrung from the start by his belief in the 'unitary nature of the historical process', Wieacker could 'emphasize certain aspects only at the cost of others perhaps equally important'.<sup>51</sup> These aspects included the development of legal institutions and the histories of criminal law and public law.<sup>52</sup> Wieacker also limited his study to Germany.<sup>53</sup> He introduced his study by identifying the 'four great shifts in European legal thinking' and matched these to the 'epochs in the history of German private law'.<sup>54</sup> Wieacker offered a simple outline of legal history in his introduction. After it was developed in the twelfth to fourteenth centuries, European legal science was diffused 'throughout the whole of Europe between the thirteenth and sixteenth centuries'. The seventeenth and eighteenth centuries saw the 'rise and dominance of the modern law of nature' while the nineteenth was characterised by the 'historical school and positivism. Finally, the twentieth century witnessed the 'collapse of positivism' and legal crisis.<sup>55</sup>

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<sup>50</sup> Franz Wieacker, *A history of private law in Europe: with particular reference to Germany*, trans. by Tony Weir (Oxford: OUP, 1995), p. 1.

<sup>51</sup> *Ibid.*, p. 2.

<sup>52</sup> However, as Reinhard Zimmermann points out, he did touch upon public and criminal law in the work. Reinhard Zimmermann, 'Forward', in Franz Wieacker, *A history of private law in Europe: with particular reference to Germany*, trans. by Tony Weir (Oxford: OUP, 1995), pp. v-xiii (p. xi).

<sup>53</sup> Wieacker, pp. 2-4.

<sup>54</sup> *Ibid.*, p. 7.

<sup>55</sup> *Ibid.*

Wieacker's story as presented in *A history of private law in Europe* became the 'syllabus of the class of European history'.<sup>56</sup> It has influenced generations of scholars and has provided the foundation for legal history textbooks across Europe.<sup>57</sup> The reissue of the text in 1995 was 'still authoritative today'.<sup>58</sup> But there are serious problems with Wieacker's narrative and these, as Douglas J. Osler has pointed out, can in part be discovered and explored through studies of the histories of book publishing and of libraries. Osler's criticism of Wieacker takes him to task for failing to recognise basic historical and geographical facts in his study. Wieacker's over emphasis on the achievements of Protestant northern European legal humanists distorted the overall picture and created a selective version in order to create a narrative of progress which neglected the important comparisons and contrasts with two major players in European legal history, namely Spain, which dominated Europe throughout the sixteenth and seventeenth centuries, and England, which created a unique legal system despite being 'completely...integrated in the economic, political and intellectual history of Europe'.<sup>59</sup> In his article, 'The myth of European legal history', Osler predicted in 1997 that ever increasing access to the 'juristic literature...of the three centuries between 1500 and 1800' via ambitious library cataloguing projects would open up our knowledge of 'the virgin forest of the production of the printing presses of Europe' in those three centuries and would challenge the traditional model of legal history.<sup>60</sup> One area for consideration is the place of humanism in legal history.

For Wieacker, humanism represented a break with earlier schools of scholarship which gradually gained an influence over legal science.<sup>61</sup> Legal humanists felt a connection with the ancient world, attacked other forms of legal scholarship, and tried to reconstruct the sources of ancient law. They would eventually 'triumph' over rival scholars.<sup>62</sup> But humanism's appearance in the fifteenth century did not eliminate other methods of intellectual endeavour and humanists did not shut themselves off from contemporary concerns. It was, as described by Randall Lesaffer, at first a 'fairly marginal movement' and even as it developed it 'did not propose its own

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<sup>56</sup> Osler, 'Myth', p. 393.

<sup>57</sup> Ibid.

<sup>58</sup> Zimmermann, 'Forward', p. x.

<sup>59</sup> Osler, pp. 397-402. (Quote on p. 401).

<sup>60</sup> Ibid.

<sup>61</sup> Wieacker, pp. 60-3.

<sup>62</sup> Ibid, pp. 63-5.

comprehensive worldview'.<sup>63</sup> The humanist impulse developed Western civilisation in important ways but it did not replace the scholasticism of the middle ages. Humanism encouraged critical and comparative approaches to authoritative ancient texts and to different cultures. It broke down Christian religious assumptions and it promoted the development of the individual.<sup>64</sup> Humanism acted in tandem with other ways of looking at the world and, while they might have indulged in attacks on their intellectual rivals, individual scholars were likely to use multiple methodologies.<sup>65</sup>

Despite challenges, Wieacker's outline of legal history dominates elementary European legal history textbooks and it is still seductive. While a draft, one of the chapters of this thesis attempted to pin the contents of Areskine's library onto the traditional legal history framework offered by Wieacker and his followers. But Areskine's books would not cooperate as a brief mention of three Dutch authors found in his library will show. First, Hugo Grotius's works kept appearing in different categories. His great legal work, *De jure belli ac pacis*, of course, dominated a discussion of natural law history. But Grotius was not only a natural lawyer but also an institutional writer in the Dutch legal tradition and a poet.<sup>66</sup> Cornelis van Bijkershoek meanwhile provided an excellent example of a judge of the *usus modernus* tradition who brought Roman law up to date but he also wrote on ancient Roman law using the techniques of a legal humanist. And the 'elegant' legal humanist Gerard Noodt did not limit himself to matters of textual emendation and the history of the *Corpus iuris civilis*. He also considered questions of criminal law in his contemporary context. Using the traditional narrative meant that these jurists and multifaceted others like them had to be repeatedly re-introduced in different categories.

Areskine, an early modern practicing lawyer who was interested in the sources of law, had no inkling of Wieacker's twentieth-century construct. Areskine's legal texts came from many different early modern 'schools' and a study of the books he owned challenges the traditional legal history narrative. Areskine approached his book buying

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<sup>63</sup> Randall Lesaffer, *European legal history: a cultural and political perspective*, trans. by Jan Arriens (Cambridge: CUP, 2009), p. 346. See also Osler, 'Myth', p. 404.

<sup>64</sup> Lesaffer, pp. 346-9.

<sup>65</sup> Wieacker admitted that his definition of early humanism suffered from 'instability'. Hence the fourteenth century jurist Cino da Pistoia 'protested against juristic method on humanist grounds' but 'was himself one of the great Commentators'. Wieacker, p. 63.

<sup>66</sup> Areskine owned a collected edition of Grotius's poetry (OM 59). For Grotius's reputation as a 'first rate' poet see Arthur Eyffinger, 'Hugo Grotius, poet and man of letters', in *The world of Hugo Grotius (1583-1645): Proceedings of the international symposium organized by the Grotius Committee of the Royal Netherlands Academy of Arts and Sciences, Rotterdam, 6-9 April 1983* (Amsterdam: APA-Holland University, 1984), pp. 83-95.



not via any membership of a specific school of legal scholarship but as a practising scholarly lawyer of the first half of the eighteenth century. His books, while they do show his interest in what was later dubbed 'legal humanism', are not limited to one tradition. His selection also shows his concern for comparative law and includes not only important editions of the *Corpus iuris civilis* but also collections of customary law from the continent, and especially from England.

Wieacker did point out that law is not an isolated discipline: it is influenced by intellectual movements and historical events 'outside the world of law'.<sup>67</sup> His confrontational narrative, however, encourages division. The authors Areskine collected and read were not arranged in separate camps. A more relevant metaphor for the law Areskine studied is captured by Reinhard Zimmermann who describes the development of legal thinking as a 'tapestry of many different shades and nuances' in which 'the various strands of tradition were very closely interwoven'.<sup>68</sup>

### **Lawyers and the Scottish Enlightenment**

Lawyers have a special place in the history of the Scottish Enlightenment. Whether studying abroad and bringing home ideas, developing their theories about the nature of law, or sponsoring scholarship, Scottish lawyers gave energy to this intellectual phenomenon. Their approaches to knowledge and philosophy were influenced by their legal training and professional activities. Although they emulated the integrity and courage of the lawyers of the Roman Republic like Cicero and Cato, early modern Scottish lawyers placed themselves in a modern context. They did this by defining what their law was so that by the end of the seventeenth century Scots law was an integral part of Scottish identity.

Scottish lawyers had influence beyond the confines of their profession and it has been consistently argued that they played a preeminent role in the intellectual and social developments which occurred in the early eighteenth century.<sup>69</sup> As lawyers filled the

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<sup>67</sup> Wieacker, p. 6.

<sup>68</sup> Reinhard Zimmermann, *Roman law, contemporary law, European law: the civilian tradition today* (Oxford: OUP, 2001), p. 160.

<sup>69</sup> Rendall, p. 24; Nicholas Phillipson, 'Culture and society in the 18th century province: the case of Edinburgh and the Scottish Enlightenment', in *The university in society, 2: Europe, Scotland and the United States from the 16th to the 20th century*, ed. by Laurence Stone (Princeton: Princeton University, 1975), pp. 407-48 (p. 423); John Stuart Shaw, *The management of Scottish society, 1707-1764: power, nobles, lawyers, Edinburgh agents and English influences* (Edinburgh: John Donald, 1983), pp. 18-24; John W. Cairns, 'Rhetoric, language, and

social voids made when the nobility left Scotland for London after the Union of 1707 or as exiles to France after 1715, well-educated and well-connected advocates became the elite of Edinburgh society.<sup>70</sup> The rise of the advocate in Scotland, however, was not isolated. It was part of a Europe-wide improvement of the image of the legal professional which had its origins in the sixteenth and seventeenth centuries. In England, lawyers were the most well respected of the learned professions by 1730.<sup>71</sup> As social conditions changed, lawyers, especially advocates, experienced improving fortunes throughout Europe.<sup>72</sup> George Mackenzie's statement that 'an advocate is noble by his Profession'<sup>73</sup> was not unique to Scotland.<sup>74</sup> Advocates across Europe saw themselves as the modern equivalents of the respected lawyers of classical Rome. Along with the Scots, French and Castilian advocates identified themselves as members of the noble class in their societies.<sup>75</sup>

Areskine's father was a baronet and his kinship to the earl of Mar meant that he came from an elite group before he entered the Faculty of Advocates. In Scotland, many advocates came from privileged backgrounds. Nicholas Phillipson has pointed out that 27-35% of entrants to the Faculty of Advocates between 1690 and 1730 were the sons

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Roman law: legal education and improvement in eighteenth-century Scotland', *Law and History Review*, 9 (1991), 31-58.

<sup>70</sup> Alexander Murdoch, 'The Advocates, law and the nation in early modern Scotland', in *Lawyers in early modern Europe and America*, ed. by Wilfrid Prest (London: Croom Helm, 1981), pp. 147-63; Shaw, pp.12, 21. In contrast, even as late as the early nineteenth century medical practitioners – especially Edinburgh's famous surgeons whose notorious colleagues tainted their reputation by acquiring anatomical specimens in dubious ways – had image problems which held them back from filling a similar role. For a cultured surgeon who wanted to improve his profession's image see K. Grudzien Baston, 'Bell, John (1763–1820)', *ODNB* (Oxford: OUP, Sept 2004) <<http://www.oxforddnb.com/view/article/2013>> [accessed 19 August 2010].

<sup>71</sup> Geoffrey Holmes, *Angustan England: professions, state and society, 1680-1730* (London: George Allen & Unwin, 1982), p. 115.

<sup>72</sup> For comparisons, see chapters by Lenard R. Berlanstein, 'Lawyers in pre-revolutionary France', pp. 164-80; Daniel Duman, 'The English Bar in the Georgian era', pp. 86-107; Richard L. Kagan, 'Lawyers and litigation in Castile, 1500-1750', pp. 181-203; and Wilfrid Prest 'The English Bar, 1550-1700', pp. 65-85, in *Lawyers in early modern Europe and America*, ed. by Wilfrid Prest (London: Croom Helm, 1981). For Scotland see N. T. Phillipson, 'Lawyers, landowners, and the civic leadership of post-Union Scotland: An essay on the social role of the Faculty of Advocates, 1661-1830 in 18th century Scottish society', *Juridical Review* (1976), 97-120.

<sup>73</sup> George Mackenzie, *The works of that eminent and learned lawyer, Sir George Mackenzie of Rosehaugh, advocate to King Charles II. and King James VII. With many learned treatises of his, never before printed*, 2 (Edinburgh: James Watson, 1722), p. 584. Areskine shelved his copy at FM 53.

<sup>74</sup> This claim of nobility ultimately came from Justinian's *Code*, under the title *De postulando* which described the offices of advocate and procurator. John W. Cairns, 'Alfenus Varus and the Faculty of Advocates: Roman visions and the manners that were fit for admission to the Bar in the eighteenth century', in *Ius commune: Zeitschrift für Europäische Rechtsgeschichte*, 28 (2001), 203-32 (p. 221).

<sup>75</sup> Berlanstein, p. 164; Kagan, p. 196.

of peers or baronets.<sup>76</sup> John Cairns has explained that the study of Roman law further 'helped develop and reinforce the social exclusiveness of the Scots bar and its claims for rank'.<sup>77</sup>

Another factor that helped Scottish advocates to obtain their position in society and an important consequence of the increasing success of lawyers was their ability to make money and to do it quickly.<sup>78</sup> By 1749, Areskine had an annual income of £1,150 from his legal roles as a Lord of Session and as Lord Justice Clerk.<sup>79</sup> This amount did not include the money generated from his estates and investments. Lawyers could act like noble patrons. One way a lawyer could demonstrate his success and status was by commissioning a country house. Areskine did this in 1738 when he hired William Adam to design and build him a house at Tinwald in Dumfriesshire. Another way for advocates to show their wealth and taste was by supporting the arts and sciences. Areskine was a member of the Edinburgh Musical Society, a subscriber to book publications, and a founding member of the Philosophical Society of Edinburgh. The participation of Scottish advocates in all areas of enlightened society gives them a special place in intellectual history. The books that they owned provide evidence for their interests and influence. Areskine was not unique: his book collecting was part of a wider tradition among Scottish lawyers. His legally educated patron, Archibald Campbell, had one of the largest private libraries in Britain. His judicial colleagues, Lord Arniston and Lord Hailes, meanwhile created collections which they stored in specially built rooms in their houses.

This thesis examines the books in Areskine's library at a moment in Scottish legal history when a system that encouraged foreign travel for legal training was still in place, when Scots law was being refined in the courts, and when the intellectual achievements of the Scottish Enlightenment were beginning to take shape. It places Areskine and his contemporaries at the heart of the legal and intellectual developments of the first half of the eighteenth century. This thesis does not engage with controversial aspects of legal history. It presents a study of an individual's private library and places this within the context of book collecting in eighteenth century Britain.

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<sup>76</sup> Phillipson, 'Lawyers', p. 101.

<sup>77</sup> Cairns, 'Alfenus Varus', p. 207.

<sup>78</sup> Holmes, p. 124.

<sup>79</sup> Shaw, p. 68.

## **Thesis outline**

Chapter I, 'Early Eighteenth Century Book Collectors: Aristocrats, Professional Men, and Their Agents' looks at some of the major book collectors who were active in early eighteenth century Britain, including the earls of Harley and Sunderland, and Areskine's patron, Archibald Campbell. Men from the professions, especially physicians and advocates, were also emerging as notable book collectors at the time Areskine was developing his library. These book collectors had the help of librarians, agents, and booksellers who helped them develop their libraries.

Chapter II, 'Two Edinburgh Scholars: Charles Areskine, Thomas Aikenhead, and Their Books', describes Areskine's early careers as a teacher and lawyer. Areskine was a Regent of the University of Edinburgh before becoming the first holder of the Professorship of the Law of Nature and Nations at Edinburgh in 1707. This chapter explains how his education and training may have influenced some of his book collection and explains how some books could be dangerous during this time in Areskine's life – especially for students, like the ill-fated Thomas Aikenhead who shared his interests in mathematics and natural philosophy. As the century progressed secular thinking gradually became more acceptable and intellectuals like Areskine came to have influence in church affairs.

Chapter III, 'Scots Students Abroad: The Legal Grand Tour', puts Areskine within the context of the academic travel that Scottish students who sought professional qualifications undertook throughout the early modern period. Law students travelled to the continent to study with the best professors of the age and by the early eighteenth century these were to be found in the Low Countries. Before returning to Scotland, Areskine spent time in Italy and he travelled to Germany. Many legal grand tourists, including Areskine, bought books as they travelled. By the time they returned to Scotland to become advocates, they had collected the libraries they would need as they embarked on their careers.

Chapter IV, 'Buying Books: Bibliographies, Catalogues, Sales, and Auctions', considers the eighteenth century British book trade as it existed in its two major centres, London and Edinburgh, and looks at possible buying guides for some of the legal texts that were in Areskine's library. Books, both domestic and foreign, were widely available when Areskine assembled his collection. Some of Areskine's books contain information about their previous owners and these show that his books came from across Europe.

One, Jacques Godefroy's *Manuale juris* included a chapter giving details about humanist editions of legal books and Areskine's list has several matches for the books Godefroy recommended. This may show his collecting instinct but it may also be because good quality versions of works like the *Corpus iuris civilis* were useful to Scottish lawyers in practice. This chapter also looks at a particular auction, the sale of Alexander Seaton of Pitmedden's books in January 1720 at which Areskine bought ten books, all of which were recorded in his manuscript list of 1731.

Chapter V, 'Law Books in Eighteenth Century Scotland, 1700-1760', looks at a small selection of books on legal topics from Areskine's library. In addition to the books he collected during his grand tour and those from the humanist tradition discussed in the previous chapters, Areskine had comprehensive selections of books about natural law and Scots law. The chapter also presents data about where Areskine's books were published.

Chapter VI, 'Areskine's Enlightened Miscellanies: History, Religion, Modernisation, and Poetry', explores Areskine's interests outside of his profession. His interest in history, moderation in religion, concern for the development of Scotland's economy, and an appreciation for poetry both classical and modern all mark Areskine as an enlightened eighteenth century gentleman who was aware of the latest ideas and who participated in the intellectual debates of his day.

Chapter VII, 'A Scottish Gentleman's Library: Storing and Sharing Books' looks at some of the social aspects of book collecting in eighteenth century Scotland. Lawyers were known for their book collecting and they built spaces to store their books. These private libraries became important parts of their social lives and they used them for entertaining as well as for study. Were these the 'most learned drawing rooms in Europe'?

Chapter VIII, 'The Fates of Books: Provenance in the Alva Collections', gives details about a survey of those of Areskine's books that survive in the Alva Collections of the National Library of Scotland and the Advocates Library. It also examines provenance evidence found during the survey about the owners of some of the books both before and after Areskine.

The Conclusion explains how examining the private book collection of one lawyer provides a unique contribution to our understanding of the Scottish Enlightenment. Charles Areskine had access to a wide selection of books. He had a

specific need to collect books for use in his profession but his interest in other arts and sciences meant that a third of his collection related subjects beyond legal concerns. Law, however, was a key interest for the early thinkers of the Scottish Enlightenment. Lawyers like Areskine, who had the resources to create and share book collections and the power to make patronage appointments, were at the heart of the Enlightenment.

## **Early Eighteenth Century Book Collectors: Aristocrats, Professional Men and Their Agents**

### **Introduction**

The early eighteenth century was an era of obsessive book collecting. Important collectors included wealthy and powerful aristocrats like the earls of Oxford, the earl of Sunderland, and Charles Areskine's patron, the earl of Ilay. Areskine's brother, the physician Robert Areskine, was, like Areskine, a new type of collector, a professional man of law or medicine whose money and contacts increasingly allowed him to compete with aristocratic buyers in an expanding marketplace for books.

Collectors needed access to supplies of books. Library keepers, agents, and booksellers emerged to help them locate, buy, and organise their libraries. Sometimes collectors took on these roles themselves: both Charles and Robert Areskine acted as agents. The agent Alexander Cunningham of Block was a collector in his own right and the librarian Thomas Ruddiman was also a publisher. Collectors formed mutually beneficial networks to increase their buying opportunities. Students and other travelling scholars were part of these networks, and both private collectors and institutions like the Advocates Library came to rely on their access to books and their knowledge of their intellectual contents.

This chapter offers a brief survey of some of the issues and personalities involved in early eighteenth century book collecting. It will show how Areskine's library compares with the medical and legal libraries which men from the professions formed.

### **Aristocratic book collectors in early eighteenth century Britain**

Despite wars, economic problems – not least the South Sea Bubble crisis of 1720 – and the practical problems of transporting books, the book trade boomed in early eighteenth century Europe. It was particularly strong in Britain. British printers exported the latest medical and scientific books and booksellers imported books from all over Europe.<sup>1</sup> The international book trade was especially strong in the 1720s to the 1740s when

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<sup>1</sup> Giles Barber, 'Book imports and exports in the eighteenth century', in *Sale and distribution of books from 1700*, ed. by Robin Myers and Michael Harris (Oxford: Oxford Polytechnic, 1982), pp. 77-105 (pp. 82-5).

Dutch and French sellers sent large libraries to Britain to be sold by auction.<sup>2</sup> British book buyers had many sources of books. They could collect at auctions, fixed price sales, book shops, and from private individuals.

Wealthy aristocrats and professional men dominated the British book buying market throughout the first half of the eighteenth century and many of them assembled large book collections. Buyers from these groups also had purses big enough to act as sponsors for new works as patrons. Their subscription and collecting activities determined trends in publishing and inspired markets for both new and used texts. In the 'heroic era of collectors',<sup>3</sup> Robert Harley (1661-1724), first earl of Oxford and his son Edward (1689-1741), second earl of Oxford, Charles Spencer (1674-1722), third earl of Sunderland, and Archibald Campbell (1682-1761), earl of Ilay and third duke of Argyll led the way.

### ***Aristocratic rivalry: the Harleys and the earl of Sunderland***

Aristocratic collectors dominated the British book market in the early decades of the eighteenth century. They were able to pay the best prices and employ the best assistants. Aristocratic collectors were not above using underhand methods to get the books and manuscripts they desired and the British book trade was lively as they competed to create their perfect collections. The activities of collectors like the earls of Oxford and the earl of Sunderland pushed up prices and set book collecting trends.

Although both earls of Oxford were major collectors, Robert Harley and his son Edward had different collecting interests.<sup>4</sup> The older Harley was primarily a collector of manuscripts – he had 6,000 volumes of them by 1721 – but he also collected printed books and by 1715 he had 3,000 of them.<sup>5</sup> Despite its size, Harley knew the contents of

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<sup>2</sup> Ibid, pp. 89-90. French sellers sent their stock to Holland for sale by auction until the 1720s. Katherine Swift, 'Bibliotheca Sunderlandiana: the making of an eighteenth-century library', in *Bibliophily*, ed. by Robin Myers and Michael Harris (Cambridge; Alexandria, VA: Chadwyck-Healey, 1986), pp. 63-89 (p. 76).

<sup>3</sup> Giles Mandelbrote, 'Personal owners of books', in *The Cambridge history of libraries in Britain and Ireland, 2: 1640-1850*, ed. by Giles Mandelbrote and K. A. Manley (Cambridge: CUP, 2006), pp. 173-89 (p. 186).

<sup>4</sup> Areskine was distantly related by marriage to the Harleys via his cousin, the earl of Mar. Robert Harley's daughter Abigail married Mar's brother-in-law, George Hay, Lord Dupplin, in 1709. Edward Gregg, 'The Jacobite career of John, earl of Mar', in *Ideology and conspiracy: aspects of Jacobitism, 1689-1759*, ed. by Eveline Criukshanks (Edinburgh: John Donald, 1982), pp. 179-200 (p. 180).

<sup>5</sup> W. A. Speck, 'Harley, Robert, first earl of Oxford and Mortimer (1661-1724)', *ODNB* (Oxford: OUP, September 2004; online edn Oct 2007) <<http://www.oxforddnb.com/view/article/12344>> [accessed 29 July 2010].



his collection and was able to find and lend them on request.<sup>6</sup> The younger Harley took charge of his father's collection when his father was impeached as lord treasurer and sent to the Tower of London in 1715. With the help of the family librarian, Humfrey Wanley, Edward Harley organised the collection while continuing to develop it. Although he added more manuscripts, Edward's main interests were printed books and pamphlets. The scale of the Harleian collection was astonishing. By 1717 there were more than 12,000 books and by the time of Edward Harley's death in 1741 there were 50,000. The collection was particularly strong in early printed books and included a huge assortment of bibles. Both Harleys invested in expensive bindings for their acquisitions. The costs of Edward Harley's extravagant book buying and binding habits caused him to have to sell his country house, Wimpole Hall, to fund his obsession in 1740. William Oldys and Samuel Johnson catalogued the Harleian books before they were sold off in a series of sales which lasted until 1748. The family kept the manuscript collection until 1753 when they sold them to the nation as one of the foundation collections of the British Museum.<sup>7</sup>

Charles Spencer, earl of Sunderland, meanwhile, developed his library in three phases which show how book collecting could be influenced by political and economic forces when Areskine was starting to collect his books. Sunderland began collecting in the 1690s. He used domestic suppliers until 1702 when he employed Alexander Cunningham of Block as a book buying agent in The Hague<sup>8</sup> who could provide Dutch and French books. Direct trade with France was forbidden from 1688 until the Treaty of Utrecht in 1713<sup>9</sup> so having continental contacts was essential for any serious book collector. Sunderland increased his access to the French market in 1709 when he arranged passports in his official capacity as the Secretary of State for the Southern Departments for the French Huguenot booksellers Paul and Isaac Vaillant, who ran a bookshop in London, to travel to France to buy books for him in Paris.<sup>10</sup> The Vaillants

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<sup>6</sup> Brian W. Hill, *Robert Harley: speaker, secretary of state and premier minister* (New Haven; London: Yale University, 1988), p. 226.

<sup>7</sup> David Stoker, 'Harley, Edward, second earl of Oxford and Mortimer (1689-1741)', *ODNB* (Oxford: OUP, September 2004; online edn, January 2010) <<http://www.oxforddnb.com/view/article/12337>> [accessed 29 July 2010]. For a history and description of the Harleian manuscript collection, see Arundell Esdaile, *The British Museum Library: a short history and survey* (London: George Allen & Unwin, 1946), pp. 231-9.

<sup>8</sup> Swift, 'Bibliotheca', p. 64.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*, p. 74.

also acted on Sunderland's behalf at auctions in the Netherlands throughout the 1710s where they also purchased books on behalf of the Harleys.<sup>11</sup>

There was no love lost between the Harleys and Sunderland: they were opposed politically. Robert Harley, using his good relationship with Queen Anne who approved of his Tory principles, repeatedly tried to block the Whiggish Sunderland's advancement and did everything he could to get him dismissed when he attained positions in government.<sup>12</sup> The two great collectors were not friends. Those who worked for them in their capacity as book collectors could find themselves mixed up in a world of bitter rivalry. The bookseller Nathaniel Noel, for example, worked for both parties. The Harleys' librarian Wanley made regular deals with him to ensure that the Harleys had the first pick of his stock. Sunderland was not pleased by this and he asked his agent Alexander Cunningham to offer Noel a bribe of '200 guineas, to lett the Earl of Sunderland have the Preference before all others, as to the Buying of his old Books' in 1720.<sup>13</sup> When Noel refused, Sunderland tried to get him to offer his stock on the open market at auction by promising that he would get better prices from himself and his agents. Noel remained loyal to the Harleys and the sale catalogues he produced clearly show that they had already selected the best books from his stock before the catalogues were printed.<sup>14</sup> Book collecting and politics could be linked in early eighteenth century Britain and the giant collections assembled by the Harleys and Sunderland were demonstrations of their power, influence, and wealth as much as libraries reflecting their scholarly interests.

Sunderland's book collecting career ended with his sudden death in April 1722. His years of collecting had created 'one of the finest libraries in Europe'<sup>15</sup> and his choices had influenced the European book market. When he heard the news of Sunderland's death, Wanley noted that 'by Reason of his Decease; some benefit may accrue to this Library...by his raising the Price of Books no higher now; So that, in Probability, this commodity may fall in the Market; and any Gentleman be permitted to

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<sup>11</sup> Ibid, p. 76.

<sup>12</sup> Hill, pp. 104-06,126. For their political rivalry see Speck, 'Harley, Robert' and Henry L. Snyder, 'Spencer, Charles, third earl of Sunderland (1675-1722)', *ODNB* (Oxford: OUP, September 2004; online edn, May 2006) <<http://www.oxforddnb.com/view/article/26117>> [accessed 05 August 2010].

<sup>13</sup> Humfrey Wanley, *The diary of Humfrey Wanley, 1715-1726*, 1: 1715-1723, ed. by C. E. Wright and Ruth C. Wright (London: Bibliographical Society, 1966), p. 22.

<sup>14</sup> Swift, 'Bibliotheca', p. 69.

<sup>15</sup> Ibid, p. 63.

buy an uncommon old Book for less than forty [sic] or fifty Pounds'.<sup>16</sup> Booksellers recognised that there were profits to be made. Wanley thought that the 'Booksellers, upon this sale, intend to raise the Prices of Philological Books of the first Editions, and indeed of all Old Editions accordingly' and he resented Paul Vaillant's 'unlimited Commission from the Earl of Sunderland' at an auction of Robert Freebairn's books in London in 1721.<sup>17</sup> Vaillant's best prize at the auction was a printed edition of Virgil's works of 1472. When he secured it for his patron for £46, Vaillant 'huzz'd out aloud, & threw-up his Hat for Joy, that he had bought it so Cheap'.<sup>18</sup>

Although they were scholars indulged their academic interests, wealthy aristocratic collectors like the Harleys and Sunderland were sometimes subject to fashionable concerns. Collectors loved to get bargains on first editions, on particular imprints of the bible, and on works printed by the Alduses, the Estiennes, and the Elzeviers.<sup>19</sup> A small group of early eighteenth century book collectors were the first collectors of early printed books. Although Aldine editions had always been prized as fine objects, Estienne texts had always been valued for their accuracy, and Elzevier books had always been appreciated for their formats, collectors began to seek out these works as examples of particular types of books rather than for their contents.<sup>20</sup> In this they anticipated a later generation of bibliomaniacs who focused on the rarity of books rather than their content and developed obsessions for possessing first editions and for acquiring specific texts.<sup>21</sup>

### ***The earl of Ilay***

A major book collector who had close personal links with Charles Areskine was his political patron, Archibald Campbell, earl of Ilay and third duke of Argyll. Campbell, an ally of Sir Robert Walpole and the manager of Scottish politics from 1725 to 1743 and

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<sup>16</sup> Wanley, p. 139.

<sup>17</sup> *Ibid.*, p. 125. Freebairn was in exile in Rome following his Jacobite activities in 1715. He would later return to his native Edinburgh.

<sup>18</sup> Wanley, p. 125.

<sup>19</sup> Nigel Ramsay, 'English book collectors and the saleroom in the eighteenth century', in *Under the hammer: book auctions since the seventeenth century*, ed. by Robin Myers, Michael Harris and Giles Mandelbrote (New Castle, DE: Oak Knoll; London: British Library, 2001), pp. 89-110 (p. 110).

<sup>20</sup> Christopher Edwards, 'Antiquarian bookselling in Britain in 1725: the nature of the evidence', in *A genius for letters: booksellers and bookselling from the 16th to the 20th century*, ed. by Robin Myers and Michael Harris (Winchester: St Paul's Bibliographies; New Castle, DE: Oak Knoll, 1995), pp. 85-102 (p. 86).

<sup>21</sup> Arnold Hunt, 'Private libraries in the age of bibliomania', in *The history of libraries in Britain and Ireland, 2: 1640-1850*, ed. by Giles Mandelbrote and K. A. Manley (Cambridge: CUP, 2006), pp. 438-58 (p. 439).

again from 1747 to his death in 1761, controlled a vast patronage network.<sup>22</sup> Ilay's library was different in its scope and purpose from those of his fellow aristocratic collectors: it had more in common with the working collections of physicians and advocates.

Ilay was a key figure in the early Scottish Enlightenment. He was born and raised in England and educated at Eton. He studied at the University of Glasgow before studying law at Utrecht<sup>23</sup> where he achieved a level of legal expertise equivalent to that of a practicing Scottish advocate. Ilay was made Lord Justice-General in the judiciary of Scotland in 1711 and used his right to sit as an extraordinary lord of session for the remaining fifty years of his life.<sup>24</sup> His knowledge of medicine was also impressive and he was awarded an MD by King's College, Aberdeen and made an honorary Fellow of the Royal College of Physicians in 1758.<sup>25</sup> His library contained books that reflected his many practical interests and concerns.

Ilay's library was one of the largest private libraries in Britain by 1758 when it held at least 9,581 titles in 12,177 volumes.<sup>26</sup> The collection has not survived: Ilay's nephew, the earl of Bute, bought it after his death but it was later destroyed in a house fire. Only the catalogue Ilay had printed in 1758 now remains.<sup>27</sup> This soberly presented

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<sup>22</sup> Roger Emerson, 'Catalogus Librorum A. C. D. A., or, The library of Archibald Campbell, third duke of Argyll (1682-1761)', in *The culture of the book in the Scottish enlightenment: an exhibition*, ed. by Paul Wood (Toronto: Thomas Fisher Rare Book Library, 2000), pp. 13-39 (p. 13). For Ilay's dominant role in Scottish politics see John Stuart Shaw, *The management of Scottish society, 1707-1764: power, nobles, lawyers, Edinburgh agents and English influences* (Edinburgh: John Donald, 1983) esp. pp. 43-8 and Alexander Murdoch, *The People Above: politics and administration in mid-eighteenth century Scotland* (Edinburgh: John Donald, 1980), pp. 7-8.

<sup>23</sup> Shaw, p. 43.

<sup>24</sup> Alexander Murdoch, 'Campbell, Archibald, third duke of Argyll (1682-1761)', *ODNB* (Oxford: OUP, Sept 2004; online edn, October 2006) <<http://www.oxforddnb.com/view/article/4477>> [accessed 18 May 2010]. Campbell was known as the earl of Ilay from 1706 to 1743 when he inherited his brother's title and became the third duke of Argyll. He will be referred to by his earlier title throughout this chapter to avoid confusion.

<sup>25</sup> Emerson, 'Catalogus', p. 29.

<sup>26</sup> *Ibid*, p. 17.

<sup>27</sup> *Catalogus Librorum A. C. D. A.* (Glasgow: Robert and Andrew Foulis, 1758). The full catalogue is available online at Eighteenth Century Collections Online (ECCO). Areskine's 1731 manuscript catalogue does not list Ilay's catalogue but a copy was offered for sale in the first of a series of sales of Areskine and his family's books in 1850. Thomas George Stevenson, *Bibliotheca selecta, curiosa et rarissima. Part first of a general catalogue of miscellaneous English and foreign books, including a portion of the libraries of the Hon. Charles Erskine of Tinwald, Lord Justice-Clerk: James Erskine, Baron of the Exchequer, afterwards Lord Barjarg and Alva; and James Erskine, Esq. of Aberdona* (Edinburgh: Thomas George Stevenson, 1850), p. 29. Areskine's friend and fellow Ilay client, John Maule, Baron Maule, also had a copy. It survives in the Signet Library, Edinburgh, and has his signature and bookplate. (SL, Malcolm Room 091 C28). Ilay guided his nephew the earl of Bute's education and this had included legal studies in the Netherlands. John W. Cairns, 'Attitudes to codification and the Scottish science of legislation, 1600-1830', *Tulane European and Civil Law Forum*, 22 (2007), 1-78 (p. 30).

document only contains a list of books: there is no dedicatory material or explanation for the motivation behind the creation of the catalogue. Roger L. Emerson has studied Ilay's printed catalogue in detail and has found that Ilay's library was a practical collection which he used in his various roles as judge, politician, and patron of the arts and sciences. The collection was catalogued by subject with the 'largest class' as 'history, followed by mathematics, medicine, the ancient writers (including their historians), philology, miscellaneous, jurisprudence, philosophy, public law, and theology'.<sup>28</sup> The legal sections of the collection were complete enough to function as the 'working library of a British lawyer' with books on natural law, Roman, canon, criminal, and local customary law, law dictionaries and style books, and collections of decisions.<sup>29</sup> These legal texts were available to Ilay's political allies from Scotland when they came to London to take their places as Westminster MPs or to act as advocates and judges in the courts. It therefore comes as no surprise to find that when Areskine was in London he took lodgings or had his post delivered to addresses close to Ilay and his Argyll House library. Throughout the 1730s, for example, Areskine used addresses at Little Marlborough Street, Golden Square, and Poland Street all of which are within a few minutes' walk of the site of Argyll House.<sup>30</sup> Areskine used Ilay's library as a place to deal with his correspondence and to transmit Ilay's wishes about Scottish matters. A letter from 'the Librery', for example, which he sent to Lord Milton dated 24 February 1735 passes on Ilay's wishes for the management of upcoming elections.<sup>31</sup>

Books and booksellers could play a role in attracting the favour of a powerful political bibliophile like Ilay. Booksellers could act as go-betweens in the early modern quest for patronage. Books could be used as tools for attracting patronage and book collectors in influential positions could expect to receive them as gifts. When he wrote to Areskine in 1748 to ask advice about publishing a potentially controversial piece on

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<sup>28</sup> Emerson, 'Catalogus', p. 21.

<sup>29</sup> Ibid, p. 27.

<sup>30</sup> See e.g. NLS MS 16560, f. 239 for lodgings in 'little Marleborough Street' in 1735; NLS MS 5074, f.64 for a letter sent to him 'at Mr. Miltons peri-wig maker in Golden Square' in 1738, and NLS MS 5074, f. 111 and MS 5074, f. 84v for two letters sent to him at 'Mrs Shaw's in Poland Street' in 1739. For the proximity of these addresses with Argyll House see John Rocque, *The A to Z of Georgian London*, ed. by Ralph Hyde (London: London Topographical Society, 1982), map 10 at Ba where the footprint of Argyll House and its library is also visible. Areskine also received post at 'Forrest's Coffee House near Charing Cross' in 1739 (NLS MS 5074, f. 79). Forrest's Coffee House was near Whitehall and was popular with MPs. For a map showing its location see Markman Ellis, 'Coffee-house libraries in mid-eighteenth-century London', *Library*, 7th ser., 10 (2009), 3-40 (p. 16). Areskine also received post at the House of Commons. See e.g. MS 5074, f. 101.

<sup>31</sup> NLS MS 16560, f. 242.

the pros and cons of the Protestant succession in a forthcoming collection of essays, the philosopher and historian David Hume also mentioned that he had:

...order'd the Bookseller [Andrew Millar] to send you two Copies of the whole after they are printed: One I desire you to accept as a Mark of my Regard; and another to present, in my Name to the Duke of Argyle...I have a Regard for his Grace, & I desire that this Trifle may be considered as a Present, not to the Duke of Argyle, but to Archibald Campbell, who is undoubtedly a Man of Sense & Learning.<sup>32</sup>

The large and expensive libraries assembled by the leading collectors of the early eighteenth century offer a contrast to the collection created by Charles Areskine which was much smaller in scale. Even if we accept that the 1731 library catalogue in manuscript is incomplete, it is unlikely that Areskine's library was anywhere near the size of those of the great aristocratic and professional collectors of the age. Areskine's was a modest collection assembled for his private needs. He had access to the private library of the earl of Ilay and to the institutional collection held by the Faculty of Advocates so his need to acquire copies of specific texts may have been lessened since he was able to borrow or use materials from these sources.

If it was different from the collections assembled by the wealthy aristocrats of his time, Areskine's library was also different from libraries bought by bibliomaniacs later in the century. Areskine used his books as a part of his professional life and his priorities were different from other, and especially later, collectors. It was only from the mid-eighteenth century that the modern era of book collecting began. Shakespeare replaced the likes of Cicero and Plautus and incunabula came to be valued for other reasons than their texts. Areskine's collection pre-dates the desiderata of the next generation of collectors which included an emphasis on first editions, a book's rarity as a determinant of its value, and a shift in focus from classical to modern texts.<sup>33</sup> Areskine's library, with its plainly bound spines and practical selections, may seem restrained in comparison to those of aristocrats and bibliomaniacs but this is only because it reflects a different collecting tradition. Areskine was a collector from the professions: the books he acquired reflected his professional needs as well as his cultural desires and aspirations.

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<sup>32</sup> David Hume, 'Letter to Charles Erskine, Lord Tinwald (13 February 1748)', in *The letters of David Hume*, 1, ed. by J. Y. T. Greig (Oxford: Clarendon, 1932), p. 113. Although they both had books by Hume neither Areskine nor Ilay included the 1748 edition of Hume's *Essays* in their library catalogues. Ilay had the 1752 edition of *Political Discourses* and Areskine listed the earlier edition of the *Essays* of 1741.

<sup>33</sup> Hunt, pp. 438-9.

## Book collectors from the professions: physicians

Physicians began to amass large collections of books and other objects during the late seventeenth and early eighteenth centuries. Their collections of medical books were for the practical uses of training and reference. Physicians, however, made up the elite branch of medical practitioners and that their library collections went beyond books for practice showed that they were members of an increasingly civilised society of international scholars.

Students training as physicians travelled to the continent to complete their medical educations in a manner similar to those training to be Advocates. Although their main concern was in attaining practical experience in anatomy, botany, chemistry, and physic, some physicians also started their libraries while students abroad. An international medical education at continental universities offered 'a shared universe, a cultural habitus, a social network, a professional acknowledgement' and gave each of its participants 'an expression of his social value'.<sup>34</sup> Medical students travelled throughout the early modern period but by the early eighteenth century, like student advocates, their destination of choice was the university at Leyden.<sup>35</sup> Although a hands-on approach was greatly valued, future medical practitioners also prized textbooks, especially illustrated ones for anatomy and botany, and collected them while they travelled and studied.

One of the most notable physician's libraries of the early eighteenth century was assembled by Charles Areskine's brother, Robert. Robert Areskine (1677-1718) began collecting his library when he was a medical student in Paris in 1697. He continued his studies in the Low Countries at Leyden before taking his MD at Utrecht in 1700.<sup>36</sup> The older Areskine went on to assemble a private collection of 2,320 titles on various subjects including, in addition to the medical and natural science texts which made up about a half of his library, theology, oriental books, scientific works, travel literature, political works, and books on coin collecting.<sup>37</sup> Areskine became Peter the Great's

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<sup>34</sup> Willem Frijhoff, 'Medical education and early modern Dutch medical practitioners: towards a critical approach', in *The task of healing: medicine, religion and gender in England and the Netherlands, 1450-1800*, ed. by Hilary Marland and Margaret Pelling (Rotterdam: Erasmus, 1996), pp. 205-20 (pp. 211, 213).

<sup>35</sup> For travelling medical students, their studies and destinations, see Karen Grudzien Baston, 'From Italy to Edinburgh: the medical grand tour in early modern Europe' (MA thesis, Birkbeck College, University of London, 2007).

<sup>36</sup> R. W. Innes Smith, *English-speaking students of medicine at the University of Leyden* (Edinburgh; London: Oliver and Boyd, 1932), p. 80.

<sup>37</sup> Sirkka Havu and Irina Lebedeva, *Collections donated by the Academy of Science of St Petersburg to the Alexander University Library of Finland in 1829* (Helsinki: Helsinki University Library, 1997), p. 167; John H. Appleby

personal physician in 1705 and was promoted to his chief physician and director of the entire Russian medical service in 1706. He established a physic garden at St Petersburg in 1714. In addition to his medical duties, Areskine formed a library and natural history museum for Peter at the tsar's Summer Palace.<sup>38</sup> Areskine's personal library became one of the foundation collections of the Russian Academy of Sciences Library after this death in 1718.<sup>39</sup> Charles Areskine played a role in transferring the ownership of his brother's library, one of the largest private collections in Russia,<sup>40</sup> to the tsar while also organising the transfer of another collection to Russia.

The Scottish physician Archibald Pitcairne (1652-1713) had also left a desirable book collection at his death. Pitcairne had amassed a collection of medical, natural philosophy, and Newtonian mathematical texts. Robert Areskine was negotiating the acquisition of the Pitcairne library on the tsar's behalf when he unexpectedly died. Charles Areskine stepped in to manage the payment for and transport of Pitcairne's books after an associate in London requested information about its availability and price 'since it hath...pleas'd God to take your deare Brother and my friend to himself'. Despite Robert Areskine's untimely death, the sale could go through: the tsar still retained his interest in Pitcairne's books and had 'an inclination for this Library (if not disposed of)'.<sup>41</sup> Areskine confirmed that Pitcairne's library was still available to his brother's executor, Henry Sterling, who was based in St Petersburg. Not only that: the seller, Pitcairne's widow, who was responsible for paying his extensive debts, wanted 'to part with the books as quickly as may be'.<sup>42</sup>

Areskine and Sterling were also managing the transfer of Robert Areskine's books between them and the transaction went smoothly despite some confusion about payment for it.<sup>43</sup> The tsar paid 3,000 roubles for Robert Areskine's collection.<sup>44</sup>

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and Andrew Cunningham, 'Robert Erskine and Archibald Pitcairne: two Scottish physicians' outstanding libraries', *Bibliothèque*, 11 (1982), 3-16 (pp. 12-14).

<sup>38</sup> John H. Appleby, 'The founding of St Petersburg in the context of the Royal Society's relationship with Russia', *Notes and Records of the Royal Society of London*, 57/3 (2003), 273-84 (p. 278).

<sup>39</sup> Lindsey Hughes, *Russia in the age of Peter the Great* (New Haven; London: Yale University, 1998), p. 325.

<sup>40</sup> Havu and Lebedeva, p. 12. About 250 volumes from Robert Areskine's library, mostly theological and juridical works, were transferred to Helsinki after a devastating fire destroyed the Finnish national collection in 1827. Areskine's surviving books contain his bookplate and many of them are bound in red leather and have a shelf mark stamped at the tops of their spines. *Ibid*, p. 167.

<sup>41</sup> Charles Goodfellow, 'Letter' (17 February 1719), NLS MS 5163, f. 57.

<sup>42</sup> Charles Areskine, 'Letter' (30 May 1719), NLS MS 5163, f. 52.

<sup>43</sup> *Ibid*.

<sup>44</sup> Appleby and Cunningham, p. 7.



Pitcairne's library, meanwhile, was sold in London in 1720<sup>45</sup> but not without some financial difficulty and personal angst on Areskine's part. Areskine was acting 'for the sake of...Dear Robt'<sup>46</sup> whose loss he felt very much. A London based associate called Charles Goodfellow confused the issue by claiming that he had paid Charles Areskine for the Pitcairne collection when he had not. Areskine and Sterling eventually managed the sale and transport of Pitcairne's books for which the tsar paid 6,000 roubles.<sup>47</sup> The sale and transfer of Robert Areskine and Pitcairne's libraries gave Areskine a practical knowledge of book dealing practices including the pricing of books and of the importance of creating catalogues to accompany the books.

The libraries of Robert Areskine and Archibald Pitcairne were part of a larger trend for book collecting among physicians. Two London-based physicians meanwhile created libraries that rivalled those of their contemporary aristocratic collectors. Richard Mead is now better known for his collection of books, art, and antiquities than for his contributions to medicine. He was a close friend of Pitcairne with whom he had studied during Pitcairne's brief tenure as the professor of medicine at Leyden.<sup>48</sup> He was also a friend of Robert Areskine. Mead collaborated with Areskine in his *A mechanical account of poisons in several essays* of 1702. In the preface to the work, Mead said that after he and Areskine had had a conversation about vipers, Areskine 'very readily offered me his Anatomical Observations, which I have put at the End of the First Essay'.<sup>49</sup> Mead admired Areskine's 'wonderful Dexterity in Cutting, together with [his] true Taste of Philosophy and Physick'.<sup>50</sup> He also mentioned the contributions of two more Scottish physicians, his teacher Pitcairne and George Cheyne.<sup>51</sup> Mead and Robert Areskine both became Fellows of the Royal Society of London on 30 November 1704. Mead's interest went beyond those of science and medicine and he was an enthusiastic patron of

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<sup>45</sup> Anita Guerrini, 'Pitcairne, Archibald (1652-1713)', *ODNB* (Oxford: OUP, September 2004) <<http://www.oxforddnb.com/view/article/22320>> [accessed 29 July 2010].

<sup>46</sup> Areskine, 'Letter' (30 May 1719), f. 52v.

<sup>47</sup> Appleby and Cunningham, p. 7. The Pitcairne sale was protracted and convoluted. The Edinburgh printer and librarian Thomas Ruddiman was also involved in the negotiations. A. P. Woolrich, 'Ruddiman, Thomas (1674-1757)', *ODNB* (Oxford: OUP, September 2004) <<http://www.oxforddnb.com/view/article/24249>> [accessed 3 August 2010]. Many of Pitcairne's books were destroyed in a fire at the Russian Academy of Sciences library in 1988. Alastair Cherry, 'Special collections', in *For the encouragement of learning: Scotland's National Library, 1689-1989*, ed. by Patrick Cadell and Ann Matheson (Edinburgh: HMSO, 1989), pp. 67-102 (p. 67).

<sup>48</sup> Smith, p. 156.

<sup>49</sup> Richard Mead, *A mechanical account of poisons in several essays* (London: Printed by R. J. for Ralph Smith, 1702), preface.

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

authors and artists. Mead's library had a high concentration of texts on medicine and natural philosophy but also included classical works. His library came to hold about 10,000 volumes and he built a library in his garden to house them. His collection was dispersed by auction after his death at his own wish in 1754 and 1755 and buyers came from all over Europe to take advantage of the opportunity for enhancing their own collections.<sup>52</sup>

The library assembled by the physician and naturalist Sir Hans Sloane was one of the most outstanding and largest of the age. His collection of books and manuscripts formed only one part of his collection which also included natural history specimens, antiquities, and ethnographic materials. Sloane's library was at first a practical selection of books which would have been useful to him as a medical student in the 1680s. His student library was only the start of something much larger and by 1685 he had enough books to require a catalogue.<sup>53</sup> Sloane developed his library throughout his long life and by 1742 he had 42,000 books (about 50,000 by this time of his death in 1753), 3,516 manuscript volumes, and 347 volumes of drawings and illuminated books.<sup>54</sup> The collection encompassed Sloane's various interests from medicine to linguistics. Unlike Mead, Sloane wished his collection to remain intact after his death and it became one of the foundation collections of the British Museum Library.

Physician book collectors like Robert Areskine, Pitcairne, Mead, and Sloane were all travellers and well-connected cosmopolitan figures. They shared information about the availability of books and formed an international network. Their correspondence shows that book lists played an important part in their collection building practices. In the late 1690s, for example, Pitcairne wrote to Sloane from Edinburgh to request his desiderata 'for I sometimes find bookes here that I have long sought in vain elsewhere'.<sup>55</sup> Pitcairne also advised Robert Areskine on book buying when the later was in London in 1703. Pitcairne recommended a bookseller and fellow

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<sup>52</sup> Anita Guerrini, 'Mead, Richard (1673–1754)', *ODNB* (Oxford: OUP, September 2004; online edn, January 2008) <<http://www.oxforddnb.com/view/article/18467>> [accessed 14 May 2010]. A printed auction catalogue accompanied the sale. See *Bibliotheca Meadiana, sive catalogus librorum Richardi Mead, M.D. qui prostabunt venales sub hasta apud Samuelem Baker, in vico dicto York Street, Covent Garden, Londini...18vo Novembris, M.DCC.LIV iterumque ...7mo Aprilis, M.DCC.LV*. (London: Catalogi venundantur apud plurimos Londini bibliopolas, et in omnibus Urbibus Europae celebrioribus, unius Solidi pretio, 1754).

<sup>53</sup> M. A. E. Nickson, 'Books and manuscripts', in *Sir Hans Sloane: collector, scientist, antiquary, founding father of the British Museum*, ed. by Arthur MacGregor (London: British Museum, 1994), pp. 263-77 (p. 263).

<sup>54</sup> Edward Miller, *That Noble Cabinet: a history of the British Museum* (Athens, OH: Ohio University, 1974), p. 40.

<sup>55</sup> Quoted in Appleby and Cunningham, p. 4.

Scot called ‘Montgomerie’<sup>56</sup> who was ‘son to a mighty good man there’ and wished that more of ‘our Country-men were encouraged in bookselling in London’.<sup>57</sup>

The important libraries the physician collectors of the early eighteenth century made lived on in new collections formed by individuals or as the seeds for the great institutional foundation libraries of the age. The well-travelled, cosmopolitan physician collectors of the early eighteenth century shared many characteristics with the Scottish advocates of their time.

### **Book collectors from the professions: advocates**

Professional advocates existed in Scotland from the fifteenth century and their numbers grew as Scotland’s landed classes increasingly turned to the evolving system of central courts to resolve their disputes.<sup>58</sup> As they shaped Scots law, advocates were also changing their position in society. After 1707, when many of the noble class turned their attention to London, advocates, along with other educated professional men including physicians and writers, stepped in to take their place as patrons and leaders of Scottish society.<sup>59</sup> Advocates, many of whom came from landed gentry families, had the status needed to influence the politics and society of early eighteenth century Scotland.

As discussed in the Introduction above, advocates saw themselves as the new Scottish nobility. They liked to model themselves on lawyers of the Roman Republic like Cicero and Cato and they believed that their education entitled them to play a leading role in society. Their civilian learning instilled them with a superior sense of virtue. Their possession of virtue then gave them a noble status which allowed them to behave in trustworthy, civil, rational, and self-controlled ways.<sup>60</sup> John Cairns has pointed out that lawyers trained and examined in civil law achieved honour and status: their position was secure as members of ‘a pan-European legal culture, a *Republica*

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<sup>56</sup> This was probably Hugh Montgomery, son of William Montgomery of Edinburgh who had recently completed his apprenticeship with the London bookseller Andrew Bell in 1702. See Alison Shell and Alison Embrow, *Index to the court books of the Stationers’ Company, 1679-1717* (London: Bibliographical Society, 2007), p. 279.

<sup>57</sup> Quoted in Appleby and Cunningham, p. 5.

<sup>58</sup> John Finlay, ‘Ethics, etiquette and the early modern Scots advocate’, *Juridical Review* (2006), pt. 2, 147-78 (p. 148); Alexander Murdoch, ‘The advocates, the law and the nation in early modern Scotland’, in *Lawyers in early modern Europe and America*, ed. by Wilfrid Prest (London: Croom Helm, 1981), pp. 147-63 (p. 148).

<sup>59</sup> N. T. Phillipson, ‘Lawyers, landowners, and the civic leadership of post-Union Scotland: an essay on the social role of the Faculty of Advocates 1661-1830 in 18th century Scottish society’, *Juridical Review*, new ser., 21 (1976), 97-120 (p. 110).

<sup>60</sup> Finlay, pp. 155-6. For the prominent role lawyers played in various parts of early modern Europe, see William J. Bouwsma, ‘Lawyers and early modern culture’, *American Historical Review*, 78 (1973), 303-27.

*Jurisconsultorum*<sup>61</sup> and the ‘history of Roman law gave them the Roman jurist and the Roman orator as models for their profession’.<sup>62</sup> Their equivalent scholars of Scots law, however, needed to be vetted for ‘integrity and honest deportment’ before they could join the Faculty of Advocates.<sup>63</sup>

In a chapter on ‘Some considerable Questions concerning Precedency, resolved’, in his *Works* published in 1722 (FM 53), Sir George Mackenzie declared that ‘an advocate is noble by his Profession’.<sup>64</sup> Advocates took their duties as leaders of society seriously. They built and furnished country houses and sponsored artists and authors to show their influence and status in Scottish society. Eighteenth century judges took on executive roles ‘as members of the various commissions the government appointed to sit in Edinburgh, most notably the Commissioners for the Annexed Estates and the Board of Trustees for the Encouragement of the Fisheries and Manufactures of Scotland’.<sup>65</sup> Judges also ‘led society and set the tone of metropolitan Edinburgh’.<sup>66</sup>

Professional success and the powerful patronage of the earl of Ilay placed Charles Areskine at the top of the early eighteenth century legal profession. By the time of his death in 1763 he had been a judge for nineteen years and Lord Justice Clerk for fifteen. Like his fellow members of the legal elite, the Barons of the Exchequer and the Lords of Session, Areskine was able to pursue gentlemanly activities. For some law lords, like Henry Home, Lord Kames, these included writing books about topics of interest, legal and otherwise,<sup>67</sup> for their fellow participants in the Scottish Enlightenment. Others like John Clerk of Penicuik and Charles Areskine expressed their elite belonging by building new houses to reflect their status and taste. These, as we shall see in Chapter VII below, included spaces to keep books. Many members of Scottish legal elite class assembled impressive private libraries that demonstrated their legal

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<sup>61</sup> John W. Cairns, ‘The formation of the Scottish legal mind in the eighteenth century: themes in humanism and enlightenment’, in *The legal mind: essays for Tony Honoré*, ed. by Neil MacCormick and Peter Birks (Oxford: Clarendon, 1986), pp. 253-77 (p. 260).

<sup>62</sup> John W. Cairns, ‘Alfenus Varus and the Faculty of Advocates: Roman visions and the manners that were fit for admission to the Bar in the eighteenth century’, in *Ius commune: Zeitschrift für Europäische Rechtsgeschichte*, 28 (2001), 203-32 (p. 207).

<sup>63</sup> *Ibid.*, p. 257.

<sup>64</sup> George Mackenzie, *The works of that eminent and learned lawyer, Sir George Mackenzie Of Rosehaugh, advocate to King Charles II. and King James VII. With Many learned Treatises of His, never before printed*, 2 (Edinburgh: Printed and publish’d by James Watson, 1722), p. 584. Physicians also had ‘a Right to... Armour’. This was because neither profession was a ‘Trade’.

<sup>65</sup> Murdoch, ‘Advocates’, p. 153.

<sup>66</sup> *Ibid.*

<sup>67</sup> For books in Areskine’s library by Kames see F 170, F 238, O 243, O 263, O 272, and OM 282.

learning – and hence their noble and virtuous attributes – as well as their membership in the polite society of enlightened Scotland.

Like members of their fellow elite professional class, the physicians, Scottish advocates were known as book collectors. Like physicians they started their book collecting while undertaking educational grand tours. Legal students needed textbooks to complete their courses on Roman and natural law. Their exposure to continental culture also encouraged them to acquire works by classical authors, historical works, travel guides, dictionaries, and guides to grammar.<sup>68</sup> Although books on legal topics were widely available in Britain during the early decades of the eighteenth century, many advocates preferred to start collecting their libraries in person as they travelled throughout Europe.

The nature of the Scottish legal library's contents was changing when Areskine was a student. Scottish legal libraries of the late seventeenth and early eighteenth centuries traditionally held large selections of books on Roman law which was 'viewed as a universal superior law'.<sup>69</sup> But as Charles Areskine was assembling his collection, the focus of legal theory began to change in Scotland. Although they continued to use Roman law alongside the Scottish tradition, lawyers were increasingly interested in the law of nature and nations which came 'to dominate Scottish legal thinking'.<sup>70</sup> Areskine's own appointment as the Regius Chair of the Law of Nature of Nations at Edinburgh in 1707 reflects this change in emphasis. They also turned to the customary laws of the continent, the Roman law they had studied in the Low Countries, and English law.

Scottish legal concerns were further complicated by the Union of 1707. Sources of native Scottish law had been combined with the Roman tradition to create the 'Roman-Scots' law of Stair and Mackenzie 'in which "native" material and Roman material were blended, rationalised and validated by the law of nature'.<sup>71</sup> This blend was designed to show that Scotland had its own sovereignty and authority and that its law was distinct from English law. After the Union, interest in the English tradition

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<sup>68</sup> Kees van Strien and Margreet Ahsmann, 'Scottish law students in Leiden at the end of the seventeenth century: the correspondence of John Clerk, 1694-1696', *LLAS*, 19 (1992), 271-330; Kees van Strien and Margreet Ahsmann, 'Scottish law students in Leiden at the end of the seventeenth century: the correspondence of John Clerk, 1694-1696', *LLAS*, 20 (1993), 1-65.

<sup>69</sup> John W. Cairns, 'Law books, 1707-1918' in *The Edinburgh history of Scottish literature, 2: Enlightenment, Britain and empire (1707-1918)*, ed. by Susan Manning (Edinburgh: EUP, 2007), pp. 191-7 (p. 191).

<sup>70</sup> *Ibid.*, p. 192.

<sup>71</sup> *Ibid.*, p. 191.

increased.<sup>72</sup> By the end of the eighteenth century, ‘intellectually Scots looked more...to London than to Continental Europe’.<sup>73</sup> Scottish advocates of the early eighteenth century needed to keep up with the latest – or the most ancient – theories and they created libraries that held information about the competing concerns and theories that dominated the legal study and practice of their transitional time.

### **Advocates’ private libraries**

Charles Areskine’s library reflected a wider tradition of book collecting in the Scottish legal profession. Advocates were well-known as book lovers in Scotland from the late sixteenth century when Clement Litill bequeathed his books to the University of Edinburgh to start its library in 1580. John Scot of Scotstarvit, Thomas Hamilton, Alexander Seton, Lord Pitmedden (1639?-1719), and John Lauder, Lord Fountainhall (1646-1722), were among the serious collectors who were interested in legal books throughout the seventeenth century.<sup>74</sup> The libraries of the last two of these are well-documented as are the libraries of two more individual collectors, John Spottiswoode of that Ilk (1667-1728) and Alexander Bayne of Rires (c. 1684-1737).

Sir Alexander Seton of Pitmedden’s library was sold at auction on 11 January 1720. The auction was made up of 3,000 lots and included the law books Pitmedden had used to write his own legal work, *Mutilation and demembration*, an appendix to Mackenzie’s *Matters criminal* (F 221, F 221a), as well as an impressive selection of books on theology, medicine, mathematics, and philosophy.<sup>75</sup> Buyers at the sale included the Advocates Library, Thomas Ruddiman – who bought for his private collection as well as representing the Advocates Library, John Erskine of Carnock,<sup>76</sup> John Spottiswoode, and

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<sup>72</sup> Ibid, p. 193.

<sup>73</sup> Cairns, ‘Attitudes’, p. 56.

<sup>74</sup> Thomas I. Rae, ‘The origins of the Advocates’ Library’, in *For the encouragement of learning: Scotland’s National Library, 1689-1989*, ed. by Patrick Cadell and Ann Matheson (Edinburgh: HMSO, 1989), pp. 1-22 (pp. 12-13). The NLS acquired 345 books from the Haddington family library at Tynninghame in 1987. These may have been in the library of Thomas Hamilton, first earl of Haddington (1563-1637) and some may have belonged to his father. The first earl studied classics and philosophy in Paris; his father had probably studied law there. For the Hamiltons and their books, see Brian Hillyard, ‘“Durkan & Ross” and beyond’, in *The Renaissance in Scotland: studies in literature, religion, history and culture offered to John Durkan*, ed. by A. A. MacDonald, Michael Lynch, and Ian B. Cowan (Leiden: Brill, 1994), pp. 367-84 (pp. 372-9).

<sup>75</sup> Douglas J. Cusine, ‘Sir Alexander Seton of Pitmedden’, in *Miscellany six: by various authors*, ed. by Hector L. MacQueen (Edinburgh: Stair Society, 2009), pp. 29-44 (pp. 36, 41).

<sup>76</sup> Ibid, pp. 41-2.

Charles Areskine. Areskine bought ten books at the auction all of which went on to appear in his 1731 list.<sup>77</sup>

Pitmedden's son-in-law was another serious book collector. John Lauder of Fountainhall studied law in France and visited Brussels, Antwerp, and Leyden as part of a three year continental tour.<sup>78</sup> By the time he returned to Scotland in 1667, Lauder had a library of 536 books which he recorded before his admission into the Faculty of Advocates. Between 1667 and 1679, Lauder acquired another 456 titles which he recorded in a second list.<sup>79</sup> The first list is primarily made up of his books from France but there are also books from his visits to London and Oxford which he made on his way back to Edinburgh. Lauder's post-1667 books were mostly acquired in Edinburgh as gifts, exchanges, or purchases. Lauder's law library was extensive and included 'the standard commentaries and glosses on the civil and canon law, the works of Alciatus and Cujacius, and the numerous writings of Faber, Zoesius, Perezius, Vinnius and Wesenbachius'.<sup>80</sup> Lauder also had works on English common law and Scots law. His library, however, was not made up exclusively of legal texts: he had works by classical authors, selections of modern theology, historical works, and philosophical works along with modern drama and poetry.<sup>81</sup>

John Spottiswoode of that Ilk came from a distinguished legal family. His father was an advocate and his grandfather had been President of the College of Justice. Spottiswoode began his own legal career as an apprentice to a writer to the Signet but ultimately decided to become an advocate. He travelled to Leyden in 1692 and studied law with the professors Gerard Noodt and Philippus Reinhardus Vitriarius before returning to Scotland to be admitted to the Faculty of Advocates on 24 December 1696.<sup>82</sup> Spottiswoode was successful at the Bar but in 1702 he also started to teach classes in Scots and Roman law. He published his own textbooks for the use of his students including *Introduction to the knowledge and style of writs* (1708)<sup>83</sup> and *The form of process, before the Lords of Council and Session* (1711) (O 208). He used George Mackenzie's

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<sup>77</sup> At F 79, Q 5, Q 22, Q 82, Q 94, Q 97, Q 150, O 122, O 164, and O 235. The Pitmedden auction will be discussed in more detail in Chapter IV below.

<sup>78</sup> David Allan, 'Lauder, Sir John, second baronet, Lord Fountainhall (1646–1722)', *ODNB* (Oxford: OUP, September 2004) <<http://www.oxforddnb.com/view/article/16115>> [accessed 05 August 2010].

<sup>79</sup> Rae, p. 13.

<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*

<sup>82</sup> John W. Cairns, 'Spottiswoode, John, of that Ilk (1667–1728)', *ODNB* (Oxford: OUP, September 2004) <<http://www.oxforddnb.com/view/article/26168>> [accessed 29 July 2010].

<sup>83</sup> Areskine had the third edition of 1727 (O 248).

*Institutions of the law of Scotland* (O 209, O 210) for his Scots law course. For Roman law he used Boeckelmann's *Compendium Institutionum Justiniani* (Q 36).<sup>84</sup>

Spottiswoode's interest in books was reflected in three ways. He ran his own printing house from which he issued his grandfather Robert Spottiswoode's *Practicks* (1706) (F 133) and various publications on current debates and events. Spottiswoode's printing venture was, however, short lived and he sold his printing business to the bookseller Robert Fairbairn in 1706.<sup>85</sup> Spottiswoode was Keeper of the Advocates Library from 1702 to 1728.<sup>86</sup> Finally, Spottiswoode kept a private library which was auctioned after his death in 1728.<sup>87</sup>

Areskine may have been a buyer at the Spottiswoode auction. His copy of Simon van Leeuwen's *Censura forensis theoretico-practica* (Leyden, 1688) (F 77), now in the Advocates Library Alva Collection, contains the inscription 'Ex Bibb: apud Spottiswude'. Areskine had several books by Spottiswoode. Libraries like Spottiswoode's were full of titles desired by other advocates and the posthumous sales of them provided a useful opportunity for other collectors to augment their own book shelves.

Spottiswoode's pupil, Alexander Bayne of Rires, followed him as an advocate and teacher. Bayne studied with Spottiswoode in Edinburgh in 1704 before travelling to Leyden in 1706. He also took an interest in English law and was admitted into Lincoln's Inn in 1707. While in London, Bayne was part of the cultured set centred on Richard Steele and Joseph Addison. Bayne was back in Scotland by 1714 when he was admitted advocate. He was elected as professor of Scots law in 1722 and, like his mentor Spottiswoode, was a successful teacher. Also like Spottiswoode, Bayne published books for his students' use including *Notes for the use of students of the municipal law* (1731) and, as an appendix to his edition of Hope's *Minor practicks* of 1726 (O 202), *A discourse on the rise and progress of law in Scotland and the method of studying it*.<sup>88</sup> Bayne's interests in literature,

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<sup>84</sup> Cairns, 'Spottiswoode'.

<sup>85</sup> Brian Hillyard, 'Thomas Ruddiman: librarian, publisher, printer and collector' (forthcoming).

<sup>86</sup> Cairns, 'Spottiswoode, John'. With the very able Thomas Ruddiman on hand as his Under-Keeper, Spottiswoode seems have played little role. See Brian Hillyard, 'The formation of the library, 1682-1729', in *For the encouragement of learning: Scotland's National Library, 1689-1989*, ed. by Patrick Cadell and Ann Matheson (Edinburgh: HMSO, 1989), pp. 23-66 (pp. 42-3).

<sup>87</sup> Alexander Davidson, *A catalogue of curious and valuable books, being the library of Mr. John Spottiswood of that Ilk advocate, lately deceas'd. To be sold by way of auction in the High Exchange, on Munday the first day of July 1728* (Edinburgh, 1728).

<sup>88</sup> John W. Cairns, 'Bayne, Alexander, of Rires (c.1684-1737)', ODNB (Oxford: OUP, September 2004; online edn, January 2007 <<http://www.oxforddnb.com/view/article/1774>> [accessed 29 July 2010].



culture, and music were evident in the extensive library he collected which was sold in Edinburgh in 1749.<sup>89</sup>

The libraries collected by Seton, Lauder, Spottiswoode, and Bayne show that, while their libraries were rich in legal books, their other books showed an engagement with intellectual and cultural pursuits beyond their professional concerns. Their libraries contained the books they needed professionally as lawyers and teachers. These included reference books and commentaries for civil and Scots law. However, all of their libraries, as well as Areskine's, contained books relating to polite learning and society, including poetry, drama, and music, and modern concerns, including history and the natural sciences. From this we can infer that early eighteenth century Scottish lawyers participated in the intellectual concerns of their time. When their collections were sold or passed to the next generation after their deaths, they left legacies both of legal knowledge and of cultural heritage.

Areskine, like many of his legal contemporaries, was not a bibliomaniac or even a 'book collector' in the modern sense of the term but he was certainly a bibliophile. His library was well chosen and well used and he thought it was important to record its contents as the survival of his 'Catalogus Librorum' shows. Areskine's library combines books for Scottish legal practice and the books which were useful participation by educated Scots in the pleasures of civilised society. His books show that, like physicians, advocates were very much a part of an international society of scholars. Areskine's manuscript catalogue also shows that he was aware of and interested in European traditions of humanist learning and that he had the intellectual ability to apply his knowledge to contemporary issues.

### ***The Faculty of Advocates and their Library***

Although it was not a private library, the Advocates Library was created to provide a service for the elite legal professionals of Edinburgh and the advocates' need for accessible legal texts partly inspired the foundation of their institutional library in the 1680s. Thomas I. Rae has identified three key factors for the library's foundation. The first of these was the 'growth of a corporate sense among the members of the Faculty'

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<sup>89</sup> Alexander Kincaid, *A catalogue of curious and valuable books, being chiefly the library of the late Mr. Alexander Bane Professor of Scots law in the University of Edinburgh. Which will begin to be sold by auction, on Wednesday the 22d of February 1749...at the auction-house opposite to the Parliament-Close* (Edinburgh, [1749]). I have not found any books in the Alva Collections with Bayne provenances. Nor have I located Areskine's copies of the books he owned that were written by Bayne.

which was enhanced by close family and professional links. The second was an increased interest in ‘books and book learning’ by members of their elite social class. The third was a concern for improving the standard of legal education available in Scotland so as to reduce the necessity – and cost – of educational trips to the continent.<sup>90</sup> Although the leading figure in the development of the Advocates Library, Sir George Mackenzie, saw it as a source of training and reference materials for lawyers, the new library soon found space for books about other subjects which interested its educated gentlemanly clientele and history, poetry, and *belles lettres* books joined their legal fellows on the shelves. The advocates’ institutional library came to resemble the private collections of its members.<sup>91</sup>

The foundation of the Advocates Library had an impact on the Edinburgh book trade. Booksellers, agents, binders, and printers all benefitted from the arrival of the new institution.<sup>92</sup> Booksellers imported the foreign books that they knew the Advocates Library wanted to stock and imports from Holland became common. Before the booksellers took action, the Library had used students as agents for purchasing foreign books<sup>93</sup> and as late as 1713, the Faculty commissioned a student at Leyden, Patrick Haldane, to buy books there.<sup>94</sup> The Advocates Library was their major customer but private buyers also benefitted from the booksellers’ entrepreneurial impulse and they also had opportunities to purchase foreign books at the booksellers’ shops and auctions. The presence of the Advocates Library, therefore, increased the availability of books for private book collectors in Edinburgh.

### **Support for book collectors: keepers and agents**

...take the counsel and advice of such as are able to give it.<sup>95</sup>

Collectors of all types relied on skilled helpers to purchase, organise, and care for their books. Book buyers needed information about what books were available and to find this out they needed a support network of booksellers and agents. Although collectors might rely on a network of contacts or the services of a private keeper, by the late

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<sup>90</sup> Rae, p. 16.

<sup>91</sup> Ibid, pp. 18-19.

<sup>92</sup> Hillyard, ‘Formation’, p. 33.

<sup>93</sup> Ibid, p. 34.

<sup>94</sup> Ibid, p. 57.

<sup>95</sup> Gabriel Naudé, *Instructions concerning erecting of a library presented to my lord the President De Mesme*, tr. by John Evelyn (London: Printed for G. Bedle, and T. Collins, 1661), p. 12.

seventeenth century a new class of assistant had arrived to help book collectors of all levels. These were ‘semi-professional bookmen’ who made ‘their living by working as auction agents and valuers, as foreign book-buyers and grand tour guides, as librarians and cataloguers, proof correctors, translators and journalists’.<sup>96</sup> Although there is not space here to explore their many roles, the careers of three important eighteenth century bookmen demonstrate the varied services they provided for the collectors of the age. No discussion of early eighteenth century British book culture would be complete without mentioning the contributions of Humfrey Wanley (1672-1726), Alexander Cunningham of Block (1650x60-1730), and Thomas Ruddiman (1674-1757). All three were respected scholars who used their bibliographic skills and contacts to help book collectors. Charles Areskine, if he did not know all of these bookmen himself, certainly knew people who did. Bookmen were at the heart of the intellectual networks of early modern Europe.

### **Humfrey Wanley**

As we have seen, the great collectors of the age could employ experienced librarians like Humfrey Wanley to manage their growing collections.<sup>97</sup> In addition to his bibliographic and scholarly services, Wanley kept lists of notable collections and ‘kept a watchful eye on the newspapers for the announcements of the deaths of their owners’.<sup>98</sup> Wanley used his connections and reputation to secure books for his primary patrons, the Harleys, but his services were not exclusive to them.

Wanley was a scholar in his own right as well as a keeper and organiser of others’ collections. At first apprenticed to a draper, Wanley found that the trade did not suit him and he set out transcribing provincial records and teaching himself Old English grammar. He was an assistant at the Bodleian Library by 1695 where he continued to develop his formidable skills as a palaeographer and cataloguer until 1700 when academic backstabbing and jealousy caused him to move to London. He worked for the Society for Propagating Christian Knowledge (SPCK) and assisted Hans Sloane at the

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<sup>96</sup> Mandelbrote, p. 188.

<sup>97</sup> Although he did most of his cataloguing himself, Hans Sloane was one of the major collectors who occasionally employed Wanley and other librarians as assistant cataloguers. M. A. E. Nickson, ‘Hans Sloane, book collector and cataloguer, 1682-1698’, *British Library Journal*, 14/1 (1988), 52-89 (p. 53). For Sloane’s catalogues and book buying see M. A. E. Nickson, ‘Books and manuscripts’, in *Sir Hans Sloane: collector, scientist, antiquary: founding father of the British Museum*, ed. by Arthur MacGregor (London: British Museum, 1994), pp. 263-77.

<sup>98</sup> Swift, p. 65.

Royal Society. Wanley first met Robert Harley in 1701 but did not work for him until he resigned his position at the SPCK in 1708.<sup>99</sup> From then on Wanley and the Harleys worked together to assemble the magnificent Harleian Collection which went on to become one of the foundation collections of the British Museum Library. Wanley's role as librarian to the Harleys was complex. His responsibilities included inspecting items offered for sale, negotiating purchases, getting acquisitions bound, checking deliveries, looking after the physical condition and environment of the materials and their housing, managing visits to the collection, helping visitors with enquiries, and answering book loan requests.<sup>100</sup>

Wanley also offered his numerous book-related skills to other collectors and managed relationships between rival collectors. In 1724, for example, when finding that 'Hans Sloane (who first saw the catalogue) had marked many of the Books which my Lord designed to buy', Wanley wrote to Sloane 'desiring him to suffer my Lord to have at least half a dozen of the books contested, which his Lordship chiefly wants'.<sup>101</sup> Wanley hoped Sloane would acquiesce since he had 'formerly yielded-up his pretensions to my Lord, touching on another valuable parcel'.<sup>102</sup> The next day Sloane visited Wanley to tell him that 'he yields-up his pretensions to all the Books...out of respect to my Lord, whom he is desirous to oblige & serve upon all occasions'.<sup>103</sup> Sloane was rewarded with a 'Letter...giving him my Lords Thanks for his late Civility towards his Lordship'.<sup>104</sup> Sloane realised that a good relationship with a powerful patron was more important to him than acquiring the books he wanted at a particular auction.

### **Alexander Cunningham**

One of the most influential agents in the book market was the Scottish scholar, teacher, and book seller Alexander Cunningham of Block.<sup>105</sup> Cunningham had studied law at

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<sup>99</sup> Peter Heyworth, 'Wanley, Humfrey (1672-1726), Old English scholar and librarian', *ODNB* (Oxford: OUP, September 2004) <<http://www.oxforddnb.com/view/article/28644>> [accessed 29 July 2010].

<sup>100</sup> C. E. Wright and R. C. Wright, 'Introduction', in *The diary of Humfrey Wanley, 1715-1726*, 1: 1715-1723, ed. by C. E. Wright and Ruth C. Wright (London: Bibliographical Society, 1966), pp. lxix-lxxii.

<sup>101</sup> Humfrey Wanley, *The diary of Humfrey Wanley, 1715-1726*, 2: 1723-1726, ed. by C. E. Wright and Ruth C. Wright (London: Bibliographical Society, 1966), p. 280.

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*, p. 281.

<sup>104</sup> *Ibid.* p. 282.

<sup>105</sup> John W. Cairns, 'Alexander Cunningham's proposed edition of the Digest: an episode in the history of the Dutch Elegant School of Roman law (parts I-II)', *Tijdschrift voor Rechtsgeschiedenis*, 69 (2001), 81-117, 307-59; John W. Cairns, 'Alexander Cunningham, book dealer: scholarship, patronage, and politics', *Journal of the Edinburgh Bibliographical Society*, 15 (2010), 11-35.

Utrecht and maintained links with the book trade in the Netherlands throughout his life. Acting as an agent for British book buyers was a ‘lucrative side line’<sup>106</sup> for him and he quickly became known as a bibliophile who had a specialised knowledge of legal texts. Cunningham became an indispensable link for British book collectors seeking continental books. He worked with Andrew Fletcher of Saltoun (1653-1716)<sup>107</sup> and Lord George Douglas (c. 1667/8?-1693?), for whom he also acted as tutor and grand tour guide,<sup>108</sup> to assemble their important libraries.<sup>109</sup> Cunningham also had links with the dukes of Argyll and served as tutor and guide for Lord Lorne, the future second duke in the late 1690s.<sup>110</sup> Colonel Christopher Codrington, who left his library of 12,000 volumes to All Souls College, Oxford in 1710, used Cunningham as his agent when purchasing his collection.<sup>111</sup> Cunningham also had a long association with the earl of Sunderland and helped him to collect law books.<sup>112</sup> Neither collector nor agent speculated: Cunningham always took care to consult Sunderland before making purchases.<sup>113</sup> The law books that Cunningham bought for Sunderland were tools for serious scholarship<sup>114</sup> and they show the deep knowledge of legal history and theory shared by agent and collector. Although towards the end of his life he spent most of his time at The Hague, Cunningham spent three years in London from 1716 to 1719 during which time he helped Sunderland with his library.<sup>115</sup>

Cunningham also provided books for institutional clients. The ‘most learned Civilian’ Cunningham provided a catalogue for the Master of the Lincoln’s Inn Library in 1708 when its council decided to spend a £50 legacy on ‘books of the Civil, Canon,

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<sup>106</sup> Swift, p. 72.

<sup>107</sup> Ibid, pp. 74-5.

<sup>108</sup> Cairns, ‘Alexander Cunningham’s proposed edition’, pp. 99-100; Kelly, pp. 30, 62; Cairns, ‘Alexander Cunningham’, p. 15.

<sup>109</sup> For Fletcher’s humanist library see P. J. M. Willems, *Bibliotheca Fletcheriana: or, the extraordinary library of Andrew Fletcher of Saltoun* (Wassenaar: Privately printed, 1999). For Lord George Douglas’ library and his education with Cunningham see W. A. Kelly, ‘Introduction’, *The library of Lord George Douglas (ca. 1667/8?-1693?): An early donation to the Advocates Library* (Cambridge: LP, 1997), pp. 1-21.

<sup>110</sup> Cairns, ‘Alexander Cunningham’s proposed edition’, pp. 104, 106-10.

<sup>111</sup> Charles Benson, ‘Libraries in university towns’, in *The Cambridge history of libraries in Britain and Ireland, 2: 1640-1850*, ed. by Giles Mandelbrote and K. A. Manley (Cambridge: CUP, 2006), pp. 102-21 (p. 115).

<sup>112</sup> Swift, p. 72.

<sup>113</sup> Ibid, p. 73.

<sup>114</sup> Cairns, ‘Alexander Cunningham’s proposed edition’, p. 116.

<sup>115</sup> Cairns, ‘Alexander Cunningham’, p. 19.

and Feudal law'.<sup>116</sup> In 1729, he sold forty-two titles to Gavin Hamilton of Edinburgh who was acting on behalf of the Advocates Library.<sup>117</sup>

Cunningham's skill as a tutor and his extensive bibliographic knowledge meant that he was able to establish himself in the closely linked European intellectual scene of the late seventeenth and early eighteenth centuries. His contacts included John Locke, Robert Boyle, Joseph Addison, Gottfried Leibniz, Thomas Burnet, and the librarian and classical scholar Richard Bentley.<sup>118</sup> As he travelled with his students, Cunningham tended to his own scholarship and delivered books to an international network of friends and clients.<sup>119</sup>

Although I have not established that they had a personal connection, Cunningham was the type of agent Areskine would have found to be a useful contact for assembling his library. The two shared an interest in civilian scholarship, a desire to acquire legal texts, and a network of acquaintances. Cunningham, for example, acted as agent for Areskine's judicial colleague, and fellow Ilay client, Andrew Fletcher, Lord Milton, and acquired law and antiquarian books for him.<sup>120</sup> Fletcher was the nephew of Cunningham's friend the book collector Andrew Fletcher of Saltoun. He had met Cunningham while studying law at Leyden from 1714 to 1716.<sup>121</sup> Cunningham advised Fletcher on courses to take and books to read while he was a student and played a role in securing the earl of Sunderland's patronage for his protégé.<sup>122</sup> Books provided a link between Cunningham, Fletcher and their patron. When Fletcher achieved a raise in his salary as Cashier of the Excise with Cunningham's help in 1719, the two sent their patron a gift of two books as a token of thanks.<sup>123</sup> When he became a curator of the Advocates Library in 1719, Fletcher asked Cunningham for advice about law books.<sup>124</sup> Cunningham continued to act as an agent for Fletcher throughout the 1720s.<sup>125</sup>

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<sup>116</sup> *The records of the Honorable Society of Lincoln's Inn: The Black Books*, 3: *A.D. 1600 to A. D. 1775* (London: Lincoln's Inn, 1899; facs. edn, Abingdon: Professional Book Supplies, 1991), p. 234.

<sup>117</sup> Brian Hillyard, 'Thomas Ruddiman and the Advocates' Library, 1728-52', *Library History*, 8 (1990), 137-70 (p. 163).

<sup>118</sup> Cairns, 'Alexander Cunningham's proposed edition', pp. 105-06.

<sup>119</sup> *Ibid.*, p. 106.

<sup>120</sup> Katherine Swift, 'The formation of the library of Charles Spencer, 3rd earl of Sunderland (1694-1722): a study in the antiquarian book trade', (D. Phil thesis, Oxford, 1986), p. 273.

<sup>121</sup> Cairns, 'Alexander Cunningham's proposed edition', p. 317.

<sup>122</sup> *Ibid.*, pp. 317, 323.

<sup>123</sup> *Ibid.*, p. 323.

<sup>124</sup> Cairns, 'Alexander Cunningham', p. 20.

<sup>125</sup> Cairns, 'Alexander Cunningham's proposed edition', p. 326.

Cunningham, as an advisor and tutor to Scottish students in the Netherlands, was also an important figure in the promotion of the tradition of Dutch ‘elegant’ legal scholarship. John Cairns has pointed out that Areskine’s library was, at least in part, a product of this tradition.<sup>126</sup> Like Wanley, Cunningham was respected for his own scholarship as well as for the services he provided for other collectors. His own extensive library was sold in parts. The first sale was at Leyden, was made up of 3,246 lots, and took eight working days from 20 November 1730. This portion of the Cunningham’s collection was his law books and his classics.<sup>127</sup> The second portion was of books which his nephew had inherited and which Cunningham had used for his own writings. These were sold in Edinburgh in 1755.<sup>128</sup>

As John Cairns has described, part of Cunningham’s library was a tool for his research for a new edition of the *Corpus iuris civilis*. The project was left incomplete at Cunningham’s death but the contents of his library show the scholarly directions he was taking. He seems to have planned to use a copy of the Torelli edition of the *Florentina* (1553) as the starting point for his corrections to Justinian’s *Digest*. To help with this work, Cunningham had a collection of ‘early printed editions of the *Corpus iuris civilis*’.<sup>129</sup> This was in line with Cunningham’s other editorial projects: when he decided to edit Virgil and Horace he collected multiple editions of their works.<sup>130</sup> Cunningham was particularly concerned with the meanings of words and with restoring the original meanings of passages of the *Corpus iuris civilis*.<sup>131</sup> In 1717, despite his position as Sunderland’s agent and therefore Harley’s rival in book collecting endeavours, Cunningham requested the loan of Harley’s Horace of 1477 and an early printed copy of Justinian’s *Institutes*.<sup>132</sup> Scholars felt able to cross boundaries to get the resources they needed and expected that the love of learning would transcend other concerns. It is interesting that Charles Areskine’s library contained many of the same tools for serious legal humanist scholarship as Cunningham’s. These included the Torelli edition of the

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<sup>126</sup> Ibid, pp. 355-6.

<sup>127</sup> Swift, ‘Formation’, p. 278.

<sup>128</sup> Ibid.; Cairns, ‘Alexander Cunningham’s proposed edition’, p. 339.

<sup>129</sup> Ibid., p. 344.

<sup>130</sup> Ibid. Areskine owned a copy of Cunningham’s 1721 edition of Horace (OM 27) so he certainly was aware of Cunningham as scholar.

<sup>131</sup> Ibid, p. 345.

<sup>132</sup> Cairns, ‘Alexander Cunningham’, p. 11.

*Florentine Pandect* (F 1), Gregor Haloander's editions of the *Corpus iuris civilis* (F 18, Q 3), and Charles Annibal Fabrot's *Basilikon libri LX* (F 207).<sup>133</sup>

### **Thomas Ruddiman**

The librarian, printer, book collector, and scholar Thomas Ruddiman owed the start of his career to the physician Archibald Pitcairne whom he met in 1700 and who encouraged him to leave his position as a private tutor and move to Edinburgh to seek his intellectual fortune. Pitcairne got him work as a copyist at the Advocates Library and by 2 May 1702 Ruddiman was formally employed as an assistant librarian there.<sup>134</sup>

Ruddiman acted as the de facto Keeper of the Advocates Library from 1703 to 1729 since the official keepers seemed to have little interest in the day-to-day administration of the library. He became Keeper officially on 6 January 1730.<sup>135</sup>

As Keeper of the Advocates Library, Ruddiman performed a similar role to Wanley's with the Harleian collection. Ruddiman was also responsible for ensuring that books owed to the Library under the conditions of the Copyright Act 1710 were delivered and bound, and for supervising the publication of a new printed edition of the Library's catalogue. The Library's Curators had responsibility for approving book acquisitions but it seems that Ruddiman was able to purchase inexpensive books which were related to his own interests in early printing and Scottish concerns. However, Ruddiman mainly followed the Library's remit to acquire books on legal, historical, and antiquarian topics of interest to lawyers.<sup>136</sup>

In addition to his important position at the Advocates Library, Ruddiman was a scholar and publisher. He worked as a proof reader and editor for the bookseller Robert Freebairn who took on his younger brother Walter as an apprentice in 1706.<sup>137</sup> Among the works Ruddiman produced for Freebairn was his controversial edition of George Buchanan's *Opera omnia* in 1715 (FM 1) which made no secret of his Jacobite sympathies.<sup>138</sup> The Ruddiman brothers set up their own printing business in 1712. They

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<sup>133</sup> See *Ibid*, pp. 344-5.

<sup>134</sup> Hillyard, 'Thomas Ruddiman', forthcoming.

<sup>135</sup> Hillyard, 'Formation', p. 42; A. P. Woolrich, 'Ruddiman, Thomas (1674–1757)', *ODNB* (Oxford: OUP, September 2004) <<http://www.oxforddnb.com/view/article/24249>> [accessed 03 Aug 2010].

<sup>136</sup> Hillyard, 'Thomas Ruddiman', pp. 162-5.

<sup>137</sup> Hillyard, 'Thomas Ruddiman', forthcoming.

<sup>138</sup> Ruddiman's biographical introduction criticised Buchanan's republican views. Ruddiman himself came under fire from critics and the attacks on him were renewed after the '45 when George Logan (incidentally Alexander Cunningham's nephew) published his *Treatise on government* in 1746. A pamphlet



specialised in books for schools. They published Ruddiman's own *Rudiments of the Latin tongue* in a second edition in 1716 and Ruddiman 'confirmed his reputation as Scotland's foremost Latinist' with his publication of *Grammaticae Latinae institutiones* (1725-1731).<sup>139</sup> Ruddiman presented a copy of the second volume to the Advocates Library in December 1731.<sup>140</sup> The Ruddimans' printing firm enhanced bibliographical knowledge by publishing a new printed catalogue for the Advocates Library from 1734 to 1747.<sup>141</sup> The Ruddimans were among several Edinburgh printers who published advocates' theses for new members of the Faculty.<sup>142</sup> Ruddiman's renown as a Latin scholar was acknowledged by Samuel Johnson who remarked upon seeing the errors in his young friend James Boswell's thesis that 'Ruddiman is dead'.<sup>143</sup>

Keepers and agents like Wanley, Cunningham, and Ruddiman show that the 'bookmen' who emerged in the late seventeenth century were as well-educated and scholarly as the patrons who employed them. Their contributions to scholarship and to the book market were essential for the book collectors who relied on their knowledge and skills. Of the three, Ruddiman is the one for whom a connection with Areskine is certain. Areskine became involved with the administration of the Advocates Library almost immediately after his admission as an advocate. He audited the library's accounts, took part in visitations to inspect the library, advised on policies for the library, and was active in committees to determine the value of the Faculty's publishing projects and library expansion plans.<sup>144</sup> An undated notebook kept by Ruddiman records three book loans by Areskine from the Advocates Library.<sup>145</sup> Areskine and Ruddiman, whether or not they compared notes about their own book collecting, were both involved in the activities of the Advocates Library. Both were active participants in Edinburgh's market

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war ensured with Ruddiman printing his defences on his own press. Woolrich, 'Ruddiman, Thomas'. Areskine had the second volume of Logan's *Treatise* (OM 286).

<sup>139</sup> Woolrich, 'Ruddiman, Thomas'.

<sup>140</sup> Hillyard, 'Thomas Ruddiman', p. 159.

<sup>141</sup> Woolrich, 'Ruddiman, Thomas'; Hillyard, 'Thomas Ruddiman', p. 168.

<sup>142</sup> Hillyard, 'Thomas Ruddiman', forthcoming.

<sup>143</sup> Ibid.

<sup>144</sup> See e.g. *The minute book of the Faculty of Advocates, 2: 1713-1750*, ed. by John MacPherson Pinkerton (Edinburgh: Stair Society, 1980), pp. 23, 27, 39, 65, 148, 149-50, 151.

<sup>145</sup> Thomas Ruddiman, 'List of books borrowed from the Advocates' Library', NLS MS F. R. 260a. The loans probably date from before 1743 since one of the books Areskine borrowed was 'Carpzovij Criminalia. fol.' Areskine bought his own copy (F 187) in Edinburgh on 24 December of that year which is now in the Advocates Library at shelfmark B.1.1.

for books and they certainly attended the same sales and auctions and visited the same shops. Areskine also had at least sixteen books from the 'Ruddimans' press.<sup>146</sup>

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<sup>146</sup> At F 128, F 169, F 231, F 235, FM 27, QM 105, O 201, O 238, O 240, O 249, OM 29, OM 203, OM 207, OM 285, OM 291, and OM 292. Thomas and Walter Ruddiman formatted their names as 'T. and W. Ruddimans' or 'W. and. T. Ruddimans' on the title pages of the works they printed.

## II

### Two Edinburgh Scholars:

#### Charles Areskine, Thomas Aikenhead and Their Books

Two young Scots were studying as university undergraduates as the seventeenth century faded. They read many of the same books since these were part of the standard curriculum taught in Scottish universities in the late seventeenth century. One of them was Charles Areskine of Alva and he would go on to become a regent and professor before entering the legal profession. The other was Thomas Aikenhead and he would be executed for blasphemy. Their experiences were very different but comparing the educations of Areskine and Aikenhead reveals the state of knowledge of the educated classes of Scotland at the turn of the eighteenth century. What books students read and the ideas they took from them could be a matter of life and death in an intellectual world dominated by orthodox Presbyterianism.

This chapter discusses Areskine's educational experiences, relates them to the educational practices in use during his time as a student and teacher, and considers how these may have inspired his selection of his books early in life. Areskine was a student and a keen mathematician who became a teacher early in his life. He was a professor before he undertook the training he needed to qualify as an advocate.

An exploration of the educational trends, controversies, developments, and opportunities of the late seventeenth and early eighteenth centuries is essential for understanding Charles Areskine's intellectual development and the corresponding growth of his book collection. Areskine was involved in all aspects the Scottish academic world as he moved from student to professor. At a time when only 1.5-2 per cent or about 1,000 to 1,200 students of the eligible population of Scotland each year attended a domestic university,<sup>1</sup> Areskine represented a minority in society when he embarked on his higher education. When he was appointed as the first professor of the law of nature and nations at Edinburgh in 1707, Areskine immediately applied for leave

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<sup>1</sup> Ian D. Whyte, *Scotland before the Industrial Revolution: An economic and social history, c. 1050-c.1750* (London and New York: Longman, 1995), p. 248; R. D. Anderson, 'Scottish universities', in *Institutions of Scotland: Education*, ed. by Heather Holmes, vol. 11 of *Scottish life and society: a compendium of Scottish ethnology*, ed. by Alexander Fenton (East Linton: Tuckwell; European Ethnological Research Centre, 2000), pp. 154-74 (p. 157). Student numbers rose throughout the eighteenth century from about 1,200 in 1700 to nearly 3,000 in 1800. *Ibid.*, p. 159.

to study the subject in the Netherlands. This action was part of a larger tradition for studying abroad by Scottish students who ‘formed a significant part of the total student body at the Dutch universities’ and between 1701 and 1725 made up 13 per cent of foreign students there.<sup>2</sup> Areskine’s library had its origins in his academic experiences both in Scotland and abroad.

The reading and discussion of certain books was controversial in early modern Europe. The late seventeenth century saw an increase in irreligious publications and the readers of these were not always content to keep their freethinking opinions to themselves. Just a few years before Areskine moved to Edinburgh to take up his teaching post, a near contemporary of his, Thomas Aikenhead, paid for his dangerous reading habits, and his willingness to share the information he gleaned from controversial texts, with his life. As a regent, Areskine was responsible for guiding the moral as well as the intellectual development of his scholars. This chapter considers the fate of Aikenhead and explores how the regents of Areskine’s generation coped with the ideas contained in controversial texts. It also looks at how attitudes about natural philosophy in the Scottish universities changed in the early years of the eighteenth century.

### **Scottish universities and the arts curriculum**

I fell in one day with an English book, a translation of a work by a Frenchmen, one Renatus Descartes, published in London in the year 1649. It gave an account of the progress in philosophy of this man...I gave my allegiance without hesitation to this philosopher, and ever since I have held to his system.<sup>3</sup>

As far as basic educational opportunities were concerned, late seventeenth century Scotland was one of the best places in Europe for a boy of any social class to grow up. Scotland was one of the most educationally advanced nations in Europe and had experienced post-Reformation developments in educational policy and practice at every level from the parish schools to the universities.

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<sup>2</sup> Esther Mijers, ‘Scottish students in the Netherlands, 1680-1730’, in *Scottish communities in the early modern period*, ed. by Alexia Grosjean and Steve Murdoch (Leiden: Brill, 2005), pp. 301-31 (p. 304).

<sup>3</sup> John Buchan, *John Burnet of Barns* (Edinburgh: Polygon, 2008), p. 31. Buchan’s fictitious account of a Scottish student’s education in the late seventeenth century summarises the attitude of many of Areskine’s contemporaries. The book referred to is *A discourse of a method for the well-guiding of reason, and the discovery of truth in the sciences. Being a translation out of that famous philosopher Renaldus Des Cartes* (London: Printed by Tho. Newcomb, for John Holden, at the Anchor in the New-Exchange, 1649) (ESTC, R469037). Areskine had an edition in French produced in Leyden in 1637 (QM 53).

Scotland had a long tradition of educational provision. There was a grammar school in most towns by 1500 and from 1560 the curriculum on offer was standardised by Protestant reformers.<sup>4</sup> The *Book of discipline* of 1560 was designed primarily as a means of propagating Calvinist faith but in practice its use encouraged more general learning. The reformers had secular support and government acts of 1616, 1633, 1646, and 1696 strengthened the parish school system.<sup>5</sup> The provisions of the last of these reinforced the requirement for each parish to run a school.<sup>6</sup> The result was that by about 1700, in richer areas of the country such as the Lothians, Fife, and Angus, at least 90 per cent of parishes had schools and teachers for them. Religious instruction was combined with classes in Latin grammar and literature and vernacular instruction was also offered.<sup>7</sup>

Roger L. Emerson has highlighted the links between developments in the moral philosophy of the Scottish Enlightenment and the lessons children learned at their Kirk schools from the Reformation on. These lessons included basic ideas about law and ethics. Young children learned from *The shorter catechism* which cited the Ten Commandments as the source of moral law. Older children learned *The larger catechism* in grammar schools and colleges. As Emerson points out, *The larger catechism* expanded the idea that ‘moral law is the declaration of the will of God to mankind, directing and binding every one to personal, perfect, and perpetual conformity and obedience thereunto’.<sup>8</sup> Ideas like these were influential in inspiring the developments of legal theory and scientific practice of Areskine’s time.

Standards, of course, would have varied throughout the country, but Areskine and his brothers could have expected to leave their Kirk school with knowledge of the psalms and prayers of the catechism as well as basic literacy.<sup>9</sup> As privileged members of society they would have attended their local grammar school to learn the Latin skills they would need to further their educations. Charles and his brother Robert were related to one of the most powerful families in Scotland but they were the younger sons of a cadet branch and little financial provision was made for them. While their oldest

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<sup>4</sup> Whyte, p. 240.

<sup>5</sup> R. A. Houston, ‘Scottish education and literacy, 1600-1800: An international perspective’, in *Improvement and enlightenment: proceedings of the Scottish Historical Studies Seminar, University of Strathclyde, 1987-88*, ed. by T. M. Devine (Edinburgh: John Donald, 1989), pp. 43-61 (p. 44).

<sup>6</sup> Whyte, p. 241.

<sup>7</sup> Houston, p. 44.

<sup>8</sup> Quoted in Roger L. Emerson, ‘Science and moral philosophy in the Scottish Enlightenment’, in *Studies in the philosophy of the Scottish Enlightenment*, ed. by M. A. Stewart (Oxford: Clarendon, 1990), pp. 11-36 (p. 11).

<sup>9</sup> Houston, p. 47. Areskine’s enjoyment of sacred poetry was well known enough to have a collection dedicated to him later in life. See Appendix A, OM 207.

surviving brother John could rely on income from the family estate at Alva in Clackmannanshire, Robert and Charles needed their educations to support themselves in their chosen professions of medicine and law.<sup>10</sup>

The full details of Areskine's childhood education are unknown but he would certainly have known Latin before going to university. Since he entered St Andrews in the second class, Areskine may have had tutoring to get him to that level before leaving Alva. An employment reference of 8 November 1700 states that Areskine had spent all of his time in the Presbytery of Stirling until he went to university.<sup>11</sup> As was the usual practice in seventeenth century Scotland, Areskine began his university education while in his early teens. He was at St Salvator's College, St Andrews as an undergraduate by 1694, paid for his BA degree in 1696, and obtained his Master of Arts degree on 12 June 1699.<sup>12</sup> As an undergraduate, Areskine studied under an appointed regent who dictated lectures and read out texts to his students. The students then studied the notes that they took during their lessons.<sup>13</sup> Areskine took rather longer than was usual to obtain his MA and it seems it was an interest in mathematics which caused him to delay his graduation.<sup>14</sup> Areskine did work which went beyond the standard curriculum including advanced mathematical studies. Surviving theses dating from the 1680s and 1690s show that some of the St Andrews regents were aware of recent developments in scientific and mathematical thinking and that they were increasingly accepting the ideas of Isaac Newton.<sup>15</sup> By the time he began to apply for regenting positions, Areskine's advanced accomplishments in mathematics as well as his deportment and good behaviour were praised by his referees.<sup>16</sup>

Christine Shepherd studied the arts curriculum of the Scottish universities in the seventeenth century in great detail<sup>17</sup> and found that teaching staff at institutions

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<sup>10</sup> John W. Cairns, 'The origins of the Edinburgh Law School: The Union of 1707 and the Regius Chair', *Edinburgh Law Review*, 11 (2007), 300-48 (p. 330).

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> R. A. Houston, *Literacy in early modern Europe: Culture and education, 1500-1800* (London: Longman, 1988), p. 82.

<sup>14</sup> Cairns, 'Origins', p. 330.

<sup>15</sup> John L. Russell, 'Cosmological teaching in the Scottish universities', *Journal for the History of Astronomy*, 5 (1974), 122-32, 145-54 (p. 150).

<sup>16</sup> Robert Ramsay and others, 'Letter of Recommendation' (8 November 1700), Edinburgh City Archives, McLeod's Coll., Bundle 11, Shelf 36.

<sup>17</sup> See Christine Shepherd, 'University life in the seventeenth century', in *Four centuries: Edinburgh university life, 1583-1983*, ed. by Gordon Donaldson (Edinburgh: EUP, 1983), pp. 1-15; Christine Shepherd, 'A national system of university education in seventeenth century Scotland?', in *Scottish universities: distinctiveness and diversity*, ed. by Jennifer J. Carter and Donald J. Withrington (Edinburgh: John Donald, 1992), pp. 26-

throughout the country were often innovative and inspiring. Since Areskine started as a student in this tradition and went on to teach in it, it is worth briefly examining the mechanics of a Scottish university education of his time.

Although political and religious controversies affected the universities, the curriculum they offered remained remarkably similar throughout the century. From 1639 to 1643, visitors from the Church of Scotland General Assembly toured the universities and recommended a standard course for them. Shepherd summarises the visitors' recommendations as follows:

First Year: Greek and a compend of logic  
Second Year: Logic (Aristotle) and elements of arithmetic  
Third Year: More logic (Aristotle), ethics, compend of metaphysics, geometry  
Fourth Year: Physics (Aristotle) and Aristotle's *De anima*.<sup>18</sup>

Other institutions and groups also regularly made recommendations for changes to the system but in many ways the programme and teaching methods remained consistent throughout the century. The primary goal of the system was to provide the basic practical skills needed for careers in the ministry, law, teaching or other professions.<sup>19</sup> To this end all of the universities offered similar arts programmes based on the recommendations above, all used regenting for instruction, all of the teaching was done by dictation, and all of the exams had similar formats.<sup>20</sup> The universities regularly considered the elements of the curriculum and attempted to standardise it. From the evidence of the curriculum's structure, we can conclude that the young Areskine had a basic knowledge of Aristotle's philosophy, as well as skill in logic and mathematics by the time he took his master's degree.

Evidence from his 1731 manuscript does not confirm that Charles Areskine began to collect his books while he was a student but other sources confirm his interest in physics and mathematics at this stage of his life. His letter of recommendation to Edinburgh from St Andrews specifically mentions his post-graduate studies in mathematics. There is little evidence of any strong engagement with any of the standard Aristotelian texts recommended in the standard curriculum. One of the books in the Alva Collection of the NLS may however shed light on Areskine's studies. NLS

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33; Christine Mary King [later Shepherd], 'Philosophy and science in the arts curriculum of the Scottish universities in the 17th century' (unpublished doctoral thesis, University of Edinburgh, 1974).

<sup>18</sup> Shepherd, 'National system', p. 26.

<sup>19</sup> King, 'Philosophy', p. 313.

<sup>20</sup> Shepherd, 'National system', p. 33.

Alva.257 is Alexander Pitcairne's *Compendiaria et perfacilis physiologiae idea, Aristotelicae...Unacum anatome cartesianismi* (London, 1676).<sup>21</sup> Although Areskine's signature appears in it twice, the book is not listed in the 1731 manuscript. This treatise on Aristotle and Descartes would have been a useful addition for a Scottish undergraduate's library. That Pitcairne, who died in 1695, had been the provost of St Salvator's from 1691 and was later president of St Mary's College, secures a connection with St Andrews:<sup>22</sup> his book may have been recommended to students there. Whatever texts he used, by 1700 Areskine had 'passed his course of philosophic' at St Andrews and had 'afterward studied the mathematics for a considerable time'. These assets, along with his 'gravity, sobriety, discretion and christian conduct' won the 'verie great esteem' of the Rector, Principal and the rest of the academic staff. Areskine made an unsuccessful application to teach at St Leonard's College at St Andrews and provided 'pregnant proofs of the great advances he had then made in his studies...which were truly far beyond what could have been expected from one of his age'.<sup>23</sup>

Despite the contributions of scholars like Alexander Pitcairne, who had shown his engagement with modern ideas by dedicating his textbook to the influential promoter of experimental natural science and Fellow of the Royal Society, Robert Boyle,<sup>24</sup> the education on offer at St Andrews was not well regarded by members of rival universities. In 1696 Archibald Pitcairne (no relation) threatened from Edinburgh that

When that pair of the Philosophic course which S<sup>t</sup> Andrews has got to compile, shall come from the press, I shall make them understand that at least there are some of those, whom the S<sup>t</sup> Andrews regents abus'd in their late meetings who understand philosophic.<sup>25</sup>

The Pitcairne from Edinburgh criticised what he saw as backwardness among some of the St Andrews regents who continued to venerate Aristotle and were slow to accept the latest scientific thinking which was flowing in from London and the continent during the late seventeenth century. The University of Edinburgh, in contrast, was at the forefront in developing mathematics and natural sciences in Scotland and had by this

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<sup>21</sup> The full title is: *Compendiaria et perfacilis physiologiae idea, Aristotelicae: forte conformior, physicae practicae ac chymicis experimentis accommodatior & aptior, quam quae vulgo in scholis obtinuit, & in amplis Jesuitarum monumentis conspiciuntur. Unacum anatome cartesianismi, in qua cartesiani speculationes metaphysicae examini subjiciuntur.*

<sup>22</sup> A. S. Wayne Pearce, 'Pitcairne, Alexander (d. 1695)', ODNB (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/22321>> [accessed 2 August 2009].

<sup>23</sup>Ramsay and others, 'Letter of Recommendation'.

<sup>24</sup> Pitcairne, 'Dedication' in *Compendiaria et perfacilis physiologiae idea, Aristotelicae.*

<sup>25</sup> Archibald Pitcairne, *The best of our own: letters of Archibald Pitcairne, 1652-1713*, ed. by W. T. Johnson (Edinburgh: Saorsa, 1979), p. 22.



time broken free from the scholastic tradition which was still followed at most of the other institutions. Edinburgh, therefore, was the best destination for an ambitious young scholar like Areskine.

### **An Edinburgh regent**

The university at Edinburgh was ‘a marked success’ by 1700.<sup>26</sup> It was founded as ‘Our Tounis College’ by order of King James VI in 1582 and had the Town Council as its patron. The Council managed the appointments, finances, and educational policy of the university throughout most of the seventeenth century. Edinburgh’s teaching structure was much like that of the other universities: a principal and four regents provided the general arts curriculum. As the end of the century approached the university gained some independence from the Town Council and began to make bold appointments such as that of James Gregory as Professor of Mathematics in 1674.<sup>27</sup> The renowned Gregory had been poached from St Andrews where he had held the Chair of Mathematics since 1668<sup>28</sup> as part of a move to increase Edinburgh’s prestige and reputation for innovation. By 1685 the institution was referred to as a ‘university’ in the minutes of the Town Council and it came to be recognised as the most advanced of the Scottish universities.<sup>29</sup>

When they arrived at university, students were assigned a regent – or tutor – who would take them through all aspects of the four year arts curriculum. The regents were mostly recent graduates themselves. Areskine’s kinship with the earl of Mar and the fact that he was somewhat better qualified than the norm because of the further studies he had undertaken did not guarantee him an academic post. It may be that a career as a regent suited Areskine’s talents but it also had appeal in that it did not require a long apprenticeship or a period of foreign study before he could establish himself in his profession.<sup>30</sup> Areskine had been unsuccessful in his application for a regenting

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<sup>26</sup> James Scotland, *The history of Scottish education, 1: From the beginning to 1872* (London: University of London, 1969), p. 159.

<sup>27</sup> Alexander Law, *Education in Edinburgh in the eighteenth century* (London: University of London, 1965), p. 22.

<sup>28</sup> Scotland, p. 146.

<sup>29</sup> *Ibid.*, p. 159

<sup>30</sup> Cairns, ‘Origins’, p. 330.

position at St Andrews in 1699.<sup>31</sup> At Edinburgh, the competition for regenting positions was fierce.

Areskine became a regent at Edinburgh soon after he obtained his MA. He may have undertaken some informal postgraduate studies at Edinburgh and this may have helped his application.<sup>32</sup> Areskine and his four fellow applicants all had political support. Areskine had the backing of his cousin, the earl of Mar, who was the most powerful patron in Scotland at the time. Influential patronage could be helpful in a university setting but all of the candidates underwent a rigorous eight day trial to test their abilities. The candidates drew lots to select subjects for debate - Areskine's subject was 'De Materiae Divisibilitate'<sup>33</sup> – and they were given eight days to prepare an interpretation of a Pindaric ode to test their Greek skills.<sup>34</sup> After a public debate on the special subjects and on the odes, Areskine, who as Roger L. Emerson puts it, 'probably deserved to win'<sup>35</sup> was appointed as a regent of the University of Edinburgh on 26 February 1701.<sup>36</sup>

Areskine had a range of duties to fulfil as a regent. He was responsible for his students' intellectual and moral development during their time with him. On 28 May 1701, Areskine took charge of his first group of students.<sup>37</sup> By 1702, his original group of thirty had risen to become forty-two<sup>38</sup> and in 1704 Areskine presented sixty-four

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<sup>31</sup> Roger L. Emerson, *Academic patronage in the Scottish Enlightenment: Glasgow, Edinburgh and St Andrews universities* (Edinburgh: EUP, 2008), p. 386.

<sup>32</sup> Ibid.

<sup>33</sup> Andrew Dalzel, *History of the University of Edinburgh from its foundation, 2: History* (Edinburgh: Edmonston and Douglas, 1862), p. 273.

<sup>34</sup> Ibid. I have found a reference to but not located (at time of writing) an intriguing document relating to the selection of regents during the competition. In 1827, the Edinburgh bookseller John Stevenson offered for sale 'The petition of the gentlemen students in the University of Edinburgh, to the Town Council, in favour of Mr Charles Areskine, in the competition between him and Mr Hogg for the Professorship of Philosophy' which he described as 'CURIOUS' and priced at 2s 6d. This was item 7185 in Stevenson's *Catalogue of a collection of tracts illustrative of British history in church and state. From the accession of Charles the First to the present time* (Edinburgh: Printed for John Stevenson, 1827), p. 180. Stevenson's copy of his catalogue survives with his notes of sale in the Edinburgh Central Public Library. He notes that Dr Lee bought the item. This may have been the noted bibliophile John Lee (1779–1859) who was working in Edinburgh at the time of the sale. Fergus Macdonald, 'Lee, John (1779–1859)', *ODNB* (Oxford: OUP Press, 2004) <<http://www.oxforddnb.com/view/article/16296>> [accessed 5 September 2011]. The petition implies that Areskine already had friends in Edinburgh before becoming a candidate for the regenting position. Lee also bought a copy of Areskine's *Theses philosophicae* from Stevenson's 1827 catalogue.

<sup>35</sup> Emerson, *Academic*, p. 337.

<sup>36</sup> Dalzel, p. 274.

<sup>37</sup> Edinburgh, University of Edinburgh, Centre for Research Collections, MS Laing, Da.1.38, 'Accompts of Mr Areskines Class Matriculate the 28 of May 1701', f. 5.

<sup>38</sup> EUL, MS Laing, Da.1.38, 'Supervements 23 Febr. 1702', f. 5v

candidates for graduation.<sup>39</sup> At Edinburgh, the regents and students started their days with lectures from 6 am in winter and 5 am in summer. The regents used this time to dictate their lessons and these were followed by question and answer sessions. Regents examined their students daily. The educational routine included public lectures given by the university's professors or the Principal each afternoon. Attendance at Sunday church services was mandatory for both morning and afternoon sessions: students were examined on the sermons. Formal exams took place at the start of each year to ensure that the student was ready to progress.<sup>40</sup> Regents had the power to issue fines for a range of bad behaviour including absence, swearing, profanity, and speaking English instead of Latin.<sup>41</sup> The system was much as it had been throughout the seventeenth century but its flaws were becoming increasingly apparent as the eighteenth century dawned.

The lack of experience as well as a lack of specialised knowledge among the regents meant that the system was unable to cope with all the latest learning at some of the universities. Fortunate students might be assigned a progressive and well informed regent – like Charles Areskine at Edinburgh – but throughout the rest of the country, the regenting tradition as teaching practice was proving to be inadequate. Even before Areskine joined their ranks, the Edinburgh regents had begun to go beyond the set curriculum to follow their own interests. By 1700, they preferred to teach empirical science and cited works by Robert Boyle, Isaac Newton, and John Locke as well as other modern thinkers. They began to phase out and replace the earlier thinking of Rene Descartes and countered the ideas of the likes of Thomas Hobbes with those of Hugo Grotius, Samuel von Pufendorf, and Richard Cumberland.<sup>42</sup> But the Edinburgh regents' often innovative approaches caused problems since the content of their courses still had to follow the guidelines of the regenting system as they were interpreted by the Town Council.

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<sup>39</sup> Charles Areskine, *Theses philosophicae, quas, auspice summo numine, generosi aliquot & ingenui juvenes universitatis Jacobi Regis Edinburgenae alumni, hac vice cum laurea emittendi, eruditorum examini subjicient, ad 12. diem Maii*, H. Lq. S. (Edinburgh: Andreae Symson, 1704), p. 3.

<sup>40</sup> D. B. Horn, *A short history of the University of Edinburgh, 1556-1889* (Edinburgh: EUP, 1967), pp. 23-5.

<sup>41</sup> Dalzel, p. 274-5.

<sup>42</sup> Emerson, 'Science', pp. 17-18.

## **Dangerous books: the death of Thomas Aikenhead**

As a new regent at Edinburgh in the early eighteenth century, Areskine was entering into a dangerous world of educational and religious controversies. The tragic case of the Edinburgh student Thomas Aikenhead highlights some of the problems of the university regenting system as it existed in its final years when Areskine participated in it. Areskine would have been well aware of the Aikenhead case when he took on his new employment.

Baptised in 1676, the student Aikenhead was a near contemporary of Areskine. Aikenhead began his studies at Edinburgh in 1693.<sup>43</sup> Michael Hunter has pointed out that Aikenhead's academic progress was in no way unusual. Aikenhead had been through most of the standard arts curriculum by 1696 and his regents had combined their own interests in Cartesian theory with the basic universities' curriculum.<sup>44</sup> What was unusual about Aikenhead was his willingness to express his freethinking opinions in public and before witnesses. But in this he had had exemplars close to home. Throughout the last two decades of the seventeenth century, leading intellectuals in Edinburgh such as David Gregory, Professor of Mathematics, and the physician and Jacobite Archibald Pitcairne were well known throughout the town for their openly professed deism as well as their habit of socialising with academics and students in taverns. Gregory and Pitcairne both left Scotland to take appointments elsewhere in the early 1690s. Gregory became the Savilian Professor of Mathematics at Oxford in 1691 with the recommendation of Isaac Newton. Pitcairne became a chaired professor in the medical faculty at Leyden from 1692 to 1693.<sup>45</sup> Like Gregory, Pitcairne was fortunate in his friends. Although they opposed his political views, Gilbert Burnet, Bishop of Salisbury, and James Dalrymple, Viscount Stair, both former Leyden exiles themselves, commended Pitcairne to the university officials there.<sup>46</sup> Stair wrote to Leyden indicating that Pitcairne would 'accept a "call"': the Curators offered Pitcairne an appointment as

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<sup>43</sup> Michael Hunter, "Aikenhead the Atheist": The context and consequences of articulate irreligion in the late seventeenth century', in *Science and the shape of orthodoxy: intellectual change in late seventeenth-century Britain* (Woodbridge: Boydell, 1995), pp. 308-32 (pp. 309-10). He did not graduate: his name does not appear in the list of graduates of the University of Edinburgh. *Catalogue of the graduates in the faculties of arts, divinites, and law of the University of Edinburgh since its foundation* (Edinburgh: Neill and Company, 1858).

<sup>44</sup> *Ibid.*, pp. 310, 327.

<sup>45</sup> Michael F. Graham, *The blasphemies of Thomas Aikenhead: Boundaries of belief on the eve of the Enlightenment* (Edinburgh: EUP, 2008), p. 26.

<sup>46</sup> Simon Schaffer, 'The Glorious Revolution and medicine in Britain and the Netherlands', *Notes and Records of the Royal Society of London*, 43/2: *Science and civilization under William and Mary* (1989), 167-90 (p. 173).

Professor of the Practice of Physic.<sup>47</sup> Pitcairne later returned to Edinburgh where he was notorious as a ‘great mocker of religion’.<sup>48</sup> He even went so far as to publish satirical attacks on the presbyterian kirk<sup>49</sup> and he ended up spending time in Edinburgh’s Tolbooth Prison for his expressions of his concerns about the kirk’s power in post-Revolution Scotland.<sup>50</sup> Gregory and Pitcairne were able to use their privileged positions in society as protection for their unconventional thinking. Aikenhead was not so fortunate.

Aikenhead’s first regent at Edinburgh had been Alexander Cunningham.<sup>51</sup> Cunningham was an associate of David Gregory who had been cited in the visitation to the university in 1690 for unsound ideas and possible Roman Catholic sympathies. He may also have beaten his students and he may have had a drinking problem. In his teaching he favoured Descartes and praised Boyle but he did not embrace the Newtonianism of his friend Gregory. One of Aikenhead’s classmates, Thomas Halyburton, later described Cunningham as ‘being very skilful in teaching...the Latin Tongue’.<sup>52</sup> Ill health led Cunningham to hand his students over to a new regent, John Row, in 1695. Cunningham died in 1696 and so was not available for questioning during Aikenhead’s trial.<sup>53</sup>

Thomas Aikenhead was accused of blasphemy on 10 November 1696.<sup>54</sup> The charges against him included ‘denying the Trinity, and the authority of the Scriptures, and for maintaining the eternity of the World’.<sup>55</sup> Aikenhead’s contact with ‘atheistical books’ was credited with inspiring and encouraging his freethinking throughout his trial. He would have had easy access to sceptical writings in the University Library since works by authors like Hobbes, Spinoza, and Descartes were all available on the shelves

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<sup>47</sup>R. W. Innes Smith, *English-speaking students of medicine at the University of Leyden* (Edinburgh; London: Oliver and Boyd, 1932), p. 183.

<sup>48</sup> Robert Wodrow, quoted in Graham, p. 26.

<sup>49</sup> Hunter, p. 322. Pitcairne’s satirical works included *The assembly, a comedy, by a Scots gentleman* (‘London’, 1722) which attacked Presbyterians.

<sup>50</sup> Schaffer, p. 172.

<sup>51</sup> A different Alexander Cunningham from the bookman and civilian discussed in Chapter I above.

<sup>52</sup> Thomas Halyburton, *Memoirs of the life of the Reverend Mr. Thomas Halyburton, Professor of Divinity in the University of St. Andrews* (Edinburgh: Printed by the heirs and successors of Andrew Anderson, 1714), p. 34. Halyburton left Edinburgh for health reasons and continued his education at St. Andrews. He regarded this as a lucky escape since ‘...the Class I left was broke quite, the Regent continuing indisposed that Year, and falling next Year into a Frenzy’. Ibid.

<sup>53</sup> Graham, p. 89.

<sup>54</sup> Ibid., p. 72.

<sup>55</sup> Hugo Arnot, *A collection and abridgement of celebrated criminal trials in Scotland, From A. D. 1536, to 1784. With historical and critical remarks* (Edinburgh: William Smellie, 1785), p. 322.

there. From 1682 all of the library's holdings were made available to undergraduates and from 1694 the library's decoration even included a portrait of Descartes.<sup>56</sup> The library accepted the donation of a work by the Spanish heretic Servetus from Alexander Cunningham of Block who gave the rare book in memory of his pupil Lord George Douglas in 1695.<sup>57</sup> The library regularly invested in new books and its purchases included Hobbes's complete works, Charles Blount's translation of Philostratus' *Life of Apollonius of Tyaneus*, *Letters writ by a Turkish spy*, Thomas Burnet's *Archaeologiae philosophicae* and *Sacred theory of the earth*, and John Toland's *Christianity not mysterious*.<sup>58</sup> It is clear that such sources inspired Aikenhead, and although his evidence does not survive, it is significant that the university librarian, Robert Henderson, was called as a witness at the Aikenhead trial.<sup>59</sup> 'Atheisticall, erroneous or profane' books meanwhile were also so widely available in Edinburgh's book shops that the Privy Council had considered searching for them early in 1696.<sup>60</sup>

Aikenhead's fiercest attacker was his fellow student Mungo Craig who not only testified against him but published two pamphlets against his former friend. Craig, who had almost certainly supplied Aikenhead with atheistical reading material, was desperate to distance himself from Aikenhead's opinions.<sup>61</sup> The first pamphlet to appear was *A satyr against atheistical deism. With the genuine character of a deist. To which is prefixt, An account of Mr. Aikinhead's [sic] notions, Who is now in prison for the same damnable apostacy*.<sup>62</sup> This included a list of books Aikenhead was supposed to have wanted to publish in support of his freethinking opinions. Second on the list we find Craig's criticism of the scientific thinking and mathematical theories of Descartes:

II. *Machina Dedalæa magna atque nova*; or, A new Engine of the same use in Air that Ships are in the Water; whereby

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<sup>56</sup> Graham, pp. 90-1.

<sup>57</sup> John W. Cairns, 'Alexander Cunningham, book dealer: scholarship, patronage, and politics', *Journal of the Edinburgh Bibliographical Society*, 5 (2010), 11-35 (p. 15)

<sup>58</sup> Hunter, p. 328. Toland was briefly at the University of Edinburgh from 1689 to 1690. *Ibid.*, pp. 322-3. Material like this could also be circulated in manuscript form. As J. A. I. Champion has pointed out most accounts of irreligious thought and blasphemy have focused on printed books. For the circulation of blasphemous ideas with special reference to manuscripts in late seventeenth century London see his 'Bibliography and irreligion: Richard Smith's "Observations on the report of a blasphemous treatise", c. 1671', *Seventeenth Century*, 10/1 (1995), pp. 77-99.

<sup>59</sup> Hunter, p. 328.

<sup>60</sup> *Ibid.*, p. 322.

<sup>61</sup> *Ibid.*, p. 317.

<sup>62</sup> After Aikenhead was executed Craig published *A lye is no scandal. Or a vindication of Mr. Mungo Craig, From a Ridiculous Calumny cast upon him by T. A. who was Executed for Apostacy At Edinburgh, the 8 of January, 1697* (Edinburgh, 1697) to reinforce his point about his own lack of deistical thinking.

we may have easy Commerce with the other *Vortices*, and especially with the *World in the Moon*.<sup>63</sup>

Craig's rant continues with a list of the authors and books the deist Aikenhead admired. These included 'his Apostle *Hobb's*', '*Epicure's* Denial of Providence', '*Aristotel's* Eternity of the world', '*Blunt's* Oracles of Nonsense', and 'Mr *Lock's* Moral way of Demonstration'.<sup>64</sup> Despite the satirical titles Craig created for their books, all of these authors would have been discussed by regents and students at the university as a normal part of the curriculum. Aikenhead countered Craig's accusations by saying that his accuser was the real atheist who had 'constantly made it his work to interrogat me anent my reading of the said atheisticall principles and arguments' and further added that the books Craig had shown him 'ought neither to be printed nor exposed to public view'.<sup>65</sup> It is possible that both Craig and Aikenhead lacked, or ignored, any guidance from their regents in determining how to go about reading and interpreting the texts they had access to as students. Their discussions about vortices and other worlds showed that the students were aware of modern natural philosophy but Aikenhead's proposal that Jesus Christ had merely used the laws of the natural world to ascend to the heavens was a step too far.<sup>66</sup>

Aikenhead's fate was sealed. Unlike Gregory and Pitcairne who had money, powerful friends, and the ability to flee the country when required, he was an orphan with no resources. His expression of blasphemy and his refusal to recant were intolerable to the Town Council and on 8 January 1697 he was hanged.<sup>67</sup> The shock of Aikenhead's execution and its aftermath brought the discussion of dangerous ideas out into the open beyond the walls of the university's library but it is striking that none of Aikenhead's fellow Edinburgh freethinkers helped him during his trial.<sup>68</sup> It was one thing to express irreligious thoughts in taverns among friends or to collect and read questionable texts but quite another to rush to the aid of a condemned criminal. But the intellectual world was changing fast. The trial later came to be seen as a lapse in

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<sup>63</sup> Mungo Craig, *A satyr against atheistical deism With the Genuine Character of a Deist. To which is prefixt, An account of Mr. Aikinhead's* [sic] *notions, Who is now in prison for the same damnable apostasy* (Edinburgh: Robert Hutchison, 1696), p. 3.

<sup>64</sup> *Ibid.*, pp. 13-14. Locke was interested in the Aikenhead case and his collection of materials related to the trial is the best in existence. It survives in the Lovelace Collection of the Bodleian Library. See Hunter, "Aikenhead the Atheist", p. 231.

<sup>65</sup> Thomas Aikenhead, quoted in Graham, p. 105.

<sup>66</sup> Hunter, p. 327.

<sup>67</sup> Graham, p. 2.

<sup>68</sup> John Robertson, *The case for the Enlightenment: Scotland and Naples, 1680-1760* (Cambridge: CUP, 2006), p. 99.

judgement as debates about scepticism became a part of the discourse that was one of the strands of Scottish Enlightenment thought. As Hugo Arnot put it retrospectively in 1785: 'Mercy was asleep, as well as Justice and Science; so the dreadful sentence was executed'.<sup>69</sup> The Edinburgh where Areskine started his professional life in 1701 was a very different place from the one he ended it in more than sixty years later.

Although problems with the regenting system and its potential for providing poor quality instruction for students were emphasised by the Aikenhead case, the arts curriculum offered at Scottish universities was flexible, comprehensive, and advanced. Throughout Scotland, universities combined traditional scholastic learning with new ideas in mathematics and natural philosophy deriving Descartes and his followers which began to appear in the 1650s. By the 1670s Cartesian ideas were taught if not trusted and by the 1680s Newtonian science was taught and discussed.<sup>70</sup> This was especially the case at Edinburgh where Areskine and his fellow regents promoted the newest ideas in natural philosophy in their dictates and theses. By the time Areskine began his teaching career in the early eighteenth century, the natural philosophy of Newton and his followers was fully adopted by the regents at Edinburgh. The regents regularly referred to the works of members of the Royal Society and were well informed about the scientific and mathematical developments of their time.<sup>71</sup>

### ***Learning and faith***

Some of the 'atheistical' authors mentioned in the Aikenhead trial, although not the particular books were present in the private library Areskine started recording in 1731. He owned several works written or edited by John Toland (FM 30, O 88, OM 190, OM 296) and one by Spinoza on Descartes, *Renati Des Cartes Principiorum philosophiæ pars i, & ii, more geometrico demonstrata. Accesserunt ejusdem Cogitata metaphysica* (1663) (QM 39). The only reference found to Hobbes, however, is Edward Hyde's criticism, *A brief view and survey of the dangerous and pernicious errors to church and state, in Mr. Hobbes's book, entitled Leviathan* of 1676 (QM 6).

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<sup>69</sup> Arnot, p. 327.

<sup>70</sup> Christine M. Shepherd, 'Newtonianism in Scottish universities in the seventeenth centuries', in *The origins and nature of the Scottish Enlightenment*, ed. by R. H. Campbell and Andrew S. Skinner (Edinburgh: John Donald, 1982), pp. 66-7.

<sup>71</sup> Eric G. Forbes, 'Philosophy and science teaching in the seventeenth century', in *Four centuries: Edinburgh university life, 1583-1983*, ed. by Gordon Donaldson (Edinburgh: EUP, 1983), pp. 28-37 (pp. 34-5).



The books read by students and members of the educated classes were clearly a cause of concern for some Christians and their anxieties led them to publish books as they strove to protect their faith. The English theologian William Nicholls began publishing a series of dialogues in 1696 which were designed to help Christians defend themselves from ‘Philosophical Gentlemen’ who

being Men of Parts and Letters, and able to manage an argument...set upon some unlearned Christian; they puzzle and confound him with Philosophick Terms and Experiments, and with a Set of Jestes and Bantering Expressions against Scripture; and when thus they have beat the poor Man out of his Road, they think to have triumphed over Christianity.<sup>72</sup>

Help was at hand in the form of the learned Christian Credentius who was able to respond to his friend Philologus the theist’s arguments on this own well-read terms while converting his opinions. Both of Nicholls’ characters possessed libraries and these show that late seventeenth century scholars understood that books were used for different purposes and areas of study. Credentius’s wholesome study contains books that he is happy to lend to neighbouring clergy including

a very large and choice Collection of Books in most Arts and Sciences...he had taken care to be provided, not only with all History, both Ancient and Modern, and with a Collection of Classick and Law-Books; but was also furnished with all the Fathers and Councils of the Best Editions, with a variety of Bibles, Criticks and Commentators on the Scripture, and with a considerable number of the best Critical, Casuistical and Controversial Divines.<sup>73</sup>

Philologus’s more suspect study, meanwhile, is that of an early modern humanist:

...the Books were Methodically arranged into various Classes, under the Images of Ancient Philosophers and Poets, and some other celebrated Modern Writers. Nor was there wanting any Greek, Philosophical, or Philological Writer from *Homer* to *Pletho*; and all the Latin Classicks stood in the exactest order and in the most curious binding...they were chiefly of the charming Editions of *Aldus*, the *Stephani*, and *Vascosanus*. Here were all the Learned *Adversaria*, Dissertations, &c. of the famous Philologers of this and the last Age...here was a Collection of every thing curious in the Philosophy of the Moderns...all the Wits of our own and the Neighbouring Nations, every thing useful and delicate in the Methematicks and Poetry, most singular sets of the Modern History, Maps and Travels; in short a well

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<sup>72</sup> William Nicholls, *A conference with a theist wherein I. are shown the absurdities of the pretended eternity of the world, II. The difficulties in the Mosaick creation are cleared, III. The lapse of mankind is defended against the objections of Acrhaelologiae philosophicae, The oracles of reason, &c.* (London: Printed by T. W. for Francis Saunders...and Tho. Bennet, 1696), preface.

<sup>73</sup> *Ibid.*, p. 3.

chose Collection of the most refined and pleasing Authors, which may tend to render the study of a Gentleman agreeable and to highten his Genius.<sup>74</sup>

Credentius and Philologus are friends and they can tolerate each other's arguments while respecting each other's scholarship. Their discussions reveal much about the anxieties Christians felt about the influence of new philosophical ideas in society. Credentius's learning prevents him from being confounded by his theistic friend and his message is that Christians need to know what theist libraries contain if they are to argue for their faith successfully. The library Areskine assembled in the early eighteenth century contained most elements of both of the collections of Nicholls's scholarly duo.

A book published in Edinburgh reinforced this position of acquiring knowledge to protect faith. Aikenhead's former classmate Thomas Halyburton's *Natural religion insufficient; and revealed necessary to man's happiness* was published in 1714 with the blessing of seven Church of Scotland ministers, four of whom were involved in education as administrators or professors.<sup>75</sup> Halyburton directly attacked Aikenhead's ideas in the work.<sup>76</sup> Halyburton's posthumously published *Memoirs* candidly reveal his own internal fight against atheism in the 1690s and he states that his personal religious crisis had occurred after he had 'studied Philosophy three Years'.<sup>77</sup> His works had the stamp of approval of the religious and educational establishments since they demonstrated how scepticism could be overcome.

It is important to note that the enlightened retrospective viewpoint expressed by Arnot, the mutually respectful intellectual debates of Nicholls's characters, and the presence of 'athiesticall' authors in Areskine's library all conceal the reality that intolerance about religious issues remained well into the enlightened era. Alexander Broadie has pointed out that the intolerance demonstrated by the Aikenhead trial continued well into the 1740s. The difference was that a known deist like the philosopher David Hume did not need to find employment abroad or to fear for his life

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<sup>74</sup> William Nicholls, *A conference with a theist, Part II* (London: Printed by T. W. for Francis Saunders...and Thomas Bennet, 1699), pp. 1-2.

<sup>75</sup> 'Epistle of recommendation', in Thomas Halyburton, *Natural religion insufficient; and reveal'd necessary to man's happiness in his present state; or, A rational enquiry into the principles of modern deists* (Edinburgh: Printed by the heirs and successors of Andrew Anderson, 1714). The 'Epistle' was signed by William Carstares (Principal of the University of Edinburgh), James Hadow (Principal of St Mary's, St. Andrews), William Hamilton (Professor of Divinity at the University of Edinburgh), Will. Wisheart (Carstares's successor at Edinburgh), Thomas Black, James Grierson, and John Fleming.

<sup>76</sup> Halyburton, *Natural religion*, pp. 119-20, 131.

<sup>77</sup> Halyburton, *Memoirs*, pp. 51-6.

but it is significant that Hume did not publish his *Dialogues concerning natural religion* during his lifetime<sup>78</sup> nor did he obtain a university chair. Even so, attitudes were changing. Parliament allowed freedom of worship and ‘withdrew the legal rights of the kirk sessions over non-presbyterians’ in 1712<sup>79</sup> and ‘by 1741 it was acceptable in some circles to poke fun at the church’.<sup>80</sup>

### **Areskine’s *Theses Philosophicae* of 1704**

With the background details of the trial and execution of Thomas Aikenhead in place, it comes as no surprise that Areskine was so carefully vetted and tested before his appointment as a regent at the University of Edinburgh. Areskine went on to become a successful regent. There is no evidence that he expressed sceptical thoughts during his tenure and he seems to have been a model regent who carefully explained the contexts of his lessons and provided appropriate warnings about potentially controversial material.

To find out more about Areskine’s career as a regent, we can turn to the notebooks of two of Areskine’s students which survive in Edinburgh. The NLS holds a manuscript of the dictates taken down by Areskine’s student Patrick Wilkie in 1703.<sup>81</sup> Wilkie’s neatly written notes in Latin give details of lectures in ethics, pneumatics, physics, and philosophy and include a manuscript copy of the *Theses philosophicae* he would be called upon to defend at his graduation in 1704. Wilkie’s notes show that Areskine did not shy away from controversial authors while following the usual arts curriculum. The dictates include mentions of Democritus, Epicurius, ‘Hobbesius’, Spinoza, Socrates, ‘Pythagorū’, Plato, ‘Aristoteles’, and ‘Hendricus Morus’.<sup>82</sup> The University of Edinburgh holds a manuscript, also of 1703, of another of Areskine’s students, Nicholas Montgomery, which gives details of lectures on mathematics and physics and includes mathematical equations and diagrams. Montgomery began keeping

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<sup>78</sup> Alexander Broadie, *The Scottish Enlightenment: The historical age of the historical nation* (Edinburgh: Birlinn, 2001), pp. 35-7. Arthur Herman’s popular history, *The Scottish Enlightenment: The Scots’ invention of the modern world* (London: Fourth Estate, 2001) also uses the Aikenhead trial to demonstrate the progressive change in Scottish attitudes between c. 1700 and the 1740s. See pp. 1-11.

<sup>79</sup> R. A. Houston, *Social change in the age of Enlightenment: Edinburgh, 1600-1760* (Oxford: Clarendon, 1994), p. 194.

<sup>80</sup> *Ibid.*, p. 210.

<sup>81</sup> Patrick Wilkie, ‘Lecture notes, 1703’, NLS MS Adv.20.7.1.

<sup>82</sup> *Ibid.*, f. 23.

his notes on these lectures on 8 December 1703.<sup>83</sup> These dictates and theses not only reflect Areskine's own development and that of his students they also show the state of learning in the Scottish universities in the early eighteenth century.

A more direct source of information about the subjects Areskine taught is found in a set of theses he wrote for his students to defend at their graduation in 1704.

Areskine applied to the Town Council on 3 May 1704 to request permission for his magistrand class to graduate on 12 May 1704.<sup>84</sup> He would have then arranged for the publication of his *Theses philosophicae*. He had already given his students the theses as part of his dictates and he completed his regenting duties for the group by coaching them for their graduation ceremony.

Areskine's *Theses philosophicae* included discussions of Newtonian theories and mathematics. Perhaps it was Newton's insistence that God was necessary for his systems to work which made him popular among the Edinburgh regents. Not only were his thinking and philosophy advanced and inspirational, Newton's theories were free of the accusations of atheism which Descartes' had attracted. Areskine made this abundantly clear in his first corollary to his theses, saying:

From the mutual attraction already described, upon which depend both celestial and terrestrial phenomena, it follows of necessity that there exists an omnipotent Being who is the supreme governor of all things, and that gravitation is an effect of his power, since the force and efficacy of attraction far exceeds the power of matter.<sup>85</sup>

Areskine does not cite specific works in the *Theses philosophicae* directly but it is possible to trace the sources he used. Areskine referred to publications by Newton as well as those by his follower David Gregory and other members of the Royal Society of London. In the *Theses*, Areskine praised Newton while rejecting the theories of Descartes and Leibniz about the structure of the universe. In Thesis XIII, for example, he declares that 'Vorticism is...a weak hypothesis' and uses the motion of comets as an illustration of Newton's laws of gravity.<sup>86</sup> It is worth noting that the Descartes' vortex

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<sup>83</sup>Nicolas Montgomery, 'Annotations ad Johannis Clerici Physicam. Ditatae a Magistro Carolo Areskino in Academia Edinburgensi' (1703), EUL MS Dc.7.98. A fellow student left a note on the front pastedown of Montgomery's notebook saying: 'Geo: Lindsay is my name, Scotland is my nation'. Lindsay is listed with Wilkie and Montgomery as one of Areskine's candidates for graduation in the *Theses* of 1704.

<sup>84</sup> *Extracts from the records of the Burgh of Edinburgh, 1701 to 1718*, ed. by Helen Armet (Edinburgh: Oliver and Boyd, 1967), p. 74.

<sup>85</sup> Charles Areskine, trans. and quoted in Russell, p. 130.

<sup>86</sup> Areskine, pp. 6-7 (my translation). Comets were the subject of scientific, theological, and philosophical debates throughout the early modern period. Aristotelian theory held that comets were created in the

theory relied on matter being fixed in its motion: God had set the universe up like a giant clockwork mechanism in which his intervention was not required. Rejecting vorticism meant rejecting Descartes and therefore the deistic and atheistic implications of his theory. Throughout Areskine's *Theses* astronomy and mathematics are closely linked. Areskine additionally cites recent scholarship by Continental scholars such as Christiaan Huygens, whom he rates as the best explainer of Cartesian theory, and the Swiss mathematician Jacob Bernoulli.<sup>87</sup>

Areskine's 1731 catalogue does not contain very much which matches the sources used in his *Theses*. There is a copy of 'Newtown's Opticks' of 1704 (QM 2), but all of the other titles by Newton in the manuscript post-date the *Theses*. 'Newton's Principiae' or *Philosophiæ naturalis principia mathematica* for example, is listed in the third edition of 1726 (QM 113). This does not exclude the possibility that Areskine possessed or borrowed the first edition of 1687 at some point. The second edition of 1713 would, of course, have been too late for the *Theses*. He may have replaced the first edition when the third was published just a few years before he started his catalogue. It is impossible to know without the physical evidence of a signature or a bookplate. The only work by Leibniz in the 1731 catalogue is a collection of philosophical essays of 1714 (OM 2). For Descartes, however, there is one work which may have informed the *Theses*. 'Discoürs sur la Dioptriqüe, Les Meteores et la Geometrie' was published in Leyden in 1637. This is Descartes' *Discours de la methode: pour bien conduire sa raison, & chercher la verité dans les sciences; Plus, La dioptrique; Les meteores; et, La geometrie* (QM 53). This was a well known set of publications in scientific circles and one which had been discussed by Newton.<sup>88</sup> It was also a work known to generations of Scottish students. These works of Descartes, whether he owned them at the time or borrowed them, would have certainly been useful to Areskine as a source for his *Theses*.

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earth's atmosphere and this led to an ancient and medieval belief that they were signs of disaster because the conditions which created them also caused drought, famine, hot weather, and pestilence. By the end of seventeenth century, comets were understood to be celestial objects that had no influence on the future. See Andrew Fix, 'Comets in the early Dutch Enlightenment', in *The early Enlightenment in the Dutch Republic, 1650-1750: Selected papers of a conference held at the Herzog August Bibliothek, Wolfenbüttel 22-23 March 2001*, ed. by Wiep van Bunge (Leiden: Brill, 2003), pp. 157-72 for a discussion of the changing interpretations of comets from portents to objects constrained by the laws of nature.

<sup>87</sup> Areskine, pp. 5, 10.

<sup>88</sup> A. Rupert Hall, *Isaac Newton: Adventurer in thought* (Cambridge: CUP, 1992), p. 49. Newton's optical studies with prisms which were published in 1672 were inspired by *La Dioptrique. Les Météores* presented the theory that matter caused light to spin thereby causing us to see colours. *Ibid.*, p. 102.

With the exception of Newton's *Principia*, Areskine does not mention his sources by title. A couple of the theses, however, offer some clues as to where Areskine found his arguments. In Thesis XIX, for example, he references 'Gregorius Gentis & Academiae nostrae decus'<sup>89</sup> as the best source to consult for astronomical knowledge. In 1702 David Gregory had published *Astronomiae physicae et geometricae elementa* which featured original work by Newton. This went on to become a standard textbook for the rest of the century<sup>90</sup> but at the time of Areskine's *Theses* it was newly published. In Thesis XX (which is mistakenly labelled as XXI in the original), Areskine may have been turning to the *Philosophical Transactions of the Royal Society of London* for a discussion of Jacob Bernoulli's geometry and its relation to Newton's *Optics*. Volume 24 of the *Philosophical Transactions* had as its second article, 'Solutio Problematis. A Clariss. Viro D. Jo. Bernoulli in Diario Gallica Febr. 1403 Propositi Quam D. G. Cheyæo communicant Jno. Craig'. The '1403' here is a mistake for '1703'. Areskine's 1731 catalogue contains no works by Cheyne or Craig. Areskine did not list the *Philosophical Transactions* as being in his collection in 1731. But he certainly would have had access to the publication in the University of Edinburgh's library. Bernoulli's work on comets, *Conamen novi systematis cometarum, pro motu eorum sub calculum revocando & apparitionibus prædicendis* (OM 62) however, is also present in the 1731 list so he could have worked directly from the text.

In all of the sources he cited in his dictates and in his *Theses philosophicae*, Areskine referred to materials which were untainted by the recent controversies about sceptical learning and texts. His strongly pro-Newtonian approach explicitly acknowledged the necessity of God who was essential for making the universe work.<sup>91</sup> When he cited the work of Jean Le Clerc in his dictates meanwhile, Areskine was careful to point out to his students that not all of the ideas in that author's *Physics* were sound. Le Clerc's work had been censured by the Commissioners of the universities in the 1690s for its scepticism. Areskine made it clear that he wanted only to study Le Clerc's ideas about gravitation, which were similar to Newton's, and not to engage with his theology.<sup>92</sup>

The library at Edinburgh University actively developed its collection and the regents were keen users of the materials the library stocked. In 1690, the university's

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<sup>89</sup> Areskine, *Theses*, p. 10.

<sup>90</sup> Anita Guerrini, 'Gregory, David (1659–1708)', *ODNB* (Oxford: OUP, September 2004; online edn, January 2008) <<http://www.oxforddnb.com/view/article/11456>> [accessed 2 August 2009].

<sup>91</sup> King, 'Philosophy', p. 234.

<sup>92</sup> *Ibid.*, pp. 57, 222-3.

library was the first in Scotland to purchase Newton's *Principia*. This was five years before any other university library in Scotland.<sup>93</sup> Areskine cited an issue of the *Philosophical Transactions* in his dictates of 1703.<sup>94</sup> As with the 1704 *Theses* his interest was in the laws of motion. All of the Edinburgh regents cited works by members of the Royal Society of London. They approved of the Society's encouragement of experimental science and regularly referred to the work of its members in their dictates and theses.<sup>95</sup> Memories of the Aikenhead crisis, however, meant the Town Council remained wary about some of the materials available in the university library. On 20 May 1703, for example, the Committee on College Affairs reported that it

...did find that ther was ane press in the upper hall of Atheisticall bookes or bookes attending therto which Doctor Rule late primer caused sequestrate....It is the Committees opinion that the key and press be committed to the custodie of Mr Henderson and he be enjoyned to have a speciall care that none of these bookes without order from the Councill should be given out. The Council appoint ballie Linn to get from the professor of theologie ane catalogue of the above Athiesticall bookes to the effect that the magistrates may inquire after them.<sup>96</sup>

But Areskine may not have been completely reliant on the resources of the university. His brother, Robert, was a physician and a friend of prominent members of Newton's circle, including Gregory and Pitcairne. He shared a medical background with the latter. Robert was based in London from 1702 to 1704 and was elected as a Fellow of the Royal Society of London on 30 November 1703.<sup>97</sup> Areskine, therefore, had more than one point of access for the latest research. Robert was the closest of Areskine's brothers both in age and in interests. As we saw in Chapter I, he had a large book collection and was noted for his scholarship. His brother provided Areskine with a link to the scientific community.

Areskine's teaching was part of a wider tradition of Newtonian acceptance in the Scottish universities. Although his career as a regent lasted less than a decade, Areskine

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<sup>93</sup> Christine Shepherd, 'The inter-relationship between the library and teaching in the seventeenth and eighteenth centuries', in *Edinburgh University Library, 1580-1980: a collection of historical essays*, ed. by Jean R. Guild and Alexander Law (Edinburgh: Edinburgh University Library, 1982), pp. 67-86 (p. 74).

<sup>94</sup> *Ibid.*

<sup>95</sup> *Ibid.*

<sup>96</sup> *Extracts*, p. 49.

<sup>97</sup> The Royal Society Library and Information Services, 'List of Fellows of the Royal Society of London, 1660-2007: A complete listing of all Fellows and Foreign Members since the foundation of the Society' (2007), 13, available at <<http://royalsociety.org/WorkArea/DownloadAsset.aspx?id=4869>> [accessed 18 July 2010].

retained his interest in the subjects he taught throughout his life. Books about these topics, including works by the Newtonian Colin MacLaurin on fluxions (QM 105) and his *An account of Sir Isaac Newton's philosophical discoveries* (QM 118),<sup>98</sup> are listed in Areskine's 1731 manuscript and it is not surprising to find him amongst the founder members of the Philosophical Society of Edinburgh in 1737.<sup>99</sup> Nor is it a surprise that this organisation made it clear from the start that its members would not discuss matters of politics or religion.<sup>100</sup> MacLaurin's *Account*, however, explicitly linked 'God's providence with Newtonian physics' and this approach 'was appreciated by Moderates in the Church of Scotland, and helped reinforce the alliance between sciences, religion and the Scottish universities'.<sup>101</sup>

It is important to note that there is no evidence that there was anything questionable about Areskine's religious beliefs. He was a 'moderate' member of the Kirk. When John Simson, the Professor of Divinity at Glasgow, was accused of heresy for a second time in the 1720s, Areskine acted to manage affairs at his trial before the General Assembly of 1729.<sup>102</sup> Areskine worked on behalf of the government and of his patron Archibald Campbell, the then earl of Ilay, to support Simson against more orthodox members of the Church of Scotland. Simson, among other possibly heretical charges, had argued that the doctrine of scripture was fully compatible with Newtonian physics. He also believed that individuals could make their own choices in religious matters and he taught his students a more tolerant form of divinity than his rivals liked.<sup>103</sup> Areskine helped engineer a compromise was reached which allowed Simson to keep his living on the condition that he did not teach.<sup>104</sup> What is significant here is that,

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<sup>98</sup> Areskine subscribed for MacLaurin's *Account* in its large paper version. He is listed among the subscribers as 'The Hon. Charles Areskine, of Tinwald, one of the Lords of Session'. See also P. L. Wallis, 'The MacLaurin "Circle": the evidence of subscription lists', *Bibliothèque*, 11/2 (1982), 38-54.

<sup>99</sup> Roger L. Emerson, 'The Philosophical Society of Edinburgh, 1737-1747', *British Journal for the History of Science*, 12 (1979), 154-91 (p. 190); Cairns, 'Origins', p. 344.

<sup>100</sup> *Ibid.*, p. 164.

<sup>101</sup> Judith V. Grabiner, 'MacLaurin and Newton: the Newtonian style and the authority of mathematics', in *Science and medicine in the Scottish Enlightenment*, ed. by Charles W.J. Withers and Paul Wood (East Linton: Tuckwell, 2002), pp. 143-71 (p. 147).

<sup>102</sup> Simson had previously been acquitted of wrongdoing in the 1710s. Anne Skoczylas, *Mr Simson's Knotty case: divinity, politics, and due process in early eighteenth-century Scotland* (Montreal: McGill-Queen's University, 2001), p. 103-73, 313. I am grateful to John Cairns for drawing my attention to the Simson case. It is interesting to note that in the years Areskine was studying mathematics at St Andrews and Aikenhead was studying at Edinburgh, Simson served as 'bibliothecary' at the University of Glasgow. He had graduated MA from Edinburgh in 1692 and he began his divinity studies at Glasgow in 1694. The 'bibliothecary' looked after the books in the university library and held the office for a four-year term. *Ibid.*, p. 33.

<sup>103</sup> *Ibid.*, pp. 14-16.

<sup>104</sup> *Ibid.*, pp. 318-20.



as Simson's biographer Anne Skoczylas puts it, 'despite the unrepealed anti-blasphemy laws, no one suggested that Simson should be charged as Aikenhead had been, or hanged if convicted'.<sup>105</sup>

Areskine retained his moderate influence in the Church of Scotland's affairs: the Presbytery of Dumfries selected him to represent them as their Elder at the General Assembly in 1739.<sup>106</sup> He was the sort of person who could be trusted to possess and discuss questionable books without promoting them or misinterpreting them. Areskine's books on religious topics will be considered further in Chapter VI below.

### **The Regius Chair of the Law of Nature and Nations**

Areskine's tenure as a regent at Edinburgh was one of the last in a long tradition of regenting at the Scottish universities. As we have seen, the regent was responsible for overseeing each student's education from start to finish over the four years it took to complete the arts curriculum. Regents tended to be recent graduates and their perceived lack of knowledge in specialised subjects was a target for educational reform. Students relied on their regents having enough interest in recent studies to keep up to date. Regents might rely on old notes for their dictates and theses or they might strive for freshness. It all depended on the individual regent. The Principal of the University of Edinburgh, William Carstares, recognised these problems and was inspired by the Dutch professorial system which featured specialised teachers for each subject. He favoured removing the regents and replacing them with the best professors available for each area of study. The university's patron, the Town Council of Edinburgh, was also dissatisfied by recent performances. In 1704, it heard complaints that teachers and students were ignoring the daily timetable, speaking in English instead of Latin, and damaging the university's buildings with their 'rackets and handballs'.<sup>107</sup> Not only that but 'a great many bookes are lent out and kept out of the Liberie contrar to the Lawes of the Liberie'.<sup>108</sup>

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<sup>105</sup> Ibid., p. 352.

<sup>106</sup> William Stewart, 'Letter' (March 1739), NLS MS 5074, f. 143. The congregation was keen to exploit Areskine's 'Moderation and Influence' but understood that he might be too busy with parliamentary business in London to serve.

<sup>107</sup> Scotland, p. 159; Dalzel, p. 286-8.

<sup>108</sup> 'Memoir to the Town Council, 16 June 1704', quoted in Jonquil Bevan, 'Seventeenth-century students and their books', in *Four centuries: Edinburgh University life, 1583-1983*, ed. by Gordon Donaldson (Edinburgh: EUP, 1983), pp. 16-27 (p. 17).

An anonymous critic, possibly Andrew Fletcher of Saltoun, highlighted some of the problems with the educational system in 1704. *Proposals for the reformation of schools & universities, in order to the better education of youth* identified many flaws in the system which included too much access to education for the poor, the lack of instruction in Greek, and poorly qualified teachers for natural philosophy and mathematics.<sup>109</sup> The biggest problem, however, was that ‘our Youth are oblig’d to travel abroad, to study Physick and Law, and carry so much Money out of the Kingdom’.<sup>110</sup> To prevent this, Fletcher suggested that Parliament should ‘establish Professors of Law and Physick at Home, where our Youth might Learn more than a Year, then they can do abroad in three’.<sup>111</sup> Sending young students abroad when ‘their Passions are strong and they have little sense to govern them’ was counterproductive since ‘they acquire neither Virtue nor Learning, but Habits of all sort of Debauchery’.<sup>112</sup> The extant system was not a good method for future leaders of the nation to acquire the knowledge they needed. Fletcher suggested that ‘the Professions of Law and Physick [be] established in the University of Edinburgh’.<sup>113</sup> Edinburgh was the only possible location for these new areas of expertise since it was

where the Students of Law may have the Advantage of excellent Librarys for the Civil Law, and opportunity to hear the Pleadings and Learn the Form of the House, which our Young Men, who study abroad, for all the Money they have spent, are altogether ignorant of. And the Physicians can have no Subjects nor Rooms for Anatomy, nor Laboratories for Chymie, nor Gardens for Botany, but at *Edinburgh*.<sup>114</sup>

By 1708 Carstares’s plan for the professionalisation of the university, which addressed many of these concerns, was in place.<sup>115</sup> Regents made way for a new wave of scholars as new chairs were founded at the university. One of the gaps in educational provision in Scotland had always been in legal education. Law teaching had never been established in the universities of Scotland<sup>116</sup> and, as the *Proposals* described, students who

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<sup>109</sup> Andrew Fletcher, attrib., *Proposals for the reformation of schools & universities, in order to the better education of youth. Humbly offer’d to the serious consideration of the High Court of Parliament* (Printed in the year 1704), pp. 3-4.

<sup>110</sup> *Ibid.*, p. 9.

<sup>111</sup> *Ibid.*, p. 10.

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.*

<sup>114</sup> *Ibid.*

<sup>115</sup> Another reform was a restriction on book borrowing from the university library which was limited to masters of the college and to students who had the permission of masters. Bevan, ‘Seventeenth-century students’, p. 17.

<sup>116</sup> Scotland, p. 141.

wished to become advocates relied on travelling abroad to attain their legal training.<sup>117</sup> One of the first new chairs to be established as part of the university's reform programme was the Regius Chair in the Law of Nature and Nations in 1707. The first holder of this chair was the former regent Charles Areskine. The creation of the chair was controversial since financing it depended on reallocating funds earmarked for the Divinity School.<sup>118</sup> Although it filled a gap in the provision of legal education in Scotland, as Roger L. Emerson describes, 'in more cynical terms, it was a scheme concocted by regent William Scott to get some of the money provided by Queen Anne's bounty for himself and for his friend'.<sup>119</sup> Scott suggested to Areskine that he should contact his cousin, the earl of Mar to arrange a Greek professorship for Scott at £50 a year and a professorship in public law at £100 per year for Areskine.<sup>120</sup>

Since the regents were looking for chances to concentrate on their own interests in the new academic structure, this suggests that Areskine had already expressed an interest in teaching the new subject. That Areskine had not formally studied law was not a problem:<sup>121</sup> he may however have undertaken some informal study in the subject at some point. In a letter of 1 February 1707, his cousin Mar described Areskine as 'a Regent in the Colledge just now but [who] has made the Publick Law his Study and is a very pretty Young Man'.<sup>122</sup> For Mar, at least, Areskine's qualifications were not in doubt.

Areskine was by then an experienced regent but he probably lacked the level of specialised legal knowledge he would need for success under the new professorial system. Natural law was included as a part of the general arts curriculum. It was covered as part of the ethics curriculum under the regenting system and regents cited the writings of Grotius, Pufendorf, and Cumberland.<sup>123</sup> By the late seventeenth century

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<sup>117</sup> This does not mean that legal training did not exist in early modern Scotland. Members of the WS Society in Edinburgh, the Faculty of Procurators in Glasgow, and the Society of Advocates in Aberdeen gained their training via apprenticeships. From 1699, some Edinburgh advocates taught private classes modelled on the Dutch university system. John W. Cairns, 'Lawyers, law professors, and localities: the universities of Aberdeen, 1680-1750', *Northern Ireland Legal Quarterly*, 46 (1995), 304-31 (pp. 305, 315).

<sup>118</sup> For the fullest exploration of the controversy see Cairns, 'Origins', *passim*. This full account was written on the tercentenary of the foundation of the Edinburgh Law School and is the best account of the political implications of Areskine's appointment. It is also starting point for this PhD since Cairns includes some preliminary work on Areskine's 1731 library catalogue throughout his discussion.

<sup>119</sup> Emerson, *Academic*, p. 260.

<sup>120</sup> *Ibid.* Cairns has conclusively demonstrated that despite his authorship of a textbook on natural law, Scott was not interested in the law professorship for himself. Cairns, 'Origins', pp. 327-8.

<sup>121</sup> Cairns, 'Origins', p. 332.

<sup>122</sup> NAS, GD124/15/487/3, 'John Erskine, 'Letter' (01 February 1707).

<sup>123</sup> King, 'Philosophy', p. 168.

discussions of natural law regularly appeared in the theses published by regents.<sup>124</sup> Areskine particularly discussed natural law theories in his lectures of 1703. His ideas about natural law echo the tenets set down by *The larger catechism* as mentioned above and Shepherd describes his approach as ‘setting out...the basic rules to be observed in our relations with God, ourselves and others’.<sup>125</sup> The ethics teaching of the Scottish arts curriculum and the new professorship in natural law were closely linked.

Areskine took up the Regius Chair of the Law of Nature and Nations on 13 November 1707.<sup>126</sup> His first act, and one which confirms his interest in books, was to make a donation to the University Library which had served him so well during his regenting career. As John Cairns notes, Areskine’s donation of a copy of Aelian’s *Varia historia* with Jacobus Perizonius’ notes (Leyden, 1701) is still in the library at \*W.23.1-2 and includes an inscription recording the gift in each volume.<sup>127</sup> This was a popular acquisition among those who studied abroad at Leyden. One of them donated a copy which had been signed by Perizonius to the Advocates Library.<sup>128</sup> Areskine also promised to donate a copy of Polybius with Casaubon’s notes (Amsterdam, 1670).<sup>129</sup> It is interesting given Areskine’s new professorial title that both of these donations are of historical rather than legal works.<sup>130</sup> Areskine also delivered an inaugural address, or at least a weekly praelection, on the theme of ‘God as the fountain of Law’ in his new role.<sup>131</sup>

Whatever the state of his knowledge or his perception of it, Areskine asked for and received leave to go to the Netherlands to increase his knowledge of natural law and the law of nations. By royal assent, Areskine was granted two to three years to study abroad before taking up his post.<sup>132</sup>

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<sup>124</sup> Ibid., p. 177.

<sup>125</sup> Ibid., p. 173.

<sup>126</sup> Emerson, *Academic*, p. 260.

<sup>127</sup> Cairns, ‘Origins’, p. 333. *Kl. Ailianou sophistou Poikileistoria = Cl. Aeliani sophistae Varia historia: ad MStos codices nunc primum recognita et castigata*. In the first volume the inscription is partially obscured by subsequent tight binding. The ink inscription recording the gift is more clearly visible in the second volume and reads ‘Bibliotheca dono dedit D. Carolus Areskine 13 Nov<sup>bris</sup>. 1707’.

<sup>128</sup> NLS pressmark K.24.d. Brian Hillyard, ‘The formation of the library, 1682-1728’, in *For the encouragement of learning: Scotland’s National Library, 1689-1989*, ed. by Patrick Cadell and Ann Matheson (Edinburgh: HMSO, 1989), pp. 23-66 (p. 38).

<sup>129</sup> Cairns, ‘Origins’, p. 333. A pencil inscription in the first volume of W.20.18-20 in the Edinburgh University Library states that the volumes were ‘Probably presented by Professor Charles Areskine’.

<sup>130</sup> For Claudius Aelianus and Polybius, see *The Oxford classical dictionary*, ed. by Simon Hornblower and Antony Spawforth, 2nd rev. edn (Oxford: Clarendon, 2003), p. 18 and pp. 1209-11 respectively.

<sup>131</sup> Cairns, ‘Origins’, p. 343; Alexander Grant, *The story of the University of Edinburgh during the first three hundred years*, 2 (London: Longman, Green, 1884), p. 313.

<sup>132</sup> Cairns, ‘Origins’, p. 334; EUL, Dc.6.108.

## Scots Students Abroad: Studying Law and Collecting Books

### Scottish students and the Low Countries

The *peregrinatio academica* was a long established tradition in Western Europe by the early eighteenth century. As soon as there were universities students began to seek them out to find the best teachers and the best resources available. The destinations of students depended on the subjects sought and the political climate at any given time. Students from the British Isles seeking medical or legal training might be excluded from taking degrees at Continental universities or the two English universities on religious grounds. However, students could matriculate at most Continental universities regardless of their religious affiliations. War could disrupt academic travel but even the restrictions caused by the War of Spanish Succession from 1703 to 1712<sup>1</sup> did not stop eager students. Students could take courses with famous professors without sitting exams or putting themselves forward for degrees. Students did not need to enrol with universities formally to benefit from the educational opportunities they offered. Most travelling students were graduates who were studying in order to qualify for the professions. The system could be quite informal and foreign professors were often happy to oblige visiting students for a fee. Opportunities for studying theology, medicine, and law on the continent drew Scottish students to Italy, France, and Low Countries throughout the early modern period.<sup>2</sup>

Travel not only helped students to qualify for professions, it also fostered their feeling of belonging to an international community of scholars. Travelling was an effective way to lessen prejudices while increasing networking opportunities with like minded people who shared interests beyond the academic training which the students had as their priority. The Republic of Letters was thereby continuously refreshed with

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<sup>1</sup> John W. Cairns, 'Alexander Cunningham, book dealer: scholarship, patronage, and politics', *Journal of the Edinburgh Bibliographical Society*, 15 (2010), 11-35 (p. 16).

<sup>2</sup> Eric G. Forbes, 'Philosophy and science teaching in the seventeenth century', *Four centuries: Edinburgh University life, 1583-1983*, ed. by Gordon Donaldson (Edinburgh: EUP, 1983), pp. 28-37 (p. 28). Students of medicine from across the British Isles travelled to complete their educations. For an introductory study of mainly English students see Karen Grudzien Baston, 'From Italy to Edinburgh: the medical grand tour in early modern Europe' (unpublished master's thesis, University of London, Birkbeck College, 2007).

young scholars who came to learn from their elders.<sup>3</sup> For Scots legal scholars there was another dimension to this sense of community. Because so many future Scottish advocates travelled abroad and shared an experience of a ‘polite, gentlemanly, scholarly’ education when they returned it was as legal virtuosi.<sup>4</sup>

The study of law had never been firmly established in Scotland as a discipline in the university system. After the Reformation canon law was dropped from the universities. New university charters at Glasgow and Aberdeen failed to include provision for legal training in the late sixteenth century. Although the chair in civil law at King’s College was continuously filled from its foundation in 1619, there was little demand from students who planned on admission to the Faculty of Advocates in Edinburgh.<sup>5</sup> Areskine’s appointment as the first holder of the Regius Chair in the Law of Nature and Nations in 1707 marked the beginning of a new phase of legal education in Scotland.<sup>6</sup> Areskine, who would have been well aware of the academic opportunities available abroad, thought it was necessary to travel to obtain the specialised knowledge he needed to fulfil his obligations as a professor.

Scottish law students went abroad in large numbers throughout the early modern period. French universities, with their humanist traditions, were an early target for legal scholars but by the late seventeenth century the Netherlands, with its tolerant attitude to religion and its excellent professors, reigned supreme as the choice for future advocates.<sup>7</sup> Scottish exiles had spent time in the Netherlands throughout the 1680s and this helped strengthen trade links and eased financial transactions between the nations. The accession of William of Orange, the Dutch Stadholder, to the English and Scottish crowns in 1689 further increased connections between the Low Countries and the British Isles. William’s French wars removed the possibility of studying at the universities of France for Scottish students of the 1690s. The universities of the Netherlands took the place of those of France as the favoured destinations of Scottish

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<sup>3</sup> Thomas J. Schlereth, *The cosmopolitan ideal in Enlightenment thought: its form and function in the ideas of Franklin, Hume, and Voltaire, 1694-1790* (London; Notre Dame: University of Notre Dame, 1977), pp. 2-5.

<sup>4</sup> John W. Cairns, “‘Importing our lawyers from Holland’: Netherlands influence on Scots law and lawyers in the eighteenth century”, in *Scotland and the Low Countries*, ed. by Grant G. Simpson (Edinburgh: Tuckwell, 1996), pp. 136-53 (p. 138).

<sup>5</sup> John W. Cairns, ‘Lawyers, law professors, and localities: the universities of Aberdeen, 1680-1750’, *Northern Ireland Legal Quarterly*, 46 (1995), 304-31 (pp. 306-12, 330-1).

<sup>6</sup> James Scotland, *The history of Scottish education, 1: From the beginning to 1872* (London: University of London, 1969), p. 141.

<sup>7</sup> Cairns, “‘Importing’”, p. 144.

students.<sup>8</sup> It will never be known how many Scottish students travelled to the Low Countries for educational purposes: the matriculation records for the university at Utrecht are incomplete.<sup>9</sup> The popularity of Dutch universities continued into the eighteenth century and the numbers of Scottish students attending them were at their highest between 1681 and 1730.<sup>10</sup> The total number of students who studied abroad will never be confirmed because not everyone who studied matriculated. However, 1,027 Scottish students did matriculate formally at Leyden, Franeker, Groningen, and Utrecht during these years and these Dutch universities can be seen as in effect ‘a sixth Scottish university’: between 1701 and 1725 Scots made up nearly 13 per cent of the foreign student body at Leyden.<sup>11</sup> Leyden was a popular choice for travelling Scottish scholars and it was the destination Areskine chose for his legal education.

Founded not long before the University of Edinburgh, the university at Leyden was Leyden’s reward from William the Silent for withstanding seige by the duke of Alva<sup>12</sup> in 1574. Offered a decade without taxation or a university, the citizens chose to establish a university. Although it was a protestant foundation, the University of Leyden welcomed ‘students of any religious faith’ and soon had an international student body.<sup>13</sup> Throughout the seventeenth century foreign students arrived in Leyden in their thousands. Of these 714 have been identified as Scots and, of these Scots, 358 spent their time in the law faculty.<sup>14</sup>

There were good reasons why the Low Countries universities were so popular with seventeenth century Scottish law students. The Scottish and Dutch academic traditions shared several elements. Both were designed to provide practical professional education and both were strongly protestant in their approaches. Holland’s court system relied in the use of Roman law and created ‘a need for judges and advocates trained at

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<sup>8</sup> Ibid.

<sup>9</sup> Ibid, p. 139.

<sup>10</sup> Esther Mijers, ‘Scottish students in the Netherlands, 1680-1730’, in *Scottish communities in the early modern period*, ed. by Alexia Groshean and Steve Murdoch (Leiden: Brill, 2005), pp. 301-31 (p. 305).

<sup>11</sup> Ibid., pp. 305-06. Most of the students at Leyden, almost 60 per cent, studied law. Leyden recorded its students by faculty. From 1681 to 1700, the numbers of Scottish students at Leyden were: arts, 22; law, 198; medicine, 116, and theology, 15. Ibid., p. 313.

<sup>12</sup> The Spanish dukes of Alva have no relation to the Areskines or Erskines of Alva in Scotland. The Spanish version of the name is more commonly spelled ‘Alba’ in English. See e.g. Henry Kaman, *The duke of Alba* (New Haven: Yale University Press, 2004). I am grateful to Alexander Murdoch for this observation.

<sup>13</sup> E. A. Underwood, *Boerhaave’s men at Leyden and after* (Edinburgh: EUP, 1977), pp. 4-5.

<sup>14</sup> Kees van Strien and Margaret Ahsmann, ‘Scottish law students in Leiden at the end of the seventeenth century: the correspondence of John Clerk of Penicuik, 1694-1697’, *LLAS*, 19 (1992), 271-330 (p. 279).

the universities'.<sup>15</sup> The Dutch example inspired the Scots to reform their educational system and to embrace the idea of specialised education.<sup>16</sup> The Netherlands had developed a legal system similar to the Scottish legal system in that it required university trained advocates and judges to work in its courts. During the thirteenth and fourteenth centuries students from the Netherlands travelled to Italy and France to learn their professions but, from the fifteenth century on, universities were founded in the Netherlands and in Scotland to take on this role. Unlike those in Scotland, however, the universities in the Netherlands proved to be successful at providing the legal education their students wanted.

Protestant professors and students had been discouraged from attending the Roman Catholic universities of France and Italy from the sixteenth century on. This created a vibrant educational culture in the protestant Netherlands as refugees poured in to help bring its new foundations, such as that at Leyden, to life. Scottish students did not immediately change their preferences from the French universities, but by the mid-seventeenth century, the Netherlands had become the chosen destination for Scots legal scholars.<sup>17</sup> Scotland and the Low Countries also shared long standing trade relationships and Scottish political refugees, including James Dalrymple, Viscount Stair, found safe havens in Dutch cities.<sup>18</sup>

### **Learning law in the Low Countries**

Legal scholars visiting the Netherlands could expect an education which focused on Roman law including a thorough grounding in the texts of the *Corpus iuris civilis*, the *Institutes*, *Digest*, *Code*, and the *Novels*. History and philology helped the scholars to understand these sources in their proper contexts and philosophy explained the moral implications of the law. Legal scholars also studied the techniques of the eloquence they would need to plead in court and used mathematics as a basis for the structured forms

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<sup>15</sup> Robert Feenstra, 'Scottish-Dutch legal relations in the seventeenth and eighteenth centuries', in *Academic relations between the Low Countries and the British Isles, 1450-1700: Proceedings of the first conference of Belgian, British and Dutch historians of universities held in Ghent, September 30-October 2, 1987*, ed. by H. De Ridder-Symoens and J. M. Fletcher (Ghent, 1987), pp. 25-45 (pp. 26).

<sup>16</sup> Christine Mary King, 'Philosophy and science in the arts curriculum of the Scottish universities in the 17th century', (PhD, Edinburgh, 1974), p. 337. Leyden's law faculty had helped to reform the curriculum of the grammar school there as well as the law curriculum in the 1690s. G. C. J. J. van den Bergh, *The life and work of Gerard Noodt (1647-1725): Dutch legal scholarship between humanism and enlightenment* (Oxford: Clarendon, 1988), pp. 271-4.

<sup>17</sup> Feenstra, pp. 26-7.

<sup>18</sup> T. M. Devine, *Scotland's empire, 1600-1815* (London: Allen Lane, 2003), pp. 8-9, 35-6.



they would need in practice.<sup>19</sup> The result was that the students had a perception of the law as a ‘polite, enlightened science, related to the study of philosophy, philology and history’.<sup>20</sup> The legal education offered was clearly in demand since academic travel among those training to be advocates reached a peak between 1675 and 1725.<sup>21</sup> This is also when the Dutch universities were at their best. Scholars across Europe were attracted to the Netherlands by the chance to study with the best teachers of the day. The famous professor Hermann Boerhaave taught generations of medical students at Leyden. The law professors who were in post at the time of Areskine’s visit there were Antonius Matthaeus III, Johannes Voet, Philippus Reinhardus Vitriarius, and Gerard Noodt.<sup>22</sup>

Law teaching at Leyden had three forms. *Lectiones* (public lectures) took place daily during the academic year. *Collegia domestica* (private lectures) were offered for a fee of thirty or forty guilders a year and took place in professors’ homes. These offered ‘more freedom of choice’ since they were ‘more attuned to student demands’ and subjects like natural law and public law would be offered in this way before they appeared in the mainstream curriculum.<sup>23</sup> *Disputationes* (disputations) were held weekly and were ‘regarded as an essential element of legal training’.<sup>24</sup> Professors might write up *disputationes* on specific themes for publication under their own names.<sup>25</sup>

Ulrick Huber, a former judge in the court of Friesland and a prolific author of legal works, was professor of law at Franeker from 1682.<sup>26</sup> His *De ratione juris docendi & discendi diatribe per modum dialogi nonnullis aucta paralipomenois* of 1688 set out his ideas about what he expected from students and the knowledge and skills they could expect to obtain when they studied with him. Although he was a critic of some of the methods his fellow professors used, especially those at Leyden, Huber’s comments offer a good general description of the legal training offered at Low Countries universities from the late seventeenth century on. Huber suggested that legal students should have a strong

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<sup>19</sup> Cairns, “Importing”, p. 138.

<sup>20</sup> Ibid., p. 146.

<sup>21</sup> Ibid., p. 139.

<sup>22</sup> Ibid., p. 145.

<sup>23</sup> G. C. J. J. van den Bergh, *The life and work of Gerard Noodt (1647-1725): Dutch legal scholarship between humanism and enlightenment* (Oxford: Clarendon, 1988), p. 269.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid., p. 270.

<sup>26</sup> R. Feenstra, Margreet Ahsmann, and Theo Veen, *Bibliografie van hoogleraren in de rechten aan de Franeker Universiteit tot 1811* (Amsterdam: Koninklijke Nederlandse Akademie van Wetenschappen, 2003), p. 47.

background in general studies before starting their law course. In a description of studies very like the Scottish arts curriculum outlined in Chapter II above, Huber says

...he who applies his mind to the study of law should first work to learn literature and the arts tolerably well, for without them jurisprudence cannot be effectively understood. By literature I understand Latin and Greek literature, the former should be learned more precisely and thoroughly, the latter in such a way that the writings of the ancients can be handled clearly and rationally at least with the help of a translation....Under the study of literature it is readily understood that I include history. I require the subjects, which are preparatory for the study of law – logic...and ethics. If anyone should add mathematics and physics, I am in favour but I do not dare to demand them. I do not wish Politics to be studied in advance but I wish it rather to accompany the study of law. Also, I have said nothing about the art of oratory, for the precepts of Rhetoric are implicit in the study of literature.<sup>27</sup>

If a student had these qualifications, he could start his legal studies. But law would not enter the syllabus until the student devoted ‘a whole year in preparatory studies’. In his idealised vision, Huber said he

...would like my first year student to attend lectures on logic and ethics, commit to memory a *compendium* of universal history and see to it that he understands Suetonius clearly and fully. For in Suetonius most things relating to Roman and juridical antiquities present themselves to be understood in an easy and historic order....Meanwhile, in his spare time progress must be made with reading other writers of ancient history, and also in composing, not only by reading but also by imitating the eloquence of ancient writers....there will be no lack of those who, in the same year, can master the basics of physics and mathematics then, when the study of law is begun in the second year, I do not think that the new law student should so devote himself to the law alone, that he abandons his initial studies in the humanities and literature and considers that they do not concern him any longer.<sup>28</sup>

After this first year, the law student could ‘attend lectures on the *Institutes* of Justinian and then continue with reading the elements of the whole subject’.<sup>29</sup> Then the ‘next year ought to be spent on the *Pandects*’.<sup>30</sup> Huber

found that the most important factor of all in my practice and programmes is the following: namely that those students who, in the three years, which are occupied with the *Institutes* and the *Pandects*, spend their spare time in

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<sup>27</sup> Ulrich Huber, *De ratione juris docendi & discendi diatribe per modum dialogi nonnullis aucta paralipomenois*, trans. by Margaret Louise Hewett (Nijmegen: GNI, 2010), p. 51.

<sup>28</sup> *Ibid.*, pp. 52-3. Areskine had works by Suetonius at FM 7 and OM 238.

<sup>29</sup> *Ibid.*, p. 52.

<sup>30</sup> *Ibid.*, p. 54.

reading ancient writers, and hence are already acquainted with their subject, are students who can select and refer to the appropriate texts all the material for illustrating the Roman law which they find in philosophy, rhetoric, history and the poets.<sup>31</sup>

Huber thought that his three year legal studies programme equipped his students either for practice in the courts or for an academic career. Those who wanted to practice would ‘need instruction adapted to the custom of our day’ but anyone who completed the four years of legal study under his guidelines would be ‘a praiseworthy jurist’.<sup>32</sup>

Scottish legal scholars who had completed the Scottish arts curriculum before travelling to the Low Countries could forego the first year of preparatory study and begin their legal courses straight away. When they had had their fill of *lectiones*, *collegia*, and *disputationes*, usually after two or three years, Scottish scholars completed their cultural educations with visits to places of note across the continent.<sup>33</sup>

## **Two Scottish travellers: John Erskine of Carnock and John Clerk of Penicuik**

Aujourd’hui les *Anglois, François, Allemands, Danois, Suedois, Polonois, Hongrois, Transylvains*, & autres Nations vont à Leide, pour se former l’esprit, acquérir la connoissance des Langues, les Sciences Divines & Humaines, & se rendre, par ce moyen capables de server leur Patrie....<sup>34</sup>

Unfortunately little documentary evidence survives about Areskine’s personal experience as a student abroad. He was in Leyden by 02 February 1708 since this is when he matriculated into the university as ‘Carolus Areskin, *Scoto-Britannus*’.<sup>35</sup> Beyond this little information survives to tell us about Areskine’s studies in the Netherlands. Having been a regent and now a professor, Areskine was not a typical Scottish travelling legal scholar. We can, however, look to near contemporary sources and his limited remaining correspondence from the time to get some ideas about how he spent his time abroad. Two memoirs from the decades before Areskine travelled can help to fill gaps in information. The journal of John Erskine of Carnock (1662–1743) and the memoirs and

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<sup>31</sup> Ibid., p. 55.

<sup>32</sup> Ibid., p. 56.

<sup>33</sup> Strien and Ahsmann (1992), pp. 283-7.

<sup>34</sup> *Les delices de Leide: une des célèbres villes de l’Europe, qui contiennent une description exacte de son antiquité, de ses divers aggrandissemens, de son academie, de ses manufactures, de ses curiosités, & généralement de tout ce qu’il y a de plus digne à voir* (A Leide: Chez Pierre Vander Aa, 1712), p. 68.

<sup>35</sup> *Index to English speaking students who have graduated at Leyden University*, ed. by Edward Peacock (London: Index Society, 1883), p. 4. The Dutch academic year started in February. Mijers, p. 318.

correspondence of John Clerk of Penicuik (1676–1755) are useful sources for providing details about the experiences of Scots students in the Netherlands.

Areskine's kinsman John Erskine of Carnock travelled to the Netherlands as an exile and student in the mid-1680s. He split his time between Leyden, Amsterdam, and Utrecht where he met Lord Stair and other members of the Scottish exile community. These political and religious exiles were Whigs who refused to swear allegiance to James VII/II. They would return to Scotland after the accession of William and Mary. In the 1680s, they helped to reinforce the ties between Scotland and the Low Countries. Erskine was not a legal scholar specifically but he was interested in legal learning. Although he matriculated at Leyden as 'Johannes Erskine, *Scotus*', on 17 March 1685,<sup>36</sup> Erskine did not limit himself to the offerings there. Erskine combined his legal studies with a general liberal arts curriculum. In addition to law lectures, Erskine attended anatomical dissections, studied theology, and attended courses in physics.<sup>37</sup> His journal provides information about the often informal method used in studying when abroad. Students would approach professors and ask to be taught specific subjects. At Utrecht, on 9 November 1685, for example, Erskine

...was this morning at Van Moyden,<sup>38</sup> a professor at law, from whom I designed to have a college of the institutes of the civil law, tho he had ended the first two books. Stewart of Pardiven<sup>39</sup> and I went to the professor together, he gave us some hopes that he would teach us the first two bookes at the time of the vacance.<sup>40</sup>

The two potential students' hopes became reality and Erskine finished his *collegia* with Muyden on 17 December 1685.<sup>41</sup> Erskine appreciated the flexibility of the academic system: he was able to move around the Netherlands as his political situation demanded. Erskine was an ambitious scholar who in March 1686, still at Utrecht, complained that 'My having seven colleges was troublesome and like to turn a burthen, having three in

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<sup>36</sup> *Index*, p. 33.

<sup>37</sup> John Erskine, *Journal of the Hon. John Erskine of Carnock, 1683-1687*, ed. by Walter MacLeod (Edinburgh: Scottish History Society, 1893), pp. 166, 176.

<sup>38</sup> Johannis van Muyden (1652 or 1653-1729). He taught at Utrecht from 1681. The first edition of his textbook on the *Institutes* appeared in 1687. Margreet Ahsmann, R. Feenstra, and C. J. H. Jansen, *Bibliografie van hoogleraren in de rechten aan de Utrechtse universiteit tot 1811* (Amsterdam: North-Holland, 1993), p. 98.

<sup>39</sup> Walter Steuart of Pardovan. Later the author of *Collections and observations methodiz'd concerning the worship, discipline, and government of the Church of Scotland* (Edinburgh, 1709).

<sup>40</sup> Erskine, p. 165.

<sup>41</sup> *Ibid.*, p. 170.

the forenoon and four in the afternoon, all after other'.<sup>42</sup> In addition to his punishing lecture schedule, Erskine took advantage of opportunities to purchase books at auctions.

Another Scottish student who recorded details of his grand tour of study was John Clerk of Penicuik who travelled to the Low Countries for legal studies in the 1690s. After his continental tour, Clerk became a leading figure in early eighteenth century Edinburgh.<sup>43</sup> Clerk's cultural life and academic experiences abroad were probably closer to Areskine's than those of Erskine of Carnock. Clerk was close in age to Areskine and had a similar undergraduate background in the Scottish arts curriculum. He had studied at the University of Glasgow before setting out for Leyden in October 1694.<sup>44</sup> Clerk shared with Areskine interests in mathematics, philosophy, and history. They certainly knew each other. They would have met at Edinburgh's courts and both were founding members of the Philosophical Society of Edinburgh. Clerk offered architectural advice when Areskine came to build his country house in the late 1730s. Clerk's continental experience is well documented. He corresponded with his father while he was abroad and reported on his studies. He also wrote a memoir in which he recalled his youthful experiences.

Clerk had mixed feelings about his legal training. His attitude to extracurricular studies was reminiscent of Areskine's protracted studies before he took his MA. Clerk was so obsessed by 'Mathematiks and Phylosophy' that he could spend 'a whole month without going out of the House or puting [sic] on my cloaths' until letters from his father reminded him to 'slacken my pace and attend...civil law colleges'.<sup>45</sup> Like Areskine, Clerk was interested in eloquence, ancient history, and music. Clerk spent five years at Leyden studying law with two of the professors who were still active at the time of Areskine's visit, Philip Reinhard Vitriarius<sup>46</sup> and Johannes Voet.<sup>47</sup> He also travelled in

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<sup>42</sup> Ibid., p. 182.

<sup>43</sup> Cairns, "Importing", p. 136.

<sup>44</sup> Ibid.

<sup>45</sup> John Clerk, *Memoirs of the life of Sir John Clerk of Penicuik, Baronet Baron of the Exchequer extracted by himself from his own journals, 1676-1755*, ed. by John M. Gray (Edinburgh: EUP, 1892), p. 15. The Franeker professor Huber warned of the danger of extracurricular studies 'based on experience' since 'those who linger long and much with philosophy, literature and history are so entrapped by their toils by their pleasantness and grace, that when they betake themselves to the law, they think they study thereof boring and harsh, and can scarcely force their minds to undertake the learning of it'. Huber, p. 52.

<sup>46</sup> Vitriarius (1647-1720) was professor of law at Leyden from 1682 to 1719. Margreet Ahsmann and R. Feenstra, *Bibliografie van hoogleraren in de rechten aan de Leidse universiteit tot 1811* (Amsterdam: B. V. Noord-Hollandsche Uitgevers Maatschappij, 1984), p. 320.

<sup>47</sup> Voet (1647-1713) was professor of civil law at Leyden from 1683 to 1713. Clerk, *Memoirs*, pp. 14-15.

Germany, Italy, and France. In 1699 he admitted that two or three years of study would have been enough for him to ‘be received into the faculty of Advocates at Ed<sup>3</sup>’ but summed up the benefits of his extended studies as that he ‘had studied law with some mathematicks and philosophy....I had acquired a little more knowledge of the world’. But the extra time abroad meant that he ‘had likeways spent at least 600 lib. Str. more than my Father knew of, which gave me a very great deal of trouble for many years after’.<sup>48</sup> Happily, on his return Clerk ‘passed both the privat and publick examinations with some applause, being admitted an Advocat’.<sup>49</sup> As Erskine had been before him, Clerk was an avid purchaser of books when he was a student abroad.

Areskine’s educational grand tour of 1708 to 1711 gave him the opportunity to buy foreign books. Areskine studied in the Low Countries before travelling to Italy and Germany. He indulged his love of music – he would later become member of the Edinburgh Musical Society<sup>50</sup> – at the Venice Carnival of 1709-1710, paid intellectual homage to the antiquities of Naples and Rome, and visited the Leipzig Book Fair to deliver manuscripts for printing for one of his new Italian acquaintances. It is certain that Areskine used his time abroad to take advantage of the continental book market. As it had been for Erskine and Clerk, book buying would certainly have been a part of Areskine’s academic experience but we do not have surviving evidence for any acquisitions Areskine made during his time as a student in the Netherlands. We do, however, have some evidence for his book collecting activities in Italy.

## The Low Countries

Book purchasing was an important part of studying abroad for Scottish legal students in the Netherlands. At the time when Scots students were taking advantage of the opportunities for legal education on offer at its universities, the Netherlands was the centre of book production and trade.<sup>51</sup> The place and time of their visits influenced

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<sup>48</sup> Clerk, *Memoirs*, p. 36.

<sup>49</sup> *Ibid.*

<sup>50</sup> Roger L. Emerson, ‘The Philosophical Society of Edinburgh, 1737-1747’, *British Journal for the History of Science*, 12 (1979), 154-91 (p. 190).

<sup>51</sup> Rietje van Vliet, ‘Print and public in Europe, 1600-1800’, in *A companion to the history of the book*, ed. by Simon Eliot and Jonathan Rose (Oxford: Blackwell, 2007), pp. 247-58 (pp. 248-9). For a discussion of the book trade between Scotland and the Low Countries in the sixteenth and seventeenth centuries, see Alastair J. Mann, *The Scottish Book Trade, 1500-1720: print commerce and print control in early modern Scotland: an historiographical survey of the early modern book in Scotland* (East Linton: Tuckwell, 2000), pp. 67-93. Mann focuses on religious publishing of an earlier time than Areskine’s visit to the Low Countries but shows

what books they bought. Students were able to make purchases of books they were unable to obtain back in Scotland or even London. Clerk tried to fulfil his uncle David Forbes's commissions 'if it be possible' by going to auctions and 'send[ing] them home with mine'.<sup>52</sup> Despite the undoubted demand for books from aristocrats and members of the professions, political situations meant that book importation into Britain was difficult and it was low until 1714.<sup>53</sup> Dutch universities recognised the importance of book buying for their students and scholars were encouraged and expected to attend auctions. John Erskine of Carnock attended auctions at Leyden and Utrecht and had to 'put up' his 'books and other things'<sup>54</sup> as he travelled throughout the Low Countries as a student and political exile in the 1680s.<sup>55</sup> Book buying was so important that the daily lecture programme was suspended on days of book auctions in Leyden.<sup>56</sup> Between 1677 and 1708 an average of twenty five auctions occurred in Leyden every year.<sup>57</sup> The presence of the university at Leyden ensured a steady supply of second hand books.<sup>58</sup> Leyden booksellers also established themselves as importers of books and libraries from other places.<sup>59</sup> Auctions were advertised in newspapers and catalogues were widely available. As many as 27,500 book catalogues were produced in Holland between 1599 and 1800.<sup>60</sup> Quality was as important as quantity and Leyden especially was well-known for its Dutch and French printers and booksellers: this added to its appeal for Scottish students.<sup>61</sup>

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that the publishing links between the regions were of long standing and had important economic, religious, and political significance.

<sup>52</sup> Strien and Ahsmann (1993), p. 57.

<sup>53</sup> Giles Barber, 'Book imports and exports in the eighteenth century', in *Sale and distribution of books from 1700*, ed. by Robin Myers and Michael Harris (Oxford: Oxford Polytechnic, 1982), pp. 77-105 (p. 90).

<sup>54</sup> Erskine, p. 113.

<sup>55</sup> *Ibid.*, pp. 110, 177, 178.

<sup>56</sup> Bergh, p. 95. Or, to put it another way, in 1636 the university 'stipulated that small-scale auctions were only allowed at times when there were no lectures, and larger ones only during vacations'. Otto S. Lankhorst, 'Dutch book auctions in the seventeenth and eighteenth centuries', in *Under the hammer: book auctions since the seventeenth century*, ed. by Robin Myers, Michael Harris and Giles Mandelbrote (London: British Library; Newcastle, DE: Oak Knoll, 2001), pp. 65-88 (p. 69).

<sup>57</sup> Laura Cruz, 'The secrets of success: microinventions and bookselling in the seventeenth-century Netherlands', *Book History*, 10 (2007), 1-28 (p. 21).

<sup>58</sup> *Ibid.*, p. 22.

<sup>59</sup> *Ibid.*, p. 4.

<sup>60</sup> Lankhorst, p. 68. As of August 2011, 3,748 sale catalogues were listed in the 'Book Sales Catalogues of the Dutch Republic, 1599-1800' short title catalogue. The catalogue gives references for copies of catalogues that have been microfilmed. This is a work in process with about 1,000 more catalogues identified and awaiting filming. The database is available at <<http://bsc.idcpublishers.info/>> [accessed 21 August 2011].

<sup>61</sup> Mijers, p. 323.

## Booksellers

The Leyden bookseller Pieter van der Aa published a guide to his city in 1712. Among the sights he recommended in *Les delices de Leide* were the university's famous anatomy theatre, botanic garden, the university library, and 'la célèbre Imprimerie d'Elzevier' where books in Greek, Latin, Hebrew, and Arabic could be bought and where scholars flocked to buy books for their libraries.<sup>62</sup> Aa's admiration for the Elzevier concern was sincere: he bought most of its stock at auction after the firm folded in 1712 as well as half of its famous type and two presses. He later bought the Elzevier house and printing gallery.<sup>63</sup> He also replaced them as the university's printer at Leyden.<sup>64</sup> Aa was an international dealer in books with contacts in Frankfurt, Berlin, Venice, Paris, London, and St Petersburg.<sup>65</sup> A book Areskine owned which Aa published – and which was described in his catalogue as 'Ex typis Van der Aa' was an edition of Cicero's *Opera omnia* of 1692 (OM 50). This would probably have been an easy book for Areskine to come by even after his return to Britain. Aa asked the advice of the English bookseller Samuel Smith regarding its publication and offered a twenty per cent discount if Smith would buy at least two hundred copies of the finished product. When the book was printed in both quarto and duodecimo sizes, Smith bought 150 of each size.<sup>66</sup> Areskine's copy was in the smaller format and was one of his collection's twenty or so titles relating to Cicero who was one of the favourite role models of early modern Scottish advocates.<sup>67</sup>

In his catalogue, Areskine specifically noted that four of his books were products of the Elzevier presses. Although the firm published books and ran book shops throughout Europe, Areskine's Elzeviers which include details about their printer all came from Amsterdam. He had at least nineteen Elzevier publications produced in

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<sup>62</sup> *Delices de Leide*, p. 72. For descriptions of Leyden ranging in date from 1663 to 1718 see Kees van Strien, *Touring the Low Countries: accounts of British travellers, 1600-1720* (Amsterdam: Amsterdam University, 1998), pp. 227-37.

<sup>63</sup> P. G. Hoftijzer, 'The Leiden bookseller Pieter van der Aa (1659-1733) and the international book trade', in *Le magazine de l'univers: the Dutch Republic as the centre of the European book trade: papers presented at the International Colloquium held at Wassenaar, 5-7 July 1998*, ed. by C. Berkvens-Stevelinck and others (Leiden: Brill, 1992), pp. 169-84 (pp. 169-70).

<sup>64</sup> *Ibid.*, p. 169.

<sup>65</sup> *Ibid.*, p. 172; Laura Cruz, *The paradox of prosperity: the Leiden Bookseller's Guild and the distribution of books in early modern Europe* (New Castle, DE: Oak Knoll, 2009), pp. 178-9.

<sup>66</sup> Hoftijzer, pp. 174-5.

<sup>67</sup> See e.g. George Mackenzie, *Oratio inauguralis habita Edenburgi Id. Mar. 1689. A Dom. Georgio Mackenzieo, De structura bibliothecae purè juridicæ, et hinc De vario in jure scribendi genere* (London, 1689), p. 6, where 'Nobis placebit Cicerorem Advocatatum illum gloriosum æmulari...omnibus triumphis marjoram Lauream adeptus est'.



Amsterdam. His list shows that he possessed at least fourteen Elzevier books printed in Leyden. This means that Areskine had at least thirty five books produced by various Elzevier presses in his library. He probably had more: several of the Elzevier printers used false imprints during the firm's long history.

The famous Elzevier duodecimos were later the darlings of bibliomaniacs who cherished their appearance and historical legacy but in Areskine's time they were appreciated as tools for learning. Early lovers of Elzevier publications were bibliophiles not bibliomaniacs. Sir Thomas Browne read his Elzevier copy of Horace to death and wished for it to be buried with him 'in its leather case'.<sup>68</sup> Scholarly book buyers appreciated the Elzeviers' small format publications, clear printing, reasonable prices, and accurate text. The Elzeviers worked with contemporary scholars and they were willing to print controversial works.<sup>69</sup> However, most Elzevier texts were practical books for practical scholars and it is not difficult to imagine Areskine buying them as a travelling student and then much later packing a selection of them to take on his travels across Scotland as a circuit judge. Areskine's Elzeviers span the firm's whole period of activity and cover a range of subjects. The Elzeviers dominated the Dutch book market and Areskine had many more of their books in his list beyond the few specifically noted as 'Elzev:' or 'Elzevir' on his list. All of Areskine's Elzevier entries which include details about their printer were designated as octavos. They include a two volume *Corpus iuris civilis* from 1700 (O 1a), the comedies of Plautus from 1652 (OM 240) which declared that it was the most accurate edition, and two copies of Henning Arnisaeus's *Doctrina politica* both of 1651 (O 251, OM 81). Even after the company dissolved in 1712, Elzevier publications were widely available. It was not until the mid-eighteenth century that buyers began to worry that the small Elzevier books were becoming scarce.<sup>70</sup>

### ***Auctions and catalogues***

Book auctions were very popular in Holland and millions of books were sold at them.<sup>71</sup> Holland had the highest literacy rate in Europe but its citizens had limited access to libraries. A lack of attachment to books by private owners or their descendents combined with a large book producing industry ensured a steady supply of stock.

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<sup>68</sup> Thomas Browne, 'Will', quoted in David W. Davies, *The world of the Elzeviers, 1580-1712* (The Hague: Martinus Nijhoff, 1954), p. 150. The 'z' spelling was used in the early modern period.

<sup>69</sup> Davies, pp. 105, 144.

<sup>70</sup> *Ibid.*, p. 149.

<sup>71</sup> Lankhorst, p. 77.

Students were a target market for auctions since they had to buy their own books rather than relying on institutional library provision.<sup>72</sup> Travelling scholars could pick up books for and send catalogues to friends and family back home. They provided an important link for cross-national sellers and buyers throughout the early eighteenth century. Leyden booksellers were very aware of their international market and they exploited the trade infrastructure of Holland with allowed for freight transport on a network of lakes and canals. Booksellers used the Dutch postal service to send catalogues domestically and to potential customers abroad.<sup>73</sup> The university provided valuable contacts since Leyden booksellers could supply local academics with catalogues which they would send to an international network of scholars.<sup>74</sup>

Book buyers, however, needed to be wary if they were to escape some sharp practices. In 1691, for example, Pieter van der Aa created a fictitious seller of a private library called 'W. Snellonius' to sell off his surplus stock.<sup>75</sup> Even the most prestigious of buyers had to consider his purchases with care. The Amsterdam bookseller Louis Remard wrote to Areskine's brother Robert in his capacity as Peter the Great's librarian in 1716 to warn him of crooked dealing by Pierre Husson of The Hague whose catalogue of 'une Bibliothèque Moderne' was nothing of the sort but rather a deceptive attempt to shift poor quality old stock.<sup>76</sup> Booksellers would also top up auctions of private libraries with stock from their shops which did not relate to the collection offered for sale.<sup>77</sup> The services of a learned book dealer like Alexander Cunningham were invaluable to his countrymen when they bought their books in foreign markets.

### ***Legal textbooks***

The contents of Areskine's 1731 library list suggest that he made purchases while a student. His brother Robert had certainly started his impressive library while studying abroad so it is not too much of a stretch of the imagination to assume that the younger Areskine followed this family example. It is likely that Areskine studied with one or more of the Leyden professors who were in post during his educational tour of 1708 to

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<sup>72</sup> Ibid, pp. 69-70.

<sup>73</sup> Cruz, 'Secrets', p. 7.

<sup>74</sup> Ibid., p. 11.

<sup>75</sup> W. Snellonius, *Catalogus rarissimorum & vere insignium...librorum* (Leiden: Pieter van der Aa, 1691), 'Book Sales Catalogues', Record 1295 < <http://bsc.idcpublishers.info/> > [accessed 21 August 2011].

<sup>76</sup> Lankhorst, p. 72.

<sup>77</sup> Ibid.

1711. These were Johannes Voet (1647-1713), Philippus Reinhardus Vitriarius (1647-1720), Antonius Matthaeus III (1635-1710), and Gerard Noodt (1647-1725).<sup>78</sup>

Areskine's library contained books by all of them.

Voet's textbook, *Commentarius ad Pandectas* (F 38), 'dominated the market completely'.<sup>79</sup> *Commentarius ad Pandectas* explained Roman legal principles and considered their application in modern use. Voet saw law as both a science and an art: it could be applied creatively.<sup>80</sup> In the eighteenth century, especially in the period when Areskine was active in his profession, the influence of Voet was 'clearly discernable in the judgements of the Scottish Courts'.<sup>81</sup> Voet's 'Commentary' was 'a very cleverly made and practically useful synthesis of Roman law as it applied in Holland'<sup>82</sup> and his *Compendium juris juxta seriem Pandectarum* (O 253) was 'known to generations of students'.<sup>83</sup> Clerk, who studied with Voet for a year, recalled that 'he kept close to his own Compend on the Institutes and Pandects'.<sup>84</sup> From the German born scholar of public law Vitriarius<sup>85</sup> who related his studies to natural law, Areskine had *Institutiones juris naturae et gentium* (O 14) and *Institutiones juris publici Romano-Germanici selectee* (O 301). Areskine would not have had *Reinhardi Vitriarii...Institutiones juris publici Romano-Germanici selectee* (O 301) at the time of his studies since his copy was in an edition that was not published until 1714. Furthermore, the entry for it on his manuscript is written in pencil and by a different hand. John Cairns has described Vitriarius as the 'most popular' professor with Scots law students at the time of Areskine's visit.<sup>86</sup> Clerk thought he was 'certainly one of the greatest lawyers in the world' and noted that he had 'a particular kindness especially to Scotsmen'.<sup>87</sup>

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<sup>78</sup> Cairns, "Importing", p. 145. Cairns has discussed the books Areskine may have acquired as a student in his "The origins of the Edinburgh Law School: the Union of 1707 and the Regius Chair", *Edinburgh Law Review*, 11 (2007), 300-48 (pp. 334-9).

<sup>79</sup> Bergh, p. 263.

<sup>80</sup> J. W. Wessels, *History of Roman-Dutch law* (Grahamstown, Cape Colony: African Book Co., 1908; repr. with a new introduction by Michael H. Hoeflich, Clark, NJ: Lawbook Exchange, 2005), pp. 320-1.

<sup>81</sup> Robert Feenstra and C. J. D. Waal, *Seventeenth-century Leyden law professors and their influence on the development of civil law: a study of Bronhorst, Vinnius and Voet* (Amsterdam; Oxford: North-Holland, 1975), p. 85.

<sup>82</sup> Bergh, p. 94.

<sup>83</sup> Cairns, "Importing", p. 137. Even so, at least one anonymous Scottish student was less than enthralled by this important work and wrote in the fly-leaf of his copy: 'Thy Compend, Voet, is dull, confus'd and dry, Thou hast no Genius [sic], and no patience P. Quoted in Feenstra and Waal, p. 85.

<sup>84</sup> Clerk, *Memoir*, p. 15.

<sup>85</sup> Cairns, "Importing", pp. 136-7.

<sup>86</sup> Cairns, 'Origins', p. 335.

<sup>87</sup> Strien and Ahsmann (1992), pp. 319, 322.

Cairns has pointed out that Areskine's collection was rich in materials associated with the Dutch 'elegant' school.<sup>88</sup> As might be expected for a scholar who used this approach, Areskine had a large collection of Roman law titles as well as his own copy of Torelli's three volume *Pandectae Florentinae* of 1553 (F 1). The key concerns of the legal humanists were editing, amending, and annotating Justinian's texts, and studying and interpreting classical legal writings.<sup>89</sup> The publication of the *Florentina* was a turning point in legal scholarship. Some thought the texts of the *Corpus iuris civilis* should be treated as having the same authority as the bible but others, such as Jacques Cujas and other French humanists and later scholars, thought the text was open to amendment and interpretation.<sup>90</sup> Noodt was a leading promoter of the latter opinion. It is possible Areskine studied with him at Leyden. All of the books by him in Areskine's library are dated between 1698 and 1705 and they were shelved together in Areskine's collection (Q 72 – Q 75).

The 'elegant' scholar Noodt did not use a textbook for his civil law courses. Noodt was also influenced by the mathematical studies he had undertaken as an undergraduate<sup>91</sup> and by natural law.<sup>92</sup> Areskine had his study of usury, *De foenore et usuris* (Q 75) which explored its subject within its historical and comparative legal contexts,<sup>93</sup> his *De forma emendandi doli mali* (Q 73) which examined ancient contract law,<sup>94</sup> and his *Opera varia* (Q 72) which included his humanistic monographs *De jurisdictione et imperio libri II* and *Ad legem Aquiliam liber singularis* on Roman public law and compensation for losses respectively.<sup>95</sup> Vitriarius and Noodt both offered a *Collegium Grotianum* when Areskine was at Leyden.<sup>96</sup> It is not impossible that he studied with both of them. Matthaeus III was a humanist who shared Noodt's interests.<sup>97</sup> Areskine had his *Miscellaneæ exercitationes, adversus Abrahamum a Wesel* (O 149).

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<sup>88</sup> Cairns, 'Origins', pp. 337-8. For the significance of Dutch 'elegant' books found in the 1731 list, see *Ibid.*, pp. 334-9.

<sup>89</sup> Bergh, p. 113.

<sup>90</sup> *Ibid.*, pp. 121-2.

<sup>91</sup> *Ibid.*, p. 20.

<sup>92</sup> *Ibid.*, pp. 131, 139, 185.

<sup>93</sup> *Ibid.*, pp. 181-91.

<sup>94</sup> *Ibid.*, pp. 244-52.

<sup>95</sup> *Ibid.*, pp. 167-81.

<sup>96</sup> *Ibid.*, p. 271.

<sup>97</sup> *Ibid.*, p. 98. He was not replaced at his death in 1710 and the faculty had only three law professors for the following years. *Ibid.*, p. 62.

## John Clerk of Penicuik, William Mure and their books

There is only speculative evidence for Areskine's book buying in the Low Countries but we can turn to other sources to find out how Areskine may have started to collect his legal library. John Clerk of Penicuik started buying his books while studying abroad and documented the process. Clerk's memoirs and correspondence record his book buying and reveal his lifelong interest in books and libraries. Clerk developed a passion for book buying while in the Netherlands and his correspondence with his father, often to request more funding, tells the story of the development of his collection. Clerk was careful to justify his spending to his father and his letters show that he sometimes doubted his ability to create a library he would use for the rest of his life and career. His confidence grew as he became an experienced buyer and he had a collection he was proud of by the time he returned to Scotland. Areskine was, of course, a much older student traveller than Clerk, may already have had a small travelling library, and, as a former regent, doubtless had more confidence in his own abilities in selecting books.

When Clerk arrived in Leyden as a student in late 1694 he had only two books with him. He set off on his travels with an edition of Justinian's *Institutiones* and J. F. Boeckelmann's *Compendium institutionum Justiniani*.<sup>98</sup> By the end of February 1695, Clerk had a small library of eleven books.<sup>99</sup> Clerk also tried to limit his expenses by requesting that books from his father's library be sent to him. On 14 March 1695 Clerk asked that '...the Corpis [sic] Juris which is in your study; and Calvinus *Lexicon juridicum* (F 32, F 33) and Craig *De feudis* (F 128)' be sent to him since 'These three books are recommended extraordinarily to us'.<sup>100</sup> He reported that

I have bought a little Corpus Juris without notes, which cost me 6 guilders, because it was more ready to take with me to the colleges than a great one. Nevertheless we have always the Corpus Juris with Gothofredus' notes (F 167, F 168, Q 1) recommended to us, which at Leiden or at Amsterdam is sold for no less than 36 guilders. Such a corpus is too dear to buy...so that I fancy the corpus which you have with Gothofredus' notes will do well enough. Craig *De Feudis* is not recommended to us by our professors till we be learning the feudal law, so that it is all one whether you send it with this fleet or with another.<sup>101</sup>

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<sup>98</sup> Strien and Ahsmann (1992), p. 298. In Scotland, Boeckelmann's book was used by John Spottiswoode as a textbook for his private classes on Roman law. Cairns, 'Spottiswoode'. Areskine had a copy of the edition of 1694 (O 152).

<sup>99</sup> Strien and Ahsmann (1992), p. 326.

<sup>100</sup> *Ibid.*, p. 329.

<sup>101</sup> *Ibid.*, pp. 329-30.

Despite their best efforts, law students did have to buy some books. One of Clerk's early purchase was a copy of Grotius' *De jure belli ac pacis*, which he described as 'a book everybody takes at the beginning, being a system of the laws of nature; so that by understanding it we come to consider how the civil law and the laws of nations differs from the law of nature'.<sup>102</sup> Professors encouraged their students to read works of Roman history and Clerk 'got a catalogue from my professor of all the Roman authors in their best editions'.<sup>103</sup> By July 1695, Clerk's reading was going well despite a bout of illness which caused him to leave Leyden to convalesce at Looduinen. He reported that he 'went through Titus Livius (FM 20) before I came here, so the books I have with me are Tacitus (OM 1, OM 99, OM 100) and Suetonius (FM 7, OM 238), the Novels and Institutes in Greek and three other law books'.<sup>104</sup> In September 1695, back at Leyden, Clerk relayed his doubts about purchasing the highly recommended and recently published but pricey *Thesaurus antiquitatum Romanarum* by Graevius<sup>105</sup> although students were 'all advised to buy it...but whether I shall buy it or not I shall take your advice'.<sup>106</sup> Clerk's father in reply thought that his own collection of books would not be enhanced by this addition which he called 'an extravagant dear book' at 100 guilders 'because I am sufficiently provided already...on that subject'.<sup>107</sup>

In October 1696, after nearly two years of studying and book collecting, Clerk proudly reported the state of his library's development to his father: 'As for my books, I have near 400 guilders worth, which are all choice books and few or none of them to be got in Scotland. I shall put them in two timber cases'. The mention of cases was for shipping: the books were to be returned to Scotland while Clerk continued his continental tour. But not all the acquisitions were packed away immediately. Clerk assured his father that his quest for knowledge was ongoing and that he would continue his educational activities as he travelled to Italy:

I design to take with me besides my linens and clothes, my Corpus Juris, the Institutes together with the compend I learned, my bible with some

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<sup>102</sup> Ibid., p. 328.

<sup>103</sup> Kees van Strien and Margaret Ahsmann, 'Scottish law students at Leiden at the end of the seventeenth century: the correspondence of John Clerk, 1694-1697', *LLAS*, 20 (1993), 1-65 (p. 28).

<sup>104</sup> Ibid., pp. 14-15.

<sup>105</sup> Joannes Georgius Graevius's *Thesaurus antiquitatum romanarum* was published in twelve volumes from 1694 to 1699. At the time Clerk was considering purchasing it only the first two volumes, both published in 1694, were available. Ibid., p. 22.

<sup>106</sup> Ibid.

<sup>107</sup> Ibid., p. 25.

other little books and if I should read only law for two hours a day...I should not only keep what I have learned, but likewise learn more.<sup>108</sup>

In Clerk's case his primary focus, at least as he presented it for his parent, was reading the books as part of his academic process rather than merely collecting them.

William Mure studied law at Leyden a few years after Clerk. Mure started his book collection while studying abroad from about 1700 to 1703.<sup>109</sup> His catalogue shared many books in common with Areskine's on both legal and miscellaneous topics. Although he divided his books by size, Mure did not include publishers or dates in his list but the authors and titles he recorded allow for matching with Areskine's catalogue using Mure's descriptions. To give just a few examples, both of their legal libraries included 'Grotius de jure belli at [sic] pacis' (F 31), 'Puffendorf [sic] de jure naturae et gent.' (Q 64), 'Vinnius ad Inst.' (Q 7), and 'Voet's little Pandects' (O 253). Books on general subjects included 'Bodinus de Rep.' (O 126), 'Barclaij Argenis et Satyricon' (OM 188, OM 235), and 'Le Isola piu famouse, & c.' (FM 5). Mure, like Areskine, had a good selection of grammars and dictionaries for foreign vernacular languages.<sup>110</sup> In place of the expensive edition of Graevius that Clerk and his father balked at buying, Mure instead had a copy of *Joannis Rosini antiquitatum romanarum corpus absolutissimum*<sup>111</sup> for his studies of Roman history. Areskine also had the Rosini history in an edition printed in Paris in 1613 (FM 42). It is clear that students took advantage of cheaper alternatives to the readings recommended by professors when they were available.

Based on the evidence from the libraries developed by Clerk and Mure, the books collected by legal scholars in the late seventeenth and early eighteenth centuries shared certain characteristics with each other and with Areskine's library. The textbooks written, recommended, and used by professors in the Low Countries are present. Classical literature is well represented. The presence of aids for understanding foreign vernacular languages indicates that legal virtuosi were able to read the books they acquired that were printed in these languages. The libraries Scottish legal students

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<sup>108</sup> Ibid., p. 57.

<sup>109</sup> 'Introductory memoir', in *Selections from the family papers preserved at Caldwell, part first MCCCLXCIV – MDCCCLIII* (Glasgow: Maitland Club, 1854), p. 28. Mure was publically examined and 'found sufficiently qualified' by the Faculty of Advocates on 13 July 1706. *The minute Book of the Faculty of Advocates, 1: 1661-1712*, ed. by John Macpherson Pinkerton (Edinburgh: Stair Society, 1976), p. 265.

<sup>110</sup> William Mure, 'Catalogue of books belonging to Will<sup>m</sup> Mure (afterwards of Caldwell & Glanderstone) – Leyden 1700-1703', in *Selections from the family papers preserved at Caldwell, part first MCCCLXCIV – MDCCCLIII* (Glasgow: Maitland Club, 1854), pp. 220-3.

<sup>111</sup> Ibid.

assembled were international in scope. They were not limited to legal topics, although these dominated their collections, but rather included books that enhanced their legal learning by including classical scholarship and historical works. As they continued their travels across the continent, they added works relating to history and the arts.

## Italy

Although it lacks details about individual titles, external evidence from his correspondence shows that Areskine purchased books in Italy. He wrote to his brother from Rome in May 1710: 'I have brought a good deal of Italian and other books here, the Lord know if everr [sic] I shall get them all safe home to Scotland'.<sup>112</sup> That fifteen books with Rome as their place of publication were listed in the 1731 manuscript seems to indicate that Areskine's transportation arrangements were adequate. None of these have a publication date of later than 1710.

Areskine may have met one of the authors whose books he owned in Italy. Gianvincenzo Gravina's works, both legal and literary, are present in Areskine's list. Areskine seems to have met Gravina during his visit to Rome. Areskine found a warm welcome in Rome where he thought 'acquaintance is much easier to be made with people of Quality than in any place els [sic] in Italy'.<sup>113</sup> Later in the year, Areskine had some of Gravina's manuscripts at the Leipzig Book Fair: he was taking them to Holland so that they could be published.<sup>114</sup> Gravina's *Origines iuris civilis* (Q 147) had been published in Leipzig in 1708 and had secured his international reputation as a jurist.<sup>115</sup> Gravina was also well known as a cultural theorist who believed that poetry had the power to reform society. His *Della ragion poetica* published in Rome in 1708 (QM 68) expressed this view.<sup>116</sup> Gravina was one of the leading figures in the *Accademia dell'Arcadia*, a group of intellectuals who sought to reform literature and culture. The

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<sup>112</sup> Charles Areskine, 'Letter' (10 May 1710), NLS MS 5072, f. 8<sup>v</sup>.

<sup>113</sup> Ibid., f. 8.

<sup>114</sup> John H. Appleby and Andrew Cunningham, 'Robert Erskine and Archibald Pitcairne – two Scottish physicians' outstanding libraries', *Bibliotheca*, 11 (1982), 3-16 (p. 14). The work may have been his *Orationes et opuscula* published in Utrecht in 1713 (SCTN, <<http://picarta.pica.nl/DB=3.11/XMLPRS=Y/PPN?PPN=238538400>>). This is the closest match that fits the description given in Robert Areskine's correspondence. Areskine did not record owning a copy in his catalogue.

<sup>115</sup> The work had originally been published in Naples in 1701. The Leipzig professor Johann Burkhard Mencken (1674-1732) oversaw the publication of the 1708 edition with the expressed purpose of disseminating Gravina's work north of the Alps. Douglas J. Osler, 'The fantasy men', *Rechtsgeschichte*, 10 (2007), 169-92 (p. 181).

<sup>116</sup> Gino Bedani, 'Gravina, Gian Vincenzo (1664-1718)', in *The Oxford companion to Italian literature*, ed. by Peter Haimsworth and David Robey (Oxford: OUP, 2002), p. 277.



*Accademia* was made up of minor nobles, clerics, and lawyers who met regularly to read their poetry, organise their publishing programme, and, less formally, to converse.<sup>117</sup>

### **Cultural concerns**

To enhance his travels, Areskine may have acquired some of the language dictionaries and travel guides listed in his 1731 catalogue. Areskine's list includes dictionaries and grammars for French (QM 77, OM 98, OM 115), Italian (QM 1, QM 78, OM 122, OM 113, OM 130, OM 239), German (OM 114), and Spanish (QM 78, OM 77) and combinations of them. There are no aids for Dutch in the 1731 list. It is likely that Areskine could speak some Dutch. John Clerk reported in his *Memoirs* that he 'spoke Dutch, French, and Italian pretty readily'<sup>118</sup> by the end of his tour and it is likely that most travelling Scottish students would have picked up enough of these languages to get by. Although he had books in other foreign vernacular languages including French and Italian, Areskine listed no books in Dutch.<sup>119</sup> Areskine's listed travel guides are all for Italy (OM 52) and Italian cities including Florence (OM 119), Naples (OM 133), Pozzuoli (OM 120),<sup>120</sup> Rome (OM 140, OM 144), and Venice (OM 118, OM 174). Although he did not list a specific travel guide for Padua, Areskine signed the register of the university there on 8 March 1710.<sup>121</sup> All of Areskine's Italian travel guides were published before 1710 so it is likely he bought them for use as he toured through the country. He could also have acquired them from a shop like Pieter van der Aa's in Leyden which stocked maps and travel guides for a target market of educated tourists. Aa included his catalogue of these as a supplement to his *Les Delices de Leide*. If he kept them from other places he visited, the guides are not included in the 1731 list.

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<sup>117</sup> Susan M. Dixon, *Between the real and ideal: the Accademia degli Arcadi and its garden in eighteenth-century Rome* (Newark: University of Delaware, 2006), pp. 22-3.

<sup>118</sup> Clerk, *Memoirs*, p. 36.

<sup>119</sup> Knowledge of Dutch was not important to Scottish tourists and students who could communicate in Latin or French with their learned peers. William Carstares resolved that he 'would spend at least an hour [a day] in acquiring the french language, being, because of its universalitie, so very necessary for converse'. William Carstares, 'Rules of conduct, & c. by Principal Carstairs', in *Selections from the family papers preserved at Caldwell, part first MCCCLXCIV – MDCCCLIII* (Glasgow: Maitland Club, 1854), p. 168. Clerk studied French for a few months after his arrival on the continent. Strien and Ahsmann (1992), p. 301. For a discussion of Viscount Stair's lack of fluency in Dutch despite his visits and occasional residence in Holland see Adelyn L. M. Wilson, 'Stair and the *Inleydinge* of Grotius', *Edinburgh Law Review*, 14 (2010), 259-68.

<sup>120</sup> One of Pozzuoli's sites is Cicero's villa. This attraction certainly would have drawn Scottish legal scholars to the town on the fringes of Naples.

<sup>121</sup> John Ingamells, *A dictionary of British and Irish travellers in Italy, 1701-1800* (New Haven; London: Yale University, 1997), p. 340.

Most of the musical selections in Areskine's 1731 list are Italian operas which date from his grand tour. The dates that these were performed and published suggest that Areskine was in Venice during the Carnival season of 1709 to 1710. The Venice Carnival ran from St Stephen's Day until Shrove Tuesday and each theatre would put on two or three operas during the season.<sup>122</sup> George Frederic Handel's *Agrippina* (OM 179) opened the season on 26 December 1709 and was performed twenty-seven times.<sup>123</sup> Tomaso Giovanni Albinoni's *Ciro* (OM 178) made its debut at the Carnival in 1710.<sup>124</sup> Francesco Gasparini's 'Zamberlucco Intermezzi comici Musicali' (OM 174) appeared at the interval of his *La principessa fedele* on 10 November 1709.<sup>125</sup> The full title of what the catalogue describes as 'Berengario Re d'Italia. Drama per musica' (OM 180), *Berengario re d'Italia Drama per musica. Da rappresentarsi nel Teatro di Sant' Angelo il carnevale dell'anno 1709*,<sup>126</sup> confirms that it too was related to the Carnival. Areskine wrote to his brother in May 1710 reporting that he had been to 'Venise' and Naples before returning to the 'Seat o' the Beast' [Rome].<sup>127</sup> The travel guides and operas he kept in his library and recorded in his 1731 manuscript provide information about where he went as well as what he saw and heard during his grand tour.

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<sup>122</sup> Michael Talbot, 'Vivaldi's Venice', *Musical Times*, 119/1622 (1978), 314-19 (p. 318).

<sup>123</sup> Anthony Hicks, 'Agrippina', in *New Grove Dictionary of Opera*, *Grove Music Online*. *Oxford Music Online*, ed. by Stanley Sadie <<http://www.oxfordmusiconline.com/subscriber/article/grove/music/O900058>> [accessed 27 July 2010].

<sup>124</sup> Michael Talbot, 'Albinoni, Tomaso Giovanni', in *Grove Music Online*. *Oxford Music Online*, <<http://www.oxfordmusiconline.com/subscriber/article/grove/music/00461>> [accessed 27 July 2010].

<sup>125</sup> Dennis Libby and Angela Lepore, 'Gasparini', in *Grove Music Online* <http://www.oxfordmusiconline.com/subscriber/article/grove/music/43225pg1> [accessed 27 July 2010]. Although Carnival was the opera principal season, Venice also had an autumn season which lasted from early October to mid-December. Venetian theatres put on operas as early as November as Carnival previews. Talbot, 'Vivaldi's Venice', p. 318.

<sup>126</sup> Full title available at <http://www.worldcat.org>, OCLC 82602332 [accessed 27 July 2010].

<sup>127</sup> Areskine, 'Letter' (19 May 1710), f. 8.

# AGRIPPINA

D R A M A

*Per Musica.*

Da Rappresentarsi nel Famofif-  
fimo Teatro Grimani di  
S.Gio:Grifoftomo

L'Anno M.DCCIX.



IN VENEZIA , M. DCCIX.

Appresso Marino Rossetti in Merceria,  
all' Insegna della Pace.

*Con Licenza de' Superiori, e Privilegio.*

*Handel G. V. V. V. V.*

**Fig. 1**

**Title page of Handel's *Agrippina* which opened the Venice Carnival season of 1709-1710<sup>128</sup>**

## Return to Edinburgh

I think every man who has studied here at Leiden should at his return enter advocate, if it were only to let people see he has spent his time to the purpose, whether they have any expectation of either employment or preferment or not.<sup>129</sup>

When he returned to Edinburgh, although he attempted to launch himself as a professor, it seems Areskine had already decided on a career change. This was fortunate for the holder of the Regius Chair of the Law of Nature and Nations, although he continued to take an interest in University affairs, does not seem to have attracted any students. Fortunately, the education Areskine had undertaken in the Netherlands had not just enhanced his knowledge for a teaching career: it also enabled him to qualify as an advocate. Areskine applied to the Lords of Session for admission to the Faculty of Advocates in 1711. The Dean of the Faculty of Advocates reviewed his application and arranged for examinations in private and in public on civil law which were done in

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<sup>128</sup> Image available at <<http://www.haendel.it/composizioni/opere/agrippina.htm> >[accessed 27 July 2010].

<sup>129</sup> Strien and Ahsmann (1993), p. 32.

Latin. Once he passed these examinations, Areskine read a lesson on civil law to the Lords of Session who then admitted him into the Faculty.<sup>130</sup> Areskine dedicated this printed version of his *Disputatio juridica* to his cousin, the earl of Mar, and demonstrated his cultural learning by including a quotation from Ovid in his ninth thesis.<sup>131</sup>

Areskine successfully fulfilled the Faculty's requirements, became an advocate, and was called to the Bar. Although he retained his professorship until 1734, Areskine did not resume his teaching career. Instead, Areskine found success in his new profession as a lawyer.

### **Areskine and education: later involvement**

Areskine has been criticised for his lack of teaching during his time as Professor of the Law of Nature and Nations at Edinburgh. John Cairns has pointed out that this criticism was unfair. Areskine did not neglect to advertise his courses. Furthermore, although they are incomplete, records show that Areskine was active in the administration of the university. He attended meetings, escorted students to services at Lady Yester's Church, signed official documents, and took his turns delivering weekly professorial addresses each winter term.<sup>132</sup>

Although he made little impact as a professor, Areskine was an active participant in the political management of the Scottish universities beyond his Edinburgh role. This was in connection with the activities of his patron from about 1724, Archibald Campbell, earl of Ilay. Areskine took part in a visitation of the University of Glasgow from 1725 to 1727.<sup>133</sup> He also tried to use his political influence during Ilay's unsuccessful attempt to engineer the appointment of the professor of mathematics at Aberdeen's Marishal College in 1727.<sup>134</sup> Ilay and other patrons could demonstrate their power by making academic appointments.<sup>135</sup> Areskine seems to have retained an interest

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<sup>130</sup> John W. Cairns, 'The formation of the Scottish legal mind in the eighteenth century: themes in humanism and enlightenment in the admission of advocates', in *The legal mind: essays for Tony Honoré*, ed. by Neil MacCormick and Peter Birks (Oxford: Clarendon, 1986), pp. 253-78 (p. 255).

<sup>131</sup> Charles Erskine [sic], *Disputatio juridica, Ad Tit. 2. Lib. 28. ff. De liberis & posthumis haeredibus instituendis* (Edinburgh: Robert Freebairn, 1711), p. 5. Areskine owned copies of Ovid's works published in 1676 (OM 93) and in 1717 (OM 92).

<sup>132</sup> Cairns, 'Origins', p. 343; Dalzel, pp. 295-6.

<sup>133</sup> Emerson, *Academic*, p. 84.

<sup>134</sup> Roger L. Emerson, *Professors, patronage and politics: the Aberdeen universities in the eighteenth century* (Aberdeen: Aberdeen University, 1992), p. 51.

<sup>135</sup> *Ibid.*

in the administration of university life even as he established himself in his new legal career.

As might be expected of an ex-regent and professor, Areskine was also on hand to help young friends and family with their educational careers. An example of this can be found in the way Areskine guided William Kirkpatrick's studies after his father died in 1720. Kirkpatrick studied at Edinburgh before proceeding to Leyden from 1723 to 1725 where he may have studied natural law with Johann Jakob Vitriarius.<sup>136</sup> He succeeded Areskine as the Professor of the Law of Nature and Nations at Edinburgh in 1734.<sup>137</sup>

Areskine's surviving sons also had the benefit of good educations. Charles Erskine (1716-1749) was educated at home and attended classes at the University of Edinburgh before being sent to Winchester College in Hampshire. By 1732 his tutor at Winchester College made it clear that any skills young Charles needed to attain were not to do with his academic studies:

I find He has been so well educated at Home; and has so well improv'd Himself in Academicall Study at The University of Edinburgh; that 'tis beyond my Skill to lecture him, than He has already learnt. My chief Care will be to acquaint Him with the Nature of our Discipline, Customs, & c.<sup>138</sup>

Charles went on to graduate from Corpus Christi College, Cambridge in 1733.<sup>139</sup> He was admitted to the Middle Temple on 24 August 1733.<sup>140</sup> Areskine's 1731 library list contains information that sheds light on his legal studies. Charles used some of his father's books while studying law in England. A note, found in the catalogue's index, reads: '15 Augt 1735 The 4 Books in these three articles taken out by Mr Areskines orders & sent to London to his son Mr Charles'.<sup>141</sup> The books in question were Areskine's copies of Coke's *Institutes* (F 115a-c) and a further notation records that the first volume, was 'not sent'. This was 'Coke upon Littleton' and presumably the student had by then acquired his own copy of this essential textbook for the study of English

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<sup>136</sup> Son of Philippus Reinhardus Vitriarius. He taught at Heidelberg and Utrecht before moving to Leyden in 1719. Ahsmann and Feenstra, p. 317.

<sup>137</sup> John W. Cairns, 'The first Edinburgh Chair in Law: Grotius and the Scottish Enlightenment', in *Ex iusta causa traditum: Essays in honour of Eric H. Pool*, ed. by Rena van den Bergh (Pretoria: University of South Africa, 2005), pp.32-57 (pp. 39-40). Kirkpatrick went on to also follow Areskine as the MP for the Dumfries Burghs in 1736 and to marry his daughter, Jean, in 1746. *Ibid.*, p. 40.

<sup>138</sup> Thomas Broughton, 'Letter' (18 July 1732), NLS MS 5074, f. 25.

<sup>139</sup> Romney Sedgwick, *The House of Commons, 1715-1754, 2: Members E-Y* (London: HMSO, 1970), p. 13.

<sup>140</sup> *Register of admissions to the Honourable Society of the Middle Temple*, 1, ed. by Henry F. Macgeagh and H. A. C. Sturgess (London: Butterworth, 1949), p. 315.

<sup>141</sup> NLS MS 3283.

law. Several other textbooks of English law were recorded as being ‘taken to London’ in undated notes throughout the 1731 manuscript including ‘D’Anvers Abridgment’ (F 117), John Selden’s *Fleta* (Q 164), ‘Vaughan’s Reports’ (F 113), and ‘Hobart’s Reports’ (F 114). Perhaps the younger Charles requested books from his father as John Clerk had done from his in the 1690s. He seems also to have studied abroad at some point between 1733 and 1739. The younger Charles completed his English legal education by attending at the Westminster courts, discussing cases with his fellow students, and practicing his public speaking skills.<sup>142</sup> He was called to the English Bar on 26 October 1739.<sup>143</sup>

Although it is not known where or when he studied abroad, Charles’s efforts were commended by his father who wrote to him as he was about to be called to the English Bar in 1739:

I...readily acknowledge the goodness of Heaven to me in guiding you when in foreign Countreys, and returning you to your own with more health of body and soundness of mind than young Gentlemen Commonly import with them from parts beyond the Seas; may Comfort and success attend you in the way of life you are entering upon.<sup>144</sup>

Areskine’s younger son James (1722-1796), meanwhile, was at the University of Glasgow by 1740 where his father wrote that he was ‘...very well pleased with the account you give me of the progress of your studys, go...and be diligent now, and you’l [sic] reap the fruits of it after’.<sup>145</sup> James’s education is more obscure but his subsequent success in his legal career suggests that he too may have studied abroad at some point. He was admitted to the Faculty of Advocates on 6 December 1743.<sup>146</sup>

Charles Areskine’s *peregrinatio academica* completed his legal education while developing his credentials as a legal virtuoso. He returned to Edinburgh with the knowledge and skills he needed to establish himself in a new profession. His experiences

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<sup>142</sup> David Lemmings, *Gentlemen and barristers: the Inns of Court and the English Bar, 1680-1730* (Oxford: Clarendon, 1990), p. 141. Some of his contemporaries at the Middle Temple were Philip Yorke, second earl of Hardwicke (admitted 1729), Henry Fielding (1737), and William Blackstone (1741). Arthur Robert Ingpen, *The Middle Temple Bench book: a register of the benchers of the Middle Temple* (London: Chiswick, 1912), pp. 351, 364-5. Erskine transferred to Lincoln’s Inn in 1743. Sedgwick, p. 13.

<sup>143</sup> *Register of admissions*, p. 315.

<sup>144</sup> Charles Areskine, ‘Letter’ (23 October 1739), NLS MS 5074, f. 221.

<sup>145</sup> Charles Areskine, ‘Letter’ (20 December 1740), NLS MS 5075, f. 15.

<sup>146</sup> *Faculty of Advocates*, p. 67. His brother Charles sent a letter to him ‘to the care of Mr. Crawford, Banker at Rotterdam’ dated 25 March 1745 which acknowledged his ‘safe passage to the Continent’ and arrival at Hardingen. Other than meeting friends, there is no indication of the reason for James’s visit in the letter. NLS, MS 5156, ff. 113-113<sup>v</sup> (f. 113<sup>v</sup>).

on the continent shaped his adult life and allowed him to become one of the most successful lawyers of his day. He also had the beginnings of the book collection he would start to document in 1731. The practice of book collecting boomed in the early eighteenth century. As we shall see in the next chapter, Areskine continued to buy books on his return to Britain and he continued to do so throughout his life.

## IV

### Buying Books: Bibliographies, Catalogues, Sales, and Auctions

As described in the previous chapter, Areskine and many other Scottish advocates completed their legal educations in the Low Countries throughout the early modern period. It is impossible to determine how many Scots attended private *collegia* with Low Countries professors and the matriculation records for the some of the universities, as at Utrecht, are incomplete but large numbers of Scots travelled to universities in the Low Countries, especially between 1650 and 1750 with a peak between 1675 and 1725.<sup>1</sup> This practice left a deep impression on Scots law since Scottish legal scholars studied with professors and jurists in the Netherlands who were exploring the relationship between Dutch and Roman law in a variety of ways. When they returned home, advocates had access to the collection held in the Advocates Library which included the works of Grotius, Vinnius, Voet, and other Dutch authors which they cited in their pleadings.<sup>2</sup> Works by these authors were not printed in Scotland so students and lawyers either bought them while abroad or relied on imports or both.<sup>3</sup> This chapter considers some of the sources collectors like Areskine used to find out what books were available in the British market.

Early modern book collectors had many ways of finding information about what books were available. As we saw in Chapter I above, they could enlist the aid of agents, librarians, and other book experts. They could read catalogues and attend sales and auctions. This chapter will look at the bibliographies and catalogues that were included in Charles Areskine's library and it will explore some of the reasons that he selected particular books. Areskine collected the books he needed for his profession but his choices show that he was also interested in acquiring certain good quality copies of these. Books, both foreign and domestically produced, were widely available in London and Edinburgh. Once they knew what was available, learned book buyers could go

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<sup>1</sup> John W. Cairns, "Importing our lawyers from Holland": Netherlands influences on Scots law and lawyers in the eighteenth century', in *Scotland and the Low Countries, 1124-1994*, ed. by Grant G. Simpson (East Linton: Tuckwell, 1996), pp. 136-53 (p. 139).

<sup>2</sup> R. Feenstra and C. J. D. Waal, *Seventeenth-century Leyden law professors and their influence on the development of civil law: a study of Bronhorst, Vinnius and Voet* (Amsterdam; Oxford: North-Holland, 1975), p. 85.

<sup>3</sup> *Ibid.*, p. 83



shopping. The chapter will also look at an auction that took place in Edinburgh in 1720 at which Areskine certainly bought books.

### **A buying guide for early modern law books: Jacques Godefroy's 'Bibliotheca juris civilis Romani'**

By purchasing a book or placing it on the shelves of a private library, the man of culture clearly expresses intellectual preoccupations; but another set of motivations are at work in the possession of a book... The library of a man of law reflects a concern with the humanist values of *auctoritas* and ethics.<sup>4</sup>

Book buyers did not only rely on catalogues, chance visits to shops, or their agents' advice to find the books they wanted. Some of the books early modern legal scholars such as Areskine acquired contained useful information about other texts they might like to acquire. In 'Bibliotheca juris civilis Romani', for example, the second part of his *Manuale iuris*, the legal scholar Jacques Godefroy listed a range of books and provided bibliographical guidance for students of Roman law. Godefroy's work retained its usefulness for nearly a century.<sup>5</sup> M. H. Hoeflich has pointed out the importance of this work as a resource for exploring the history of the publication of Roman law texts in the sixteenth and seventeenth centuries. It was one of the earliest bibliographies of Roman law books and commentaries on them, it showcases the humanist approach to legal scholarship, and its frequent reissue meant it was widely available to scholars and jurists.<sup>6</sup>

Jacques Godefroy (1587-1652) was an internationally renowned jurist whose criticisms of civilian texts and other legal works retained their importance and influence long after his death in 1652.<sup>7</sup> In addition to his two copies of *Manuale iuris*, Areskine had many of his works including his important edition of the *Codex Theodosianus* (F 8), his other studies of pre-Justinianic law (Q 118, Q 119, Q 121), his books on civil law (Q 117, Q 122, Q 169), and his discourses on legal history (Q 120). The books Godefroy

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<sup>4</sup> Roger Chartier and Daniel Rooke, 'New approaches to the history of the book', in *Constructing the past: essays in historical methodology*, ed. by Jacques Le Goff and Pierre Nova (Cambridge: CUP, 1985), pp. 198-214 (p. 205-06).

<sup>5</sup> M. H. Hoeflich, 'A seventeenth century Roman law bibliography: Jacques Godefroy and his "Bibliotheca juris civilis Romani"', *Law Library Journal* 75 (1982), 514-28 (p. 518).

<sup>6</sup> *Ibid.*, p. 518. John Locke owned a copy. *Ibid.* So did Archibald Campbell. *Catalogus librorum A. C. D. A.* (Glasgow: In aedibus academicis excudebant Robertus et Andreas Foulis, 1758), p. 77.

<sup>7</sup> Hoeflich, pp. 517-18.

recommended in his 'Bibliotheca' had informed his own research projects and he owned many of the books he mentioned in his 'Bibliotheca' in his own library.<sup>8</sup>

Areskine's 1731 manuscript list includes two editions of Godefroy's *Manuale iuris* (O 172, O 173).<sup>9</sup> The first of these is either the 1665 or the 1672 edition: both editions were published in Geneva. The ink entry gives '1665' but a note was later added in pencil saying '1672'. Either of these is plausible since the 1665 edition was the seventh edition in duodecimo and the eighth was an octavo in 1672 and Areskine's manuscript does not divide the sizes with enough precision to determine which it was by size. It seems likely that the 1672 version was meant since the correction was added or perhaps Areskine obtained a newer edition to replace the old. A copy of either of these editions with an Areskine provenance has not yet been located so it is not possible to confirm the book's identity. The identity of the second copy is certain. Described on the following line as 'Another Copy' and dated 1676, this is the ninth edition of *Manuale iuris* which was published in Leyden. It is now in the NLS at shelf mark Alva.143 and it contains Areskine's bookplate. Although there are no notations or other marks in Alva.143 which might indicate that Areskine used Godefroy's 'Bibliotheca' as a buying guide, there are so many matches between the recommended list and the 1731 manuscript that they cannot be coincidental.

Godefroy took a humanistic approach to his scholarship. He studied legal texts in their original languages and contexts. A particular set of ancient legal texts that he and other humanist scholars considered had a vast influence on legal history. The Emperor Justinian ordered the gathering and publication of the laws of his Byzantine Empire – the remaining part of the Roman Empire in the east - in the early sixth century. The result was four works which were designed to clarify and explain the law as it then existed. The *Code* brought together imperial enactments and organised them by chronological order and subject.<sup>10</sup> The *Digest* explained the law using examples from classical jurists.<sup>11</sup> The *Institutes* was a textbook designed for students since the *Digest* was too difficult for beginners.<sup>12</sup> The *Novels* were new imperial laws which were, in contrast

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<sup>8</sup> Hoeflich, p. 526.

<sup>9</sup> The author is misidentified in the manuscript as 'Gothofredi (Dion):'.

<sup>10</sup> Peter Stein, *Roman law in European history* (Cambridge: CUP, 2009), p. 33.

<sup>11</sup> *Ibid.*, p. 33.

<sup>12</sup> *Ibid.*, p. 35.

to the Latin of the other works, mostly issued in Greek.<sup>13</sup> The collective name for these works, the *Corpus iuris civilis*, was not adopted until the sixteenth century when Denis Godefroy's edition of 1583 first used the title.<sup>14</sup>

The most important of the texts that Justinian sponsored was the *Digest*. This part of the *Corpus iuris civilis* was an encyclopaedia of juristic literature that Justinian intended should act as the source of law for his empire.<sup>15</sup> The *Digest* failed to work in this way<sup>16</sup> but its text survived in an early manuscript, the *Florentine Pandects*, dating from the mid-sixth century. The *Florentine Pandects*, or *Codex Florentinus*, was probably written in Constantinople for government officials. It may have been in Italy by the ninth century and it had been moving around the Italian peninsula for years as war booty by the time it came to the attention of legal scholars. It was in Pisa by the late eleventh century and was captured by the Florentines in 1406. This important document has since remained in Florence.<sup>17</sup>

By the fifteenth century, Justinian's codification of law had acquired a range of commentaries, glosses, and other medieval interpretations. Jurists of the humanistic persuasion considered that these once useful apparatus were strangling the original texts. The approaches of adding explanations and interpretations used by medieval glossators and commentators continued to be used, especially in Italy, but a new way of studying the sources of Roman law developed alongside them. Humanism, the idea of being educated in subjects beyond the studies needed to pursue professions, was an innovation of the European Renaissance. Fifteenth century Italian universities developed a programme of education around the 'teacher of the *studia humanitatis*, who based his course...on grammar and rhetoric, poetry and history, and the ethical writings of classical Antiquity'.<sup>18</sup> The humanist scholar focused his attention on 'recovering and reviving ancient knowledge and ancient eloquence, ancient purity of diction and ancient

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<sup>13</sup> Ibid. For an early modern description of Justinian's legislation, see Jacques Godefroy, *I. Gothofredi Manuale iuris, seu parva juris mysteria: ubi quatuor sequentia continentur. Juris civilis Romani I. Historia. II. Bibliotheca. III. Florilegium sententiarum juris politicarum, & communium notionum, ex corpore Justiniano desumptarum. IV. Series librorum & titulorum in Digestis & in Codice* (Lugduni Batavorum: Apud Joannem à Gelder, 1676), pp. 31-4.

<sup>14</sup> Ditlev Tamm, *Roman law and European legal history* (Copenhagen: DJØF Publishing, 1997), p. 5; Hoeflich, p. 516.

<sup>15</sup> Stein, pp. 33-4. Paul du Plessis, *Borkowski's Textbook on Roman law*, 4th edn (Oxford: OUP, 2005), p. 55-6.

<sup>16</sup> This was partly because Byzantine lawyers spoke Greek, not Latin. Leo the Wise sponsored a Greek translation of Justinian's law, the *Basilica*, in about 900. Stein, p. 35. This later attracted much interest from early modern scholars who read both Greek and Latin and could compare the two compilations.

<sup>17</sup> Godefroy, p. 38; Stein, p. 43.

<sup>18</sup> J. B. Trapp, 'The humanist book', in *The Cambridge history of the book, 3: 1400-1557*, ed. by Lotte Hellinga and J. B. Trapp (Cambridge: CUP, 1999), pp. 285-315 (p. 285).

techniques of argument' while studying and translating Greek and Latin texts.<sup>19</sup> The humanist approach was eagerly taken up by legal scholars. Legal humanists turned their attention to sorting out the texts of Roman law that they deemed had been corrupted over the centuries by inadequate scholarship. In Justinian's legal legacy, humanists found an ideal subject that appealed to their scholarly methodologies.

Legal humanists looked at the sources of Roman law to determine what the *Corpus iuris civilis* actually said instead of relying on medieval explications. Key to the process was the revival of Greek learning in the West which was inspired by the fall of Justinian's one-time capital Constantinople in 1453. Scholars who could read Greek arrived in the West and scholars of both Greek and of classical Latin turned their attention to the *Corpus iuris civilis*.

Godefroy cited only humanist editions of the *Corpus iuris civilis* in his 'Bibliotheca'.<sup>20</sup> In 'Historia, seu progressus Juris Civilis Romani', which precedes the 'Bibliotheca' in *Manuale iuris*, Godefroy listed the scholars he admired for their careful study of the Florentine *Pandects*. These included a roll call of humanist scholars from across Europe including Guillaume Budé, Andrea Alciati, Gregor Haloander, Antonio Agustín, Lelio Torelli, Henricus Zoesius, Wiggle van Aytta, and Jacques Cujas.<sup>21</sup> Areskine had works by all of these in his library. He even had copies of many of the specific editions of their works that Godefroy recommended in his 'Bibliotheca'.

Godefroy praised Gregor Haloander's edition of the *Digest* published in 1529 (Q 3) and 1531 (F 18) for its use of the Florentine manuscript and its attempt at restoring the original text of the *Digest*.<sup>22</sup> Godefroy also mentioned Louis Russard and François Dauren's notes on the *Corpus juris civilis* published in 1567 (O 2). Godefroy preferred editions of the *Florentina* for which their editors had worked directly from the manuscript so his inclusion of the 1553 edition of the *Florentina* (F 1)<sup>23</sup> published by Lelio and Francesco Torelli is unsurprising. The editors of this printed edition of the *Florentina* stressed that they had recreated as closely as possible the original spelling used in the manuscript version of Justinian's *Digest*. They only intervened within the text in order to amend obvious errors and to add minor punctuation. The editorial integrity of

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<sup>19</sup> Trapp, p. 285.

<sup>20</sup> Hoeflich, p. 525.

<sup>21</sup> Godefroy, p. 40.

<sup>22</sup> Hoeflich, p. 525; Godefroy, pp. 69, 73

<sup>23</sup> Hoeflich, p. 525. Interestingly, Godefroy did not have his own copy. It was already a rare and expensive book by the early seventeenth century. Ibid, p. 526.

the project was greatly admired by early modern scholars and the book served as a model for other humanist publishing projects.<sup>24</sup> Louis Le Caron's edition of the *Corpus iuris civilis* published in 1575 (F 164) is mentioned without comment.<sup>25</sup> Denis Godefroy's edition of the *Corpus iuris civilis* was the best available version<sup>26</sup> and his son was free to state this without fear of contradiction. Although he did not have an edition of Denis Godefroy's *Corpus iuris civilis* of the same year that Godefroy recommended, Areskine had three other editions of this work which were published in 1589 (O1-O1b), 1628 (F 167), and 1705 (Q 1).

Areskine's list also has matches in author, title, publication, and date for works mentioned in Godefroy's bibliography by Antonio Agustín (O 22, O 23) whom Godefroy admired as an accurate editor of pre-Justinianic legal texts<sup>27</sup> and by the civilians François Baudouin (O 80), and Scipio Gentili (O 57). Areskine seems to have substituted alternate versions when the specific editions recommended in Godefroy's 'Bibliotheca' were not available. One example of this is found where Areskine has the Paris edition of 1584 of Agustín's *De legibus et senatusconsultis liber* (F 58) in place of the recommended Rome edition of 1583. Most of the matches between Godefroy's *Manuale iuris* and Areskine's library come from Godefroy's recommendations for 'Justiniana Jurisprudentia: eiusque variae Editiones'.<sup>28</sup> Even if he did not acquire every book Godefroy mentioned, Areskine certainly shared his preference for works which demonstrated a humanist approach to the legal scholarship that Justinian's laws attracted.

Areskine's library contained at least twenty five versions of the *Corpus iuris civilis* and its component parts for which Justinian could be described as the 'author'. Areskine was certainly interested in obtaining accurate copies of the *Corpus iuris civilis* which had been created using humanist scholarly techniques. But this is not enough to assign him membership in an intellectual 'school'. While he appreciated humanist scholarship, Areskine did not limit his book collecting to texts published by humanists. Nor did he limit his selections of works by legal humanists to their editions and commentaries on

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<sup>24</sup> Brian Richardson, *Print culture in Renaissance Italy: the editor and the vernacular text, 1470-1600* (Cambridge: CUP, 2004), p. 130-1.

<sup>25</sup> Hoeflich, p. 526.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid., p. 522.

<sup>28</sup> Godefroy, pp. 69-79.

the *Corpus iuris civilis*. His collection is much richer and more varied and offers a challenge to the standard narrative of legal history.

For Areskine and his contemporaries, law texts like these were part of a living legal system. These were not texts full of arcane knowledge or springboards for exploring linguistic or historical problems but sources used to support contemporary legal arguments. Lawyers' 'Informations', that is written pleadings presented to the court, were peppered with references to such authorities as Justinian's Digest, the *lex Rhodia*, and natural law texts such as those by Hugo Grotius. Areskine's own *Information for the East India Company of Holland, of the Chamber of Zeland* is a thirty five page long display of legal knowledge and references. Areskine's examination of the right to the ownership of goods which survived a shipwreck includes references to civilian law and interpretations of it as well as comparing the customary laws of the Burgundy, England, the Hanse Towns, Holland, and Scotland.<sup>29</sup> Given the closeness in date between his library manuscript and the case, many of the sources he cites were available to him on his library shelves when he prepared this case. This 'Information' provides evidence about Areskine's use of his library for reference and shows the practical side of the collection.

### **A case study: Areskine's citations of books from his library**

I know there is not man at the bar that has been at it for many years that comes within sight of Mr, Charles Erskin for drawing a paper and as he was always my lawier... it was certainly most unaccountable in you not to call him and have his assistance.<sup>30</sup>

Taking a close look at just one of the cases he dealt with in the early eighteenth century and relating it to his library reveals the practical side of the Areskine's book collection. Areskine's *Information for the East India Company of Holland, of the Chamber of Zeland* of 24 March 1729 displays his legal knowledge and demonstrates his use of a wide variety of sources. Areskine's examination of the right to the ownership of goods which survived a shipwreck includes references to civil law and interpretations of it as well as comparing

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<sup>29</sup> Charles Areskine, *Information for Appollonius Lampsints, Hieronymus Joseph Boudaen, Johan Steengragt, and Peter van Hoorn, Lords and Directors of the Honourable East India Company of Holland...and Mr. William Drummond of Grange, Their Factor, For His Interest, Against His Grace Charles Duke of Queensberry and Dover, Vice Admiral of Scotland, For His Interest, and Mr. Alexander McKenzie, One of the Principle Clerks of the Court of Session, His Deputy* (Edinburgh, 1729).

<sup>30</sup> Simon Fraser, 'Letter' (04 February 1744), quoted in *Report on the Laing manuscripts in the University of Edinburgh*, ed. by Henry Paton, 2 (London: HMSO, 1925), p. 276.

the customary laws of England, the Hanse Towns, Holland, Zeeland, and Scotland.<sup>31</sup> Although he had an academic's interest in law, Areskine primarily used his collection as a practitioner of law. Given the closeness in date between his library manuscript and the case, many of the sources Areskine cited were available to him on his library shelves when he prepared this case. These include citations from Bijnkershoek, *De Lege Rhodia de Jactu* (O 115);<sup>32</sup> Coke, *Reports* (F 244); Crusius, *Opuscula varia politico-juridico-historica* (Q 106); Curicke, *Jus maritimum Hanseaticum* (Q 151);<sup>33</sup> Gibson [Lord Durie], *Decisions* (F 134); Godefroy (ed.), *Codex Theodosianus* (F 8); Graef, *Syntagma juris publici* (Q 60); Groenewegen van der Made, *Tractatus de legibus abrogatis* (Q 16); Grotius (various editions); Leeuwen, *Censura forensis theoretico-practica* (F 77); Livy, *Historiae Romanae* (FM 20); Loccenius, *De iure martimo & navali libri tres* (NLS, Alva.251); Louis XIV, *Ordonnance de la marine, du mois d'Aoust 1681* (O 188); Mackenzie, *Observations on the acts of Parliament* (F 126); Nisbet, *Some doubts & questions* (F 131); Peck, *Opera omnia* (F 36); Skene, *Regiam Majestatem* (F 122); Stair, *Institutions* (F 129 – F 130b); Welwood, *Abridgement of all sea-lawes* (O 235); Vinnius, *Institutionum sive Elementorum libri quatuor* (O 53); Vinnius, 'Notes on Peckius' (O 33); Voet, J., *Commentarius ad Pandectas* (F 38); and Voet, P., *In quatuor libros Institutionum imperialium commentarius* (Q 6). *Information for the East India Company of Holland*, therefore, provides evidence for Areskine's use of his private library of books for reference in his legal practice and it demonstrates the usefulness of his collection for him as lawyer. These books came from different times, places, and legal traditions but they were all relevant for Areskine as he developed his case in Scotland in 1729.

### Other catalogues and buying aids in Areskine's manuscript

Areskine only listed a few catalogues and buying aids in his manuscript: he doubtless would have had access to many more but it seems he did not think they were worth

<sup>31</sup> Charles Areskine, *Information for Appollonius Lampsints, Hieronymus Joseph Boudaen, Johan Steengragt, and Peter van Hoorn, lords directors of the honourable East India Company of Holland...and Mr. William Drummond of Grange, their factor, for his interest, against His Grace Charles Duke of Queensberry and Dover, Vice Admiral of Scotland, for his interest, and Mr. Alexander McKenzie, one of the principal clerks of the Court of Session, his deputy* (Edinburgh, 1729). Scotland and the Dutch Republic had a strong trading relationship which was strengthened by shared Protestantism and their use of Roman law. See Esther Mijers, 'A natural partnership?: Scotland and Zeeland in the early seventeenth century', in *Shaping the Stuart world, 1603-1714: the Atlantic connection*, ed. by Allan I. Macinnes and Arthur H. Williamson (Leiden: Brill, 2006), pp. 233-60.

<sup>32</sup> The work dealt specifically with jettison so it is no surprise to find it in Areskine's argument. See Henry Flanders, *A treatise on maritime law* (Boston: Little, Brown, 1852; repr. Union, NJ: Lawbook Exchange, 2001), p. 5.

<sup>33</sup> Areskine had two copies of an edition of 1667. The Hanse Towns had compiled their maritime law in 1591 and this collection was enlarged and corrected in 1614. *Ibid.*, p. 23.

recording. Potential buyers could easily obtain book sale catalogues. These could, for example, be attached to other purchases. One example of this can be found in the Advocates Library. Alva Coll., 22, which contains the bookplate of James Erskine, is a collection of reports on equity cases which was published in London in 1741. Bound at its back is a catalogue for ‘Law Books *publish’d since the Year 1700, sold cheap by J. WORRALL, at the Dove in Bell-Yard near Lincoln’s Inn*’. Erskine listed the fourth edition of 1738 of Worrall’s catalogue as a separate publication (O 299). This catalogue includes books which appear in the 1731 manuscript including ‘Blount’s Law Dictionary’ (F 107), ‘D’Anvers Abridgment’ (F 117), ‘Treatise of Feme Coverts: Or, Ladies Law’ (O 259), and included the prices a buyer could expect to pay.<sup>34</sup> The fifth edition of 1740, with the bookplate of Erskine’s son James, is in the NLS at Alva.<sup>377</sup> Worrall took care to establish that his bibliographic integrity was greater than that of his rivals by saying, ‘I took my Account from the Books themselves’ and the ‘Observations I have made are True’.<sup>35</sup> Worrall published his updated stock list regularly.<sup>36</sup> His shop ‘in Bell Yard near Lincoln’s Inn’ attracted customers from about 1736 until 1763<sup>37</sup> and Erskine’s library contained selections produced by Worrall and his partners.<sup>38</sup>

The title page of the bookseller John Walthoe’s *A catalogue of the common and statute law-books of this realm* of 1722 proclaimed that it included information about the ‘best editions, and Common Prices for which they are now Sold’ (O 214). Walthoe was a notable printer of and dealer in law books in London with shops near Lincoln’s Inn and Middle Temple from the late seventeenth century until 1733.<sup>39</sup> Erskine owned at least ten titles on English law which were sold by the Walthoe firm<sup>40</sup> so he may have used their catalogues to make his purchases when he was in London.

Although not a catalogue, Georg Matthais Koenig’s *Bibliotheca vetus et nova* of 1678 (FM 44) offered bibliographic information on a variety of subjects including law.

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<sup>34</sup> John Worrall, *Bibliotheca legum: or, a new and compleat list of all the common and statute law books, of this realm; From their First Publication, to the Year 1738, under the following Heads, viz. Abridgments. Conveyancing. Courts, and Court-Keeping. Entries, Declarations, &c. Maxims and Grounds of the Law. Miscellanies. Parliamentary Affairs. Reports. Sheriffs. Statutes. Tithes and Laws of the Clergy. Wills, Executors, &c. Giving an Account of their several Editions, Dates and Prices, and wherein they differ. The fourth edition.* (London: John Worrall, 1738).

<sup>35</sup> *Ibid.*, p. 4.

<sup>36</sup> James Raven, *The business of books: booksellers and the English book trade, 1450-1850* (New Haven; London: Yale University, 2007), p. 282.

<sup>37</sup> *Ibid.*

<sup>38</sup> See e.g. F 235, O 265, O 287.

<sup>39</sup> Henry R. Plomer, *A dictionary of the printers and booksellers who were at work in England, Scotland and Ireland from 1668 to 1725*, ed. by Arundell Esdaile (Oxford: OUP, 1922), p. 300.

<sup>40</sup> See e.g. F 107, F 156, F 244, O 190, O 191, O 193, O 199, O 216, and O 265.



Its alphabetical arrangement made it easy to track down authors. Once found more information was available ranging from basic lists of publications to brief biographies. The most recent books include place and date of publication. An example of this is at the entry for Richard Cumberland for whom the only information is that his 'librum de legibus naturae' was published in quarto in London in 1672 (O 50). Deceased authors tend to have their life dates and some biographical information as well as a list of their works. This *Bibliotheca* would have been a useful source for information about authors and their publications for Areskine as he developed his collection. He could also have turned to his copy of Cornelis à Beughem's *Bibliographia juridica & politica novissima* (OM 193) for ideas about what books to buy.

What is described as 'Robinson's History' at QM 115 is a collected edition in two volumes of the London bookseller Jacob Robinson's *The history of the works of the learned...Containing impartial accounts and accurate abstracts of the most valuable books published in Great-Britain and foreign parts*. Areskine's catalogue does not include the year that his copy was published. Eighteenth Century Collections Online (ECCO) has a copy giving details of books from Robinson's recommendations and reviews of 1738 and the English Short Title Catalogue (ESTC) lists an edition of 1739. Robinson started his bookselling career in the Strand in 1737 and was active until 1759.<sup>41</sup> His *Works of the learned* included not only lists of books 'Just publish'd by Jacob Robinson, under the Inner-Temple-Gate' for each month but also a collected list for the year and an index to the books reviewed throughout the year.<sup>42</sup> Horace Walpole's *A catalogue of the royal and noble authors of England, with lists of their works* (OM 248) offered comprehensive critical guidance about royal and aristocratic authors which, despite its title, included works by Scottish and Irish authors.

Even if he did not have a policy of keeping and recording book catalogues, Areskine had resources in his library that he could use to find out about available and desirable publications. He could have made selections of legal works from Godefroy's 'Bibliotheca', consulted the catalogues of London booksellers and continental bibliographers, and studied reviews of the latest works by Robinson and Walpole.

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<sup>41</sup> Raven, p. 166.

<sup>42</sup> *The history of the works of the learned, for the year one thousand seven hundred and thirty-eight. Containing impartial accounts and accurate abstracts of the most valuable books published in Great-Britain and foreign parts. Interspers'd with dissertations on several curious and entertaining subjects, critical reflections, and memoirs of the most eminent writers in all branches of polite literature* (London: Printed for Jacob Robinson, under the Inner-Temple Gate in Fleet-Street, 1739), e.g. pp. 232, 310.

### ***Desiderata? Printers and publishers mentioned in the 1731 manuscript***

The Areskine manuscript gives information about printers and publishers for twenty-nine books of the 1,290 books listed. The inclusion of these details may indicate that Areskine or his agents selected these books for the quality of the print or their desirability as collectors' copies as well as for their content. The printers and publishers mentioned in Areskine's manuscript appear without fanfare. Most of the list's entries give only the shelf number, title and author details, place of publication, and date. The information about publishers, when it appears, is either in the column which gives the place of publication or it is included as a note as part of the title and author information. The most frequently mentioned publishers are members of the Chouet dynasty of Geneva who appear on seven occasions (F 32, F 45, F 218, Q 98, Q 169, O 79, O 101). They are followed by the Elzeviers of Amsterdam with four mentions (O 1, O 251, OM 81, OM 240) and the Estiennes of Geneva with three (FM 16, QM 79, OM 155). The heirs of Filippi de Giunta of Florence are mentioned twice (OM 45, OM 121) as are the Wechel Presses at Frankfurt and Hanau (Q 142, O 42). The rest of the printers appear with one mention each. They are: Peter van der Aa of Leyden (OM 50), Aldus of Venice (OM 1), Alessandro Minuziano of Milan (OM 99), Jean Lertout of Lyon (O 150), Sigmund Feyerabend of Frankfurt (OM 102), Pierre Des Hayes of Paris (F 179), Pierre Le Petit of Paris (OM 77), Herman Scheus of Rome (OM 145), David Friedrich Rhete of Gdańsk (QM 37), the heirs of Eustatius Vignon and James Stoer of Geneva (F 201), and Johannes van de Water of Utrecht (Q 181). The only printer mentioned from the British Isles is William Ged of Edinburgh (OM 236).

There is no overall subject theme to the books which include these publication details. They range from legal reference books to the collected works of classical authors. Most of the entries which include details about their publishers, however, were books printed by the publishers who were best known for quality printing, specialised typefaces, humanistic scholarship or all three. An intriguing fact is that many more books in Areskine's list were also created by some of these same publishers and this is especially the case for the Chouets, Elzeviers and various members of Wechel family. That he was interested in acquiring works by publishers like these places Areskine as a collector 'of the mid-eighteenth century' who was 'interested in the finely printed

editions of the classics produced by the scholar-printers of the early sixteenth century<sup>43</sup> rather than in the incunables fancied by latter collectors.

As mentioned above, the most frequently noted publishers in Areskine's manuscript are the Chouets of Geneva. The Chouets were known for providing good quality printing and attractive typography at reasonable prices. They published works on Roman and public law for the northern European market while concentrating on canon law and Rota decisions for the southern market.<sup>44</sup> Areskine's Chouet selections included works by François Baudoin, Johannes Calvinus,<sup>45</sup> Jacques Godefroy, Jacobus Labittus, Francisco Mantica, and Alexander Scot. These were, with the exception of Mantica's work on canon law, for the northern market as we might expect for a working collection based in protestant Scotland. Areskine had at least eighteen works from their presses in total. The Chouets and other Geneva book producers distributed their products through book sale catalogues and at the Frankfurt and Leipzig book fairs.<sup>46</sup> This practice continued for centuries. Areskine was present at the Leipzig Fair in 1710<sup>47</sup> and it is reasonable to assume that he made some purchases there.

As we saw in Chapter III above, Areskine also had a wide selection of books published by the Elzeviers of the Netherlands. This may be because the firm was one of the most prolific of the seventeenth and eighteenth centuries or it may be that Areskine was seeking out their publications as a collector. Elzevier books were popular with Scottish collectors: they were also present in the Newhailes library assembled by the

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<sup>43</sup> Arnold Hunt, 'Private libraries in an age of bibliomania', in *The Cambridge history of libraries in Britain and Ireland, 2: 1640-1850*, ed. by Giles Mandelbrote and K. A. Manley (Cambridge: CUP, 2006), pp. 438-58 (p. 444).

<sup>44</sup> Georges Bonnant, 'Typographies Genevoises du XVI<sup>e</sup> au XVIII<sup>e</sup> siècle', in *Cinque Siècles d'Imprimerie à Genève, 1478-1978: Pages d'histoire composées, illustrées, imprimées et reliées par des maîtres et compagnons en hommage aux praticiens d'un noble corps de métier*, ed. Beat Weber (Genève: Société Suisse des Maîtres Imprimeurs, 1978), pp. 93-100 (p. 99).

<sup>45</sup> Johann Kahl (d. 1614), alias Calvinus, professor at the University of Heidelberg. Areskine had the 1665 edition of his *Lexicon juridicum* (F 32) printed by the Chouets as well as 'Another Copy', also by them of 1645 (F 33).

<sup>46</sup> Georges Bonnant, 'La Librairie Genevoise en Allemagne jusqu'à la fin du XVIII<sup>e</sup> siècle', in *Cinque Siècles d'Imprimerie à Genève, 1478-1978: Pages d'histoire composées, illustrées, imprimées et reliées par des maîtres et compagnons en hommage aux praticiens d'un noble corps de métier*, ed. Beat Weber (Genève: Société Suisse des Maîtres Imprimeurs, 1978), pp. 131-66 (p. 142).

<sup>47</sup> John H. Appleby and Andrew Cunningham, 'Robert Erskine and Archibald Pitcairne – Two Scottish Physicians' Outstanding Libraries', *Bibliothèque* 11 (1982), 3-16 (p. 14). Heinrich Von Huysen wrote to Robert Erskine and mentioned that he had seen his brother at the Leipzig Fair. Areskine was transporting manuscripts for printing by Gianvincenzo Gravina, whom he had met in Rome.

Dalrymples. A search on the NLS catalogue for ‘Elzevier’ and ‘Nha’ (the Newhailes collection prefix) returns forty seven records.<sup>48</sup>

Only one British publisher is mentioned by name in Areskine’s list. The Edinburgh goldsmith William Ged’s invention of stereotype printing in the 1730s promised a revolution in book printing. Ged sought the Faculty of Advocates’ patronage by delivering a copy of his stereotyped Sallust of 1739 to them in 1740<sup>49</sup> and this is the book described as ‘Ged’s Salustij Belli Catilinarij et Jugurthini Historiæ’ in Areskine’s catalogue. This book’s imprint proudly proclaimed that it had been produced ‘non typis mobilibus, sed tabellis seu laminis fuis’, which is to say by a stereotype process. Areskine would have been more aware of the history of this book and its process than many of the other advocates since he was involved with the administration of the Faculty of Advocates and its Library: he would have known about Ged’s gift to the Faculty. The inclusion of Ged’s name on his list may indicate that Areskine thought that the contemporary Scottish innovation that the book represented was the equal of more traditional printing techniques on the continent or that he appreciated the innovation as someone who was interested in technological advances. Stereotype printing had the potential to revolutionise book printing by making it more efficient and therefore less expensive to produce books.<sup>50</sup>

There is, however, another reason why printers and publishers were mentioned in the manuscript. Areskine had a two volume octavo copy of *Les negotiations de monsieur le President Jeannin* of 1659 (OM 77). Its title page gives ‘chez Pierre le Petit imprimeur & libraire ordinaire du Roy, ruë Saint Jacques, à la Croix d’or’ as the producer. There were at least two printers called ‘Pierre Le Petit’ operating in Paris at the time that *Les negotiations de monsieur le President Jeannin* was published in folio in 1656.<sup>51</sup> His manuscript duly gives ‘Chez Pierre La [sic] Petite’ as his book’s publisher. What the title page actually says is ‘Iouxte la Copie de Paris. Chez PIERRE LE PETIT 1659’. The reason Areskine’s list gives the reference to the publisher rather than the place is simply that there is no place of publication on the title page. The book was probably published in

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<sup>48</sup> <[www.nls.uk](http://www.nls.uk)> [accessed 3 September 2011]. I am grateful to Brian Hillyard for this comparison.

<sup>49</sup> John Burnett, ‘Ged, William (1684/5–1749)’, *ODNB* (Oxford: Oxford OUP, 2004) <<http://www.oxforddnb.com/view/article/10484>> [accessed 8 November 2010]. For Ged’s relationship with the Faculty of Advocates see Brian Hillyard, ‘William Ged and the invention of stereotype: another postscript’, *Library*, 6th ser., 13 (1991), pp. 156-7.

<sup>50</sup> For Ged’s long-standing relationship with the Faculty of Advocates see *Ibid.*

<sup>51</sup> V. F. Goldsmith, *A short title catalogue of French Books, 1601-1700 in the Library of the British Museum* (Folkstone: Dawsons of Pall Mall, 1973), p. 648.

Amsterdam or Leyden but library catalogues give no consensus as to the place or the publisher. In this case the reason for the publisher's appearance in the manuscript is an obvious one – no information was available to the cataloguer when he looked at the title page – and this has nothing to do with considerations of humanist scholarship, typography, or rarity.

### **Buying books in London and Edinburgh**

When they returned home after their academic travels, Scottish book buyers who were interested in law and other books had a range of domestic sources available to them to help them find the books they wanted. The Advocates Library, for example, printed its catalogue in 1692 and again in 1742. These catalogues not only advertised the library's collection to its users but also provided inspiration for legal professionals who wished to create their own versions. Areskine's involvement in the administration of the Advocates Library meant he sat on publication planning committees,<sup>52</sup> took part in library visitations, advised on library policies such as on expanding the physical space, and recommended the purchase of books. In 1719, for example, Areskine was nominated as a library inspector and acted as part of a committee responsible for inspecting work done on 'clearing a peice [sic] of waste ground at the south end of the Library'.<sup>53</sup> In 1723, he was part of a team that negotiated the purchase of books on British history for the Library from James Anderson who had bought them at the auction of Robert Sibbald's library.<sup>54</sup>

Areskine, despite having his own private book collection, used the Advocates Library as a source of books. 'An undated 'List of Books Borrowed from the Advocates Library' kept by Thomas Ruddiman recorded three loans made by Areskine. One of the books he borrowed was 'Carpzovij Criminalia. fol.'.<sup>55</sup> Areskine bought his own copy of Benedict Carpzov's *Practicae novae imperialis Saxonicae rerum criminalium* (F 187) on 24 December 1743 for '7sh. 6d': an inscription on the title page records the purchase date and price.<sup>56</sup> Although he did not list either of the library's printed catalogues in his own

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<sup>52</sup> *The minute book of the Faculty of Advocates, 2: 1713-1750*, ed. by John MacPherson Pinkerton (Edinburgh: Stair Society, 1980), pp. 39, 148-50, 194.

<sup>53</sup> *Ibid.*, pp. 23, 27.

<sup>54</sup> *Ibid.*, p. 65.

<sup>55</sup> Thomas Ruddiman, 'List of Books Borrowed from the Advocates' Library', n.d., NLS MS F. R. 260a, f. 3.

<sup>56</sup> AL shelfmark B.1.1 which also contains Areskine's bookplate.

catalogue, Areskine would have been very familiar with the Advocates Library and its holdings.

British collectors did not need to make repeated continental visits to complete their libraries. Learned books were widely available in Britain. Some continental sellers recognised the importance of the British market and expanded their businesses to include shops in London. Some of these sellers concentrated their efforts on the 'Latin trade', that is, scholarly books. An example of these sellers is provided by David Mortier, a Dutch bookseller, who was established in London by 1698. Although he was based in Holland from 1709 to 1719 when he took over his brother's part of the family business, Mortier was back in London by 1720. He printed catalogues from 1702 which featured his selections of used books, new foreign books, and maps and prints. All of his stock was printed or sourced in Holland.<sup>57</sup> Areskine had at least three books from the Mortier concern all of which were published in Amsterdam (QM 12, OM 58, OM 221). He also owned books from other foreign booksellers based in London including the Vaillants (QM 73, OM 27) and Pierre Gosse (OM 44). These foreign sellers used their continental connections, which were often family based, to supply books from Holland and France 'of the sort which book collectors might require'.<sup>58</sup> They managed sales and auctions on both sides of the Channel<sup>59</sup> and they were able to supply the books their cosmopolitan clientele demanded.

### **London**

Library keepers and agents helped collectors develop their libraries and booksellers also played important roles in the book culture of the early eighteenth century. Wealthy aristocratic British book collectors like the Harleys, the earl of Sunderland, and the earl of Ilay stimulated the book trade and 'tens of thousands of books came into the London market in the early years of the century...for dispersal...by auction or retail catalogue'.<sup>60</sup>

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<sup>57</sup> Katherine Swift, 'Dutch penetration of the London market for books, c. 1690-1730', in *Le magasin de l'univers: the Dutch Republic as the centre of the European book trade: papers presented at the international colloquium, held at Wassenaar, 5-7 July 1990*, ed. by C. Berkvens-Stevelinck and others (Leiden: Brill, 1992), pp. 265-80 (pp. 268-70).

<sup>58</sup> *Ibid.*, p. 270.

<sup>59</sup> *Ibid.*, p. 277.

<sup>60</sup> Christopher Edwards, 'Antiquarian bookselling in Britain in 1725: the nature of the evidence', in *A genius for letters: booksellers and bookselling from the 16th to the 20th century*, ed. by Robin Myers and Michael Harris (Winchester: St Paul's Bibliographies; New Castle, DE: Oak Knoll, 1995), pp. 85-102 (p. 86).

One of the booksellers' most important functions was creating catalogues for their inventories of stock for sale at retail or at auction. Beyond their obvious marketing purposes as advertisements of books on sale, catalogues could be used as sources of availability information by keepers, agents, and collectors.

The London book trade had expanded beyond the confines of St Paul's Churchyard by the early eighteenth century and different areas of the city came to be associated with different types of books.<sup>61</sup> John Mackay's popular travel guide, *A journey through England. In familiar letters from a gentleman here, to his friend abroad* published in London in 1714, informed its readers about where they should look to find the books they wanted:

The *BOOKSELLERS* of Antient Books in all Languages are in *Little-Britain* and *Pater-Noster-Row*; those for *Divinity* and *Classicks* on the *North* side of *St Paul's* Cathedral; *Law*, *History* and *Plays* about the *Temple-bar*; and the *French-Booksellers* in the *Strand*.<sup>62</sup>

Booksellers, whatever their location, ensured that their sale catalogues were available at book shops and in coffee houses where learned gentlemen met to discuss the latest publications and compare their book desiderata. Areskine regularly visited London from the 1720s to the 1740s as a Westminster MP. He also acted in appeal cases before the House of Lords. He would have had easy access to catalogues and shops. While in London, Areskine would also have spent time with his son Charles who completed his legal training at the Inns of Court before call to the Bar in 1739. The younger Charles practiced law and was an English barrister until his death in 1749. It is not difficult to imagine the visiting Areskine and his lawyer son buying books together in shops and at auctions.

As they had in the Low Countries, auctions proved a popular way to buy and sell books in Britain. The first English book auction had taken place in Cambridge in 1676. In their early days, English book auctions were morning affairs but by the 1730s they could start as late as six pm. Evening sales evolved alongside the new coffeehouses. Coffeehouse book customers found the later sales an entertaining way to spend their

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<sup>61</sup> Giles Mandelbrote, 'Workplaces and living spaces: London book trade inventories of the late seventeenth century', in *The London book trade: typographies of print in the metropolis from the sixteenth century*, ed. by Robin Myers, Michael Harris and Giles Mandelbrote (New Castle, DE: Oak Knoll; London: British Library, 2003), pp. 21-44 (p. 26).

<sup>62</sup> John Macky, *A journey through England. In familiar letters from a gentleman here, to his friend abroad* (London: printed by J. Roberts, 1714), p. 205.

evenings while they increased their libraries. They could enjoy all the benefits of coffeehouse society while they shopped.<sup>63</sup> The British book market was divided between publishers and sellers in London and those in the provinces. Areskine was the sort of customer who patronised multiple markets. As we have seen, he picked up books while travelling abroad. When he shopped domestically Areskine would have used booksellers in both London and Edinburgh to acquire his library.

### **Edinburgh**

Edinburgh, too, had a lively book market which was supported by sales and auctions along its High Street and in Parliament Square. Areskine's townhouse in Mylne's Square was opposite the Tron Kirk. He may even have had a printing house in his block: John Moncur operated a printing house in Bull Close, opposite the Tron Kirk in the early eighteenth century.<sup>64</sup> Areskine's house was accessed via Bull's Stairs.<sup>65</sup> He had two books from Moncur's press (F 137, O 208). As in London, book buying opportunities were frequent and convenient. Parliament Hall acted as a market with 'stalls for booksellers' and other merchants.<sup>66</sup>

Scottish book publishing developed separately from the English industry. There was no central regulating body like the Stationers' Company in London and the Scottish publishing industry's organisation was similar to that in the Low Countries. Unlike the English print industry which was almost exclusively centred on London, publishing centres evolved in Aberdeen, Edinburgh, and Glasgow after printing was introduced into Scotland by royal patent in 1507.<sup>67</sup> Legal publishing was present from the start since James IV's patent authorised, among other things, the printing of 'bukis of our Lawis' and 'actis of parliament'.<sup>68</sup> Scottish buyers had their own book market, centred in Edinburgh, with an infrastructure of sellers and publishers before 1707.<sup>69</sup> The early

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<sup>63</sup> Katherine Swift, 'Bibliotheca Sunderlandia: The making of an eighteenth-century library', in *Bibliophily*, ed. by Robin Myers and Michael Harris, *Publishing History Occasional History*, 2 (Cambridge: Chadwyck-Healey, 1986), pp. 63-89 (p. 68).

<sup>64</sup> Plomer, p. 209.

<sup>65</sup> J. Gilhooley, *A directory of Edinburgh in 1752* (Edinburgh: EUP, 1988), p. 18.

<sup>66</sup> Angus Stewart, 'The Session Papers in the Advocates Library', in *Miscellany four by various authors*, ed. by Hector L. MacQueen (Edinburgh: Stair Society, 2003), pp. 199-223 (p. 202, n. 21).

<sup>67</sup> Jonquil Bevan, 'Scotland', in *The Cambridge history of the book in Britain*, 4: 1557-1695, ed. by John Bernard and D. B. Mackenzie (Cambridge: CUP, 2002), pp. 687-700 (p. 687).

<sup>68</sup> Quoted in Alastair Mann, 'Printing and publishing', in *The Oxford companion to Scottish history*, ed. by Michael Lynch (Oxford: OUP, 2007), pp. 491-3 (p. 491).

<sup>69</sup> John Feather, 'The book trade and libraries', in *The Cambridge history of libraries in Britain and Ireland*, 2: 1640-1850, ed. by Giles Mandelbrote and K. A. Manley (Cambridge: CUP, 2006), pp. 301-12 (p. 303).



eighteenth century witnessed the arrival of quality printing in Scotland and printers like James Watson, Robert Freebairn, and Thomas Ruddiman began to export books that had appeal beyond the domestic market.<sup>70</sup>

Booksellers in Scotland recognised that their well-travelled customers wanted books from other sources and took pains to import them. The printer and bookseller Robert Freebairn, the associate of Thomas Ruddiman, advertised an auction of ‘A Parcel of Books, Lately imported from *England*, and *Holland*...to be sold...at his Shop below the Trone-Church’ on 22 January 1734.<sup>71</sup> Despite this description, the auction included books printed in Edinburgh. The Advocates Library bought more books than any other buyer at Freebairn’s sale. Among its purchases was the distinctly non-legal Pliny’s *Natural history* (Brescia, 1496).<sup>72</sup> If he was in Edinburgh on this date, it is possible that Areskine looked at the stock on offer or attended the auction.

Perhaps because of the close links between the Low Countries and the Scottish book trade and because Scottish customers were used to the idea, auctions were extremely popular in Scotland. Book auctions were a well established practice in Scotland by the early eighteenth century.<sup>73</sup> The earliest surviving Scottish book auction catalogue is dated 1686 and was a sale of the Edinburgh bookseller John Reid’s stock.<sup>74</sup> Few auction catalogues survive but sales were advertised in newspapers like *The Scots Courant* and the *Edinburgh Gazette*.<sup>75</sup> The *Edinburgh Evening Courant* also published lists of available ‘books of Scots law’.<sup>76</sup> Booksellers publicised their stock with catalogues of the

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<sup>70</sup> Alastair Mann, *The Scottish book trade, 1500-1700: print commerce and print control in early modern Scotland: an historiographical survey of the early modern book in Scotland* (East Linton: Tuckwell, 2000), p. 208.

<sup>71</sup> Robert Freebairn, *A parcel of books, lately imported from England, and Holland, by Mr. Robert Freebairn, To be sold by auction at his shop below the Trone-Church, upon Tuesday the twenty second day of January, 1734* (Edinburgh: Printed in the year MDCCXXXIII). We met Freebairn above in Chapter I as a Jacobite exile. He had shops in Parliament Close and then Forrester’s Wynd from 1705 to 1737. He was sometime the Queen’s printer but forfeited this in 1715 when he set up his printing operation in Perth on behalf of the Pretender. Plomer, p. 121. Despite his eventful life, Freebairn managed to run a successful printing house. Areskine had many products of his press in his library.

<sup>72</sup> Brian Hillyard, ‘Thomas Ruddiman and the Advocates’ Library, 1728-52’, *Library History*, 8 (1990), 137-70 (p. 164).

<sup>73</sup> Murray C. T. Simpson, ‘“Every one is sure to get something for his money”’: a 1712 book lottery and auction in Edinburgh’, *Journal of the Edinburgh Bibliographical Society*, 5 (2010), 36-44 (p. 36).

<sup>74</sup> *Ibid.* Reid’s shop was in Bell’s Wynd from 1680 to about 1716. Plomer, p. 250.

<sup>75</sup> Simpson, p. 36. Simpson’s article raises interesting questions about book ownership in the light of books being bought by lottery. Books would be distributed randomly by numbered tickets for the lots. It seems unlikely that serious collectors like Areskine would be attracted to such sales unless they saw them as a novelty. As Simpson points out, the ‘method would have surely only attracted booksellers’. *Ibid.*, p. 39.

<sup>76</sup> See e.g. 01 November 1720 and 07 November 1720 which contain advertisements of ‘books of Scots law to be sold by William Brown his Shop in the Parliament-Close Edinburgh’. Brown’s list included Mackenzie’s *Institutions* (O 210), *Criminals* (Q 168), and *Observations* (O 227), collections of decisions by

‘curious and valuable books’ available at their many shops or auction-shops that lined the High Street or at the High Exchange in Edinburgh. Their customers who had been abroad would have recognised the procedures as well as the opportunity to collect quality books at good prices. In the case of auctioned law libraries, they could take advantage of the chance to augment their collections of foreign legal texts without having to travel again. Evidence found in some of the Alva Collection books shows that Areskine frequented auctions in Edinburgh to acquire his books. One of his books was previously owned by John Spottiswoode whose books were sold at auction in Edinburgh in 1728. A copy of Simon van Leeuwen’s *Censura forensis theoretico-practica* published in 1678 (F 77) has the inscription ‘Ex Bibb: apud Spottiswude’ on its title page.<sup>77</sup> Areskine had two books (Q 153a, Q 180) from the library of William Forbes which was sold at auction in 1736.<sup>78</sup> Both of the books previously owned by Forbes also contain inscriptions which indicate that he too may have purchased them at an auction. As we shall see below, Areskine bought books at the Sir Alexander of Pitmedden sale of 1720 and this is verified by the interleaved clerk’s copy of the sale catalogue which survives in the National Library of Scotland<sup>79</sup> as well as the presence of the books he bought in his 1731 list.

## **An Edinburgh book auction: 11 January 1720**

Edinburgh book auctions were advertised in advance and details about their procedures were included in the catalogues that described the lots on offer. So we know that on Monday, 11 January 1720 the Edinburgh bookseller James McEuen and his clerk John

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Gilmour (Q 163), Gibson (F 134), Falconer (Q 163), and Bruce (F 137), Forbes’s *Journal of the Session* (F 136), *Duty and Power of Justices of the Peace* (O 262), and his *On bills of exchange* (O 212), Spottiswoode’s *Form of process* (O 208), and Stair’s *Institutions* (F 129).

<sup>77</sup> Spottiswoode’s library, as sold at auction, contained nearly 3,000 items. John W. Cairns, ‘Spottiswoode, John, of that ilk (1667–1728)’, *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/26168>> [accessed 14 September 2011].

<sup>78</sup> Alexander Kincaid, *A catalogue of curious and valuable books, being the library of the deceased Mr. William Forbes younger of Schivas Advocate. Which will be begin to be sold at auction, on Tuesday the 21st of December 1736* (Edinburgh: Alexander Kincaid, 1736). The books Areskine purchased are listed on p. 5 of the sale catalogue.

<sup>79</sup> NLS MS 3802: Interleaved clerk’s copy with buyer’s names and prices of *A catalogue of valuable books, in several languages and faculties, viz. divinity, law, medicine, history, philosophy, mathematicks, with several of the best editions of the classicks, a curious collection of pamphlets and controversies, &c being the library which belong’d to Sir Alexander Seaton of Pitmedden, Baronet, lately deceased. To be sold by way of auction on Munday the 11. Day of January 1720* (Edinburgh, 1719).

Wilson made their way to ‘the second Story of the first Turnpike below the Head of Blackfriar’s Wynd’ because the location of the sale is described on the verso of the title page of the catalogue for the auction of the books of Sir Alexander Seton (or Seaton) of Pitmedden. The seller and his clerk stopped to put up some placards that advertised the auction before climbing the stairs.<sup>80</sup> Wilson readied his ledger to record the sales which would take place that afternoon from 2 pm until 6 pm. He had a copy of the catalogue interleaved with blank pages which he numbered by lot so that he could record the purchaser and price for each book sold. The buyers already knew what they wanted before they arrived so the sale could move along quite quickly. They had been able to look at the wares on offer for eight days before the sale and they had catalogues which they had bought from McEuen or other booksellers’ shops or which they had been able to peruse in coffee shops.<sup>81</sup>

The advocate, knight, judge, politician, and Baronet of Nova Scotia, Alexander Seton had died the previous year.<sup>82</sup> Among his publications was a treatise on *Mutilation and Demembration* which was published in 1699 as a supplement to Sir George Mackenzie’s *The law and customs of Scotland in matters criminal* (F 221). Douglas J. Cusine has pointed out that the works, mostly of criminal law, that Seton cited in this treatise were present in his private library.<sup>83</sup> Seton had an extensive library of legal books – 596 titles were listed in the auction catalogue – but his large book collection as advertised also included theological works (1,302 titles), historical works (697 titles), works on the natural sciences, mathematics, and medicine (290 titles), and miscellanies (194 titles). A total of 3,080 lots were offered at the auction on 11 January. The focus here is only on the ‘Libri Juridici’ section of the sale.

Areskine bought ten books at the Pittmedden auction. He was one of forty six named buyers of law books at the sale.<sup>84</sup> These included twenty two advocates,<sup>85</sup> two

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<sup>80</sup> *Catalogue of valuable books*, title page.

<sup>81</sup> *Ibid.*

<sup>82</sup> Douglas J. Cusine, ‘Sir Alexander of Pitmedden’, in *Miscellany six by various authors*, ed. by Hector L. MacQueen (Edinburgh: Stair Society, 2009), pp. 29-44 (p. 31). I am grateful to Hector MacQueen for drawing my attention to this essay.

<sup>83</sup> *Ibid.*, p. 41.

<sup>84</sup> I have not been able to identify all of the buyers at the sale. ‘Mr Smith’, ‘Mr McKinzie’, ‘Robert Taylor’, ‘Mr Pagitor’, ‘David Stewart’, ‘Mr Creichie’, ‘John Lang’, and ‘Mr McDonald’ remain elusive at time of writing.

<sup>85</sup> NLS MS 3802, ff. 23<sup>v</sup>-31<sup>v</sup>. Charles Areskine, William Clerk (1681-1723), John Erskine (1695–1768), Alexander Drummond (or David Drummond), Andrew Fletcher (1692-1766), James Gillon (d. 1749), ‘James Graham’ (there are several advocate candidates), ‘Mr Grant’ (there are several advocate candidates), Alexander Hay (d. 1745), Archibald Inglis (1696-1754), Patrick Leith (d. 1731), John Ross

judges,<sup>86</sup> one Writer to the Signet,<sup>87</sup> two professors,<sup>88</sup> four booksellers, including McEuen,<sup>89</sup> two institutions (the Advocates Library and the University of Glasgow), two nobles or members of the landed gentry,<sup>90</sup> two purchasers who may be related to Edinburgh booksellers,<sup>91</sup> and two members of the Seton family.<sup>92</sup>

Among the major buyers at the auction were the Advocates Library, and the advocates John Erskine, John Spottiswood, and John Ogilvie. McEuan also featured heavily as a buyer at the auction he was managing since he was fulfilling commissions for out-of-town buyers. Presumably the other booksellers present also acted in this way for remote clients. Only three lots from the legal books part of sale failed to find buyers: George Adam Struve, *Syntagma juris feudalis* (Jenae, 1669),<sup>93</sup> Struve's *Jus canonicum* (Leipzig, 1688), and Wigle van Aytta (*Virgilis Zuichemus*), *De testamentis* (Leeuwarden, 1643). The rest of Seton's varied collection of texts of civil and canon law, treatises, collected works of continental judges and professors, feudal law, and Scots law were sold.

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Mackie, Kenneth Mackenzie of Dolphinton, 'Mr McKinzie' (there are several advocate candidates), Archibald Murray, Alexander Nairn (or Robert Nairn), 'Mr Pringle' (there are several advocate candidates), John Ogilvie, William Scot, John Spottiswood of that Ilk, Archibald Stewart, and Alexander Wedderburn (or Peter Wedderburn). For these and the possible candidates see *The Faculty of Advocates in Scotland with genealogical notes*, ed. by Francis J. Grant (Edinburgh: Scottish Record Society, 1944).

<sup>86</sup> Sir William Calderwood of Polton (Lord Polton) (1660-1733) and Sir James Mackenzie of Royston (Lord Royston) (1671-1744).

<sup>87</sup> James Anderson (1662-1728). See *The Society of Writers to His Majesty's Signet: with a list of the members and abstracts of the minutes of the Society, the commissioners and council and the early history of the Scottish Signet* (Edinburgh: EUP, 1936), p. 61. Anderson was also an author: Areskine had four of his works (F 169, FM 39, QM 5, OM 183). Anderson's library was sold in London in 1729. See *Catalogus librorum praestantissimorum in omnibus ferè artibus et scientiis; or, A catalogue of the libraries of...James Anderson.. late Post-Master-General of Scotland; and of a celebrated judge and lawyer in England...; likewise a collection of curious books lately imported from Scotland...; which will be sold very cheap, [the lowest price fix'd in each book] on...the 17th of.. April, 1729, by Andrew Millar* (1729), ESTC, T61934.

<sup>88</sup> Alexander Dunlop (1684-1747), professor of Greek at Glasgow, and Charles Mackie (1688-1770), professor of history at Edinburgh.

<sup>89</sup> The others were Thomas Ruddiman who was buying for himself as well as acting on behalf of the Advocates Library, and the Edinburgh booksellers George Stewart (active 1716-1734) and John Paton ('in the Parliament Close', 1716-1754). Plomer, pp. 233, 281.

<sup>90</sup> John, third earl of Kintore (1699-1758). He succeeded to his title in 1718 and would marry, in 1729, Areskine's relative, Mary, daughter of James Erskine, Lord Grange. *The Scots peerage founded on Wood's edition of Sir Robert Douglas's Peerage of Scotland containing an historical and genealogical account of the nobility of the kingdom*, ed. by James Balfour Paul, 5 (Edinburgh: David Douglas, 1908), p. 241. The other was, possibly, William Baird of Auchmedden.

<sup>91</sup> Arthur Henderson may have been a relative of the bookseller Alexander Henderson who had a shop in the Luckenbooths from 1692 to 1709. Plomer, p. 152. David Watson may have had a connection with James Watson, printer in Edinburgh who had a shop next door to the Red Lion and opposite the Luckenbooths from 1695 to 1722. Plomer, p. 303.

<sup>92</sup> 'Thom. Seaton' and 'Capt. Seaton'.

<sup>93</sup> Areskine had an edition of 1690 (Q 148, now NLS, Alva.210).

Seton's books came from across Europe. They range from humanist editions of the *Corpus iuris civilis*, customary law from across the continent, and treatises on specific legal problems. Areskine's ten selections from the sale reveal something of the variety of books on offer. The books he bought on 11 January 1720 are now mostly in the Alva Collections in Edinburgh.

### **Folios**

Lot 122, 'Corasi (*Jo.*) Opera omnia per Foresterum, II Voll *Wit*, 1603' (F 79)

### **Quartos**

Lot 29, 'Langlaei, (*Ja.*) Semestria, *Paris* 1611' (Q 22)

Lot 31, 'Costa (*Jo. Bapt.*) De congrua in jure rerum partitione. *Item*, Hesel [sic] (*Jo.*) Loci communes juris practice, *Nov.* 1677' (Q 5, now NLS, Alva.116-117(1-2))

Lot 32, 'Mattaeus (*Ant.*) De auctionibus, *Traj.* 1653' (Q 150, now AL, Alva Coll., 148)<sup>94</sup>

Lot 56, 'Regneri (*Cypr.*) Censura Belgica V. Voll. *Utraj.* 1669' (Q 82, now NLS, Alva.195-197(1-2))

Lot 109, 'Pancirollus (*Guid.*) De clavis legum Interpretibus, *Ven.* 1655' (Q 40)

Lot 133, 'Harprectus (*Jo.*) Ad Instituta, IV Voll. *Francof.* 1658' (Q 97, now NLS, Alva.224-225)

### **Octavos**

Lot 52, 'Barclaius (*Gul.*) De rebus creditis. *Item* De jurejurando, *Par* 1605' (O 94, now NLS, Alva.317)

Lot 70, 'Rittershusius (*Geo.*) De jure Asylorum, *Argent.* 1624' (O 162, now NLS, Alva.258)

Lot 146, 'Henryson (*Edw.*) Adversus Goreanum de Jurisdictione, *Par* 1555' (O 122)

Lot 166, '*Welwood* (*Will.*) Of Sea-Laws, *Ibid.* [London] 1636' (O 235, now NLS, Alva.85)

Since his purchases came to a total value of more than twenty shillings, Areskine would have been able to claim back the sixpence he paid for the catalogue (if he had bought a copy).<sup>95</sup> All of the books he bought were from the legal section of the sale. Other buyers, like his cousin John Erskine, seem to have attended all day and made

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<sup>94</sup> Where better to buy a book about the law of auctions than at an auction?

<sup>95</sup> *Catalogue of curious and valuable books*, verso of title page.

selections from the other parts of the auction. Erskine, for example, bought the only book by Francisco Suárez that sold from the books listed in the theological section, a copy of *De legibus* published in Antwerp in 1613.<sup>96</sup>

### **Book buying evidence in correspondence and accounts**

Areskine also bought books by correspondence and acted as a subscriber for some of the titles found in his catalogue. Among the works he sponsored were some by John Fordun (FM 59), John Harvey (QM 8), Colin Maclaurin (QM 118), John Major (QM 76), Robert Monteith (OM 39), and Nicholas Saunderson (QM 104). Presumably the copies in his library list were the results of his patronage. Subscription publishing could cross national boundaries. For example, Areskine sent funds to Amsterdam to help fund the publication of Jean Dumont, baron de Carlsroon's *Corps universel diplomatique du droit des gens* (F 69) in 1731. One William Monro wrote to Areskine to request remittance of the subscription fee:

Sir Please to give the Bearer £2:2<sup>s</sup>:6<sup>d</sup> Sterling as the full Subscription price of the 4 last Volums of Corps Diplom. viz the 13.14.15.&16<sup>th</sup> Volums. the Mony being forthwith to be remitted to Holland by Sir Your humble Servant W<sup>m</sup>. Monro.<sup>97</sup>

All of the evidence we have for Areskine's purchasing practices postdates his early academic career. The 1731 catalogue lists the collection of an established professional man known for his learning and it lacks the titles we might expect to find which relate to subjects from his earlier career as a regent at the University of Edinburgh. By 1731 Areskine may have passed some of these on to his sons who were, at least in part, schooled at home<sup>98</sup> before setting out for their own university educations. Such books were certainly owned by Areskine's son, James, who included them in his own library catalogue of 1774.

James Erskine's account books for 1750 through 1755, although they are incomplete and tell us only very little about his book buying habits, do reveal a close relationship between son and father. The two lent each other money, paid each other's

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<sup>96</sup> NLS MS 3802, f. 7

<sup>97</sup> William Monro, 'Letter' (22 July 1731), NLS MS 5073, f. 176. Dumont had died in 1726 or 1727. The work is attributed to Jean Rousset de Missy with contributions by Jean Barberyac and was published in parts between 1726 and 1731. Michael Bitter, 'George Forbes's "Account of Russia", 1733-1734', *Slavonic and East European Review*, 82 (2004), 886-920 (p. 893).

<sup>98</sup> See e.g. NLS MS 5073, f. 14 where it is said of Charles Erskine that it was known 'how far he was advanced he [the schoolmaster] would scarce advised putting him to school'. William Steuart, 'Letter' (07 July 1726[?]).

taxes, and made joint purchases of wine. James was a frequent purchaser of prints, stationery, and books and his accounts included entries for an ‘Irish Grammar & Dictionary’,<sup>99</sup> and ‘To an Engl. Telemachus for Hughy<sup>100</sup> as N. years gift’.<sup>101</sup> In 1753, he recorded in his ‘Account of Books & c bought’ that his ‘By Yearly Expense for books’ had been £15, 17s, 3p. The bulk of this total - £15, 5s, 3p - went ‘To Kincaid & Donaldson’s acco<sup>tt</sup>’, on 01 June 1753. The rest of the money went to pay for ‘a ream of papers’.<sup>102</sup> Frustratingly, the account book does not list the titles of the books that James bought. Alexander Kincaid and Alexander Donaldson ran a business together as printers, stationers, and booksellers in Edinburgh from 1751 until 1758.<sup>103</sup> This was one of the largest book retailing outlets in Edinburgh and the partnership printed new books as well as managing auctions.<sup>104</sup> Areskine’s 1731 manuscript lists several collections of statutes printed by them<sup>105</sup> so it is likely that Areskine would have spent a similar amount on account with them as his son did during the 1750s.

In addition to the books themselves, booksellers provided services to help book owners manage their growing collections. In 1766, for example, Robert Dundas of Arniston paid the Edinburgh bookseller John Balfour’s ‘Clerk...a Reward for writing fairly the Catalogue of the Library’.<sup>106</sup> Booksellers were also commissioned to create posthumous inventories of collections. In 1840, the Edinburgh bookseller Thomas G. Stevenson compiled an inventory of Baron David Hume’s collection in compliance with the terms of the Baron’s will.<sup>107</sup> Booksellers therefore used their knowledge of books to assist with the administrative tasks associated with book ownership.

The eighteenth century British book trade was lively and books crossed borders and moved throughout society. Some of Areskine’s books contain evidence about their

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<sup>99</sup> James Erskine, ‘Account book of James Erskine, Lord Alva, 1750-5’, f. 4v. (3 JULY 1750, 12s).

<sup>100</sup> ‘Hughy’ was James’s wife’s young brother, Hugh Macguire. Scottish educational theorists that thought the Homeric character Telemachus’s adventures were an entertaining way to educate children about morality. See Henry Hutchison, ‘An eighteenth-century insight into religious and moral education’, *British Journal of Educational Studies*, 24 (1976), 233-41 (p. 238).

<sup>101</sup> Erskine, ‘Account book’, f. 10v. (7 Jan 1751, 4 s, 6p).

<sup>102</sup> *Ibid.*, ff. 68v-69.

<sup>103</sup> *Scottish Book Trade Index*, available at

<[http://www.nls.uk/catalogues/resources/sbti/kincaid\\_lawson.html](http://www.nls.uk/catalogues/resources/sbti/kincaid_lawson.html)> [accessed 30 July 2009].

<sup>104</sup> For Kincaid and Donaldson see Richard B. Sher, ‘Kincaid, Alexander (1710–1777)’, *ODNB* (Oxford: OUP, 2004)<<http://www.oxforddnb.com/view/article/65021>> [accessed 30 July 2009] and J. J. Caudle and Richard B. Sher, ‘Donaldson, Alexander (*bap.* 1727, *d.* 1794)’, *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/64278>> [accessed 30 July 2009].

<sup>105</sup> At O 239.

<sup>106</sup> Pat Wigston, ‘A grain of truth’, *Architectural Heritage*, 12 (2001), 13-26 (p. 24).

<sup>107</sup> David Fate Norton and Mary J. Norton, *The David Hume library* (Edinburgh: Edinburgh Bibliographical Society; NLS, 1996), p. 21.

previous owners while others can be traced in later collections. As we shall see in Chapter VIII below, the books held in the Alva Collections of the National Library of Scotland and the Advocates Library show that books desired by Scottish buyers were well-travelled and retained their interest for decades or even centuries.



## Law Books in Eighteenth Century Scotland

One cannot fully understand the law and the legal profession without understanding its history. One cannot understand that history without understanding the intimate connections between law, lawyers, books, and libraries. No one can truly call themselves a legal historian without also acknowledging that they are historians of the book, of publishing, of bookselling, and of libraries. And, thus, we can say that the history of law is also the history of the law book.<sup>1</sup>

### Areskine's law books

The story of Charles Areskine's library started centuries before his cataloguer dipped his quill into ink to record the books on his shelves. Areskine's eighteenth century book collection brought together centuries of legal heritage. His library catalogue of 1731 lists 824 titles as 'Books', that is, as is clear when examining the list, books on legal topics, while the rest of his collection numbered 489 titles and was described as 'miscellaneous'. This means that, according to their cataloguer, 63 per cent of the titles listed specifically considered aspects of law. His library, as John Cairns has pointed out, shows that Areskine took a scholar's approach to his exploration of the history and science of law.<sup>2</sup> Areskine's library was international in scope. His selection included books about the sources and theory of law and some of the books he chose indicated his interest in humanist scholarship, especially that of the Dutch 'elegant' tradition. His collection also featured a rich selection of books on natural law written by Hugo Grotius and his German followers in particular. Given that Areskine had been a teacher and was appointed as the Regius Professor of the Law of Nature and Nations at the University of Edinburgh before he undertook his professional training, this aspect of his legal book collection is not surprising: his approach to the study of law was that of a serious scholar. Areskine's selection of books about Scots law included works about inheritance and land ownership, texts that we would now call institutional writings, criminal and maritime law, and the contemporary works of his judicial colleagues. His English law

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<sup>1</sup> M. H. Hoeflich, 'Legal history and the history of the book: variations on a theme', *University of Kansas Law Review* 46 (1997-8), 415-31 (p. 431).

<sup>2</sup> See John W. Cairns, 'Alexander Cunningham's proposed edition of the Digest: an episode in the history of the Dutch Elegant School of Roman law (part II)', *Tijdschrift voor Rechtsgeschiedenis*, 69 (2001), 301-59 (p. 356) and John W. Cairns, 'The origins of the Edinburgh Law School: the Union of 1707 and the Regius Chair', *Edinburgh Law Review*, 11 (2007), 300-48 (pp. 334-9).

books, meanwhile, contained all the texts an English barrister needed to practice. His library included ‘forms of process’ for Scottish legal practice, works about criminal law, and collections of Scottish, English, and British Acts of Parliament. Areskine used books like these as his ‘tools of trade’ as his fictitious colleague Paulus Pleydell described the contents of his own working library.<sup>3</sup> Advocates relied on having access to books like these in eighteenth century legal practice.

Early modern law books ‘were produced in a bewildering array of types’ including commentaries on the *Corpus iuris civilis*, monographs and treatises on specific legal topics, and commentaries on the laws of particular territories.<sup>4</sup> The invention of the printing press widened book distribution and scholarly communication across Europe.<sup>5</sup> Legal texts about Roman law and the civilian tradition were published in Latin and therefore accessible for an international educated class of legal professionals. Figures 1 and 2 show where Areskine’s books were produced across the continent. Figure 1, organised by city, shows that the majority of his books were published in the two major publishing centres closest to him, London and Edinburgh. Figure 2, a chart showing the regions of publication, however, shows that books published in the Low Countries and Germany formed the largest part of Areskine’s collection overall.<sup>6</sup>

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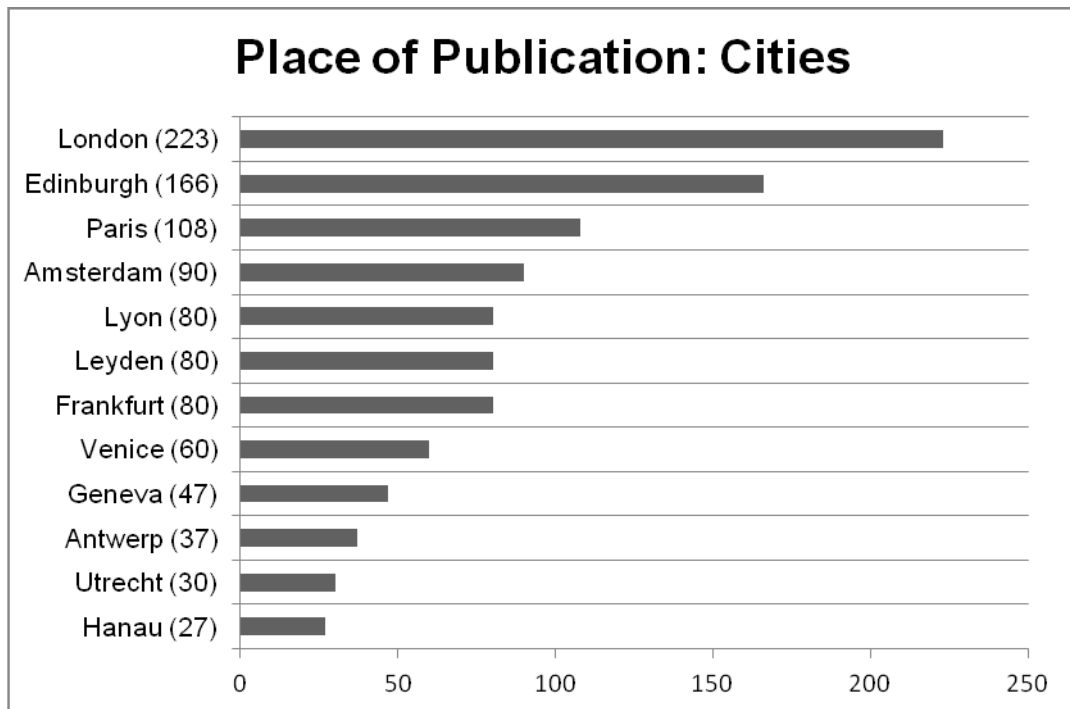
<sup>3</sup> Walter Scott, *Guy Mannering; or, the Astrologer*, 4th edn, 2 (Edinburgh: James Ballantyne, 1817), p. 290. The lawyer and book collector Andrew Crosbie is thought to be the original for Pleydell. Areskine certainly knew Crosbie: they were related by marriage and Crosbie was one of the ten investors in Areskine’s cobalt mining project at Alva. Stephen Moreton, *Bonanzas and Jacobites: the story of the Silver Glen* (Edinburgh: National Museums Scotland, 2008), p. 58. Crosbie also saw Areskine’s will through the probate court. NA, Prob 11/888, f. 139. See Irma S. Lustig, ‘Crosbie, Andrew (1736–1785)’, in *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/6782>> [accessed 18 January 2011].

<sup>4</sup> Alan Watson, *The making of the civil law* (Cambridge, MA; London: Harvard University, 1981), p. 77.

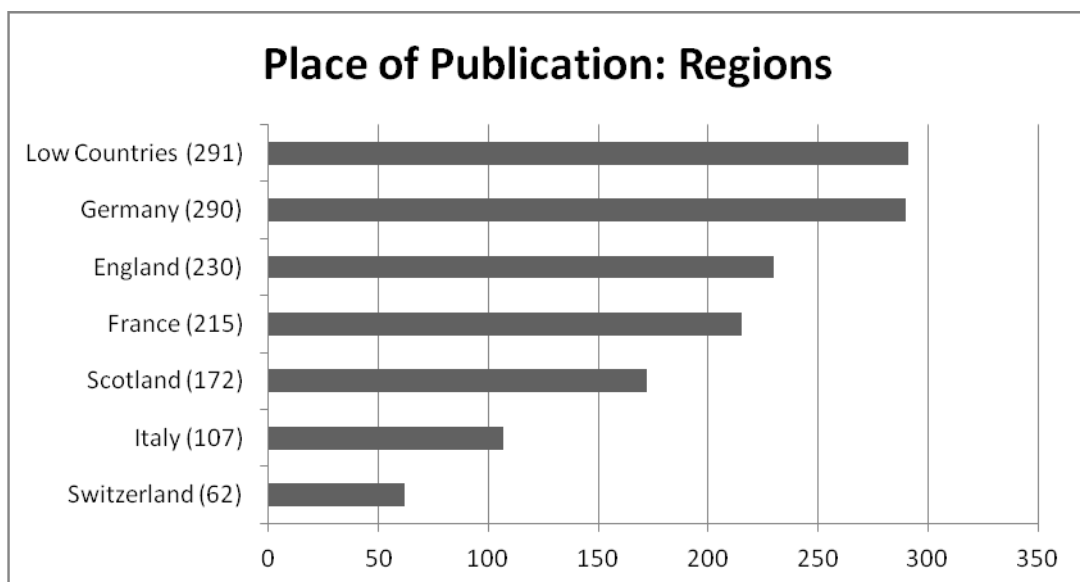
<sup>5</sup> Randall Lesaffer, *European legal history: a cultural and political perspective*, trans. by Jan Arriens (Cambridge: CUP, 2010), p. 345. This statement needs to be qualified. The arrival of print did not immediately change scholarly practices. For the debate about the impact of the printing press on the diffusion of knowledge, see Adrian Johns, *The nature of the book: print and knowledge in the making* (Chicago; London: University of Chicago, 1998), pp. 10-20 where Johns challenges Elizabeth Eisenstein’s central thesis that printing meant that texts became ‘fixed’ after the arrival of print in her *The printing press as an agent of change* (1979). As Douglas Osler points out early modern authors of legal texts took advantage of frequent re-issues of their works and would ‘add, cancel or emend’ them every ‘two or three years’. Douglas Osler, ‘Legal humanism’ <<http://www.rg.mpg.de/en/forschung/osler-legal-humanism/>> [accessed 10 September 2011]. Sir George Mackenzie was aware of the fluid nature of early modern legal texts and recommended that the Advocates Library should acquire not only first editions of works, since he assumed their authors would have played a part in their creation, but also editions published within their authors’ lifetimes, the latest editions, and the most notable ones. George Mackenzie, ‘Oratio inauguralis’, in *Oratio inauguralis in apienda jurisconsultorum bibliotheca*, trans. by James H. Loudon (Edinburgh: Butterworths, 1989), pp. 46-86 (pp. 74-5).

<sup>6</sup> I have treated Scotland as a separate region here since many of Areskine’s books predated the Union of 1707 and also because I want to highlight the importance of books of Scottish origin in Areskine’s library. A ‘British’ region would hide some of the character of the collection. I realise that similar problems exist

Although books from northern European protestant areas, especially those which had active university presses, dominated his selection, Areskine's book collection crossed boundaries and included selections from the south, especially from Italy.



**Fig. 1 Cities where 25 books or more of Areskine's books were published**



**Fig. 2 Regions where 50 or more of Areskine's books were published**

for the Netherlands and the German regions and I hope the breakdown of the publications by city (Fig. 1) clarifies the matter somewhat.

It does not matter how closely he read his books or if he read them at all: Areskine took care to record these books in a catalogue and placed them on his shelves in an organised fashion so there is no doubt that they were important to him.

For Areskine and the Scottish legal practitioners of his time, books were part of a living legal system. They used books as sources of law to support contemporary legal arguments. Advocates submitted their signed pleas in writing.<sup>7</sup> Lawyers' Petitions, Answers, 'Informations', and Memorials, that is, the written pleadings presented to the court<sup>8</sup> were peppered with references to such authorities as Justinian's *Digest*, the *lex Rhodia*, and the natural law texts of Grotius and his followers. Lawyers regularly cited continental authors when dealing with criminal matters. Written pleadings were produced and amended quickly: printers might work overnight to supply papers in the morning which lawyers would then correct and have re-printed for distribution the same evening.<sup>9</sup> Having a private library for reference would therefore have been a valuable asset for Areskine in his professional life.

Areskine's library contained books that considered the structure and heritage of the Scottish legal tradition and which defined it. Texts later called 'institutional' works modelled on Justinian's *Institute* defined Scots law as it existed. Three of the most important of these works were published during Areskine's lifetime and these reinforced the conventions that developed Scots law into a mixed legal system that combined civilian learning, continental law, local custom, and English common law.

## Early modern law books

The law as set down by the Emperor Justinian in the early sixth century and then preserved in the books of the *Corpus iuris civilis* was only one of many sources of law by the early modern period. Laws regulating international trade, property ownership and inheritance, and criminal matters developed to address regional concerns.

Jurists worked to establish the interrelationships between the *ius commune*, the civilian tradition, and their local customary laws across early modern Europe. Klaus Luig

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<sup>7</sup> John Spotiswood, *The form of process before the Lords of Council and Session* (Edinburgh: John Moncur, 1711), pp. xl-lxi.

<sup>8</sup> For descriptions of the different types of written pleadings, see John A. Inglis, 'Eighteenth century pleading', *Juridical Review*, 19 (1907-1908), 42-57 and Angus Stewart, 'The Session Papers in the Advocates Library', in *Miscellany four by various authors*, ed. by Hector L. MacQueen (Edinburgh: Stair Society, 2003), pp. 199-223 (pp. 201-02).

<sup>9</sup> John Finlay, 'The lower branch of the legal profession in early modern Scotland', *Edinburgh Law Review*, 11 (2007), 31-61 (p. 41).

has described the development of written forms of law as a four stage process. First, the study of Roman law throughout the middle ages provided the basis of the *ius commune* of Europe. The second stage saw jurists trying to reconcile differences between Roman law and their local law. Local statutes and customs were blended with Roman law to create relevant systems. In the third stage ‘particular legal systems were commented upon and described separately from the *ius commune*’. The fourth stage saw the emergence of national legal systems as objects of study in their own right. Roman law was ‘no longer the central topic of European legal science’ and Latin was replaced by works in vernacular languages as jurists discussed ‘the indigenous legal sources of statutory law and decisions of the courts’.<sup>10</sup> All of this activity ensured a steady supply of book publication at every stage.

As Luig relates, ‘the four stages of the reception and assimilation of Roman law and the development of national legal systems did not occur in a straightforward chronological order’.<sup>11</sup> The legal literature of the four stages existed concurrently.<sup>12</sup> Roman law remained as an international focus of study and works about it were ‘frequently reprinted in almost all European countries’.<sup>13</sup> Manlio Bellomo agrees and emphasises that ‘the various movements – legal humanism, Italian Bartolism, “practical jurisprudence”, German *Usus Modernus Pandectarum*, the “Seconda Scholastica” – were all European in scope and were present everywhere’.<sup>14</sup> Natural law joined Roman law as another ‘international aspect of legal science...as practiced in the system of Grotius and particularly in Pufendorf’s compendium *De officio hominis et civis*’.<sup>15</sup> Areskine had two copies of Pufendorf’s book in his library (O 37, O 38). In Scotland it was ‘the standard text-book of moral philosophy at the beginning of the eighteenth century’.<sup>16</sup> In

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<sup>10</sup> Klaus Luig, ‘The institutes of national law in the seventeenth and eighteenth centuries’, *Juridical Review*, new ser., 17 (1972), 193-226 (pp. 194-5).

<sup>11</sup> *Ibid.*, pp. 197-8.

<sup>12</sup> *Ibid.*, p. 198.

<sup>13</sup> *Ibid.*

<sup>14</sup> Manlio Bellomo, *The common legal past of Europe, 1000-1800*, tr. Lydia G. Cochrane (Washington, DC: Catholic University of America, 1995), p. 224.

<sup>15</sup> Luig, p. 198. Pufendorf’s work was published in more than 150 editions between 1673 and 1964. Klaus Luig, ‘Zur verbreitung des naturrechts in Europa’, *Tijdschrift voor Rechtsgeschiedenis*, 40 (1972), 540-57 (p. 546).

<sup>16</sup> Peter Stein, ‘From Pufendorf to Adam Smith, the natural law tradition in Scotland’, in *The character and influence of Roman law: historical essays* (London: Hambledon, 1988), pp. 381-93 (p. 381). Areskine’s copy at O 38, now NLS, Alva.126, is an edition by Gershom Carmichael of 1724 and this shows signs that Areskine’s son James had access to it at an early age. An inscription on the third from free endpaper reads ‘James Erskiy’ while another inscription on the third free endpaper from the back reads ‘James Earsken his Book’.

Scotland, as in France, Venice and Naples, ‘the point at issue in the construction of a national legal system was to bring together all indigenous legal rules in to a body of theory and at the same time to include the received rules of Roman law’.<sup>17</sup>

By the late seventeenth century James Dalrymple, Viscount Stair and Sir George Mackenzie were able to consider Scots law as an ‘intelligible system’.<sup>18</sup> Advocates continued to study and be examined on the texts of the *Corpus iuris civilis* as a demonstration of their humanist skills and virtues: their use of Roman law allowed Scottish lawyers to see themselves as part of a pan-European legal tradition.<sup>19</sup> Alongside civil law and statute law, the judge-made law of Scotland was recorded in ‘Practicks’ and ‘Decisions’ and this generated its own literature. By the eighteenth century, ideas from natural philosophy and social theory influenced Scottish lawyers.<sup>20</sup> These new ideas helped Scottish lawyers to defend the separateness of Scots law after the Union of 1707. Scots law had developed into a legal system which combined elements of the civil law tradition, feudal law, customary law, and mercantile law.

Despite the Union of 1707, Scots law had more in common with European traditions than it did with English practice. This was based on an inheritance of Roman law as well as with the desire to give the law a modern, systematic approach. As John Cairns has pointed out, the ‘Glorious’ Revolution of 1688-9 galvanised Scottish legal theorists to use natural law ideas to justify the new political order.<sup>21</sup> Scots law, both criminal and civil, was organised and explained by Sir George Mackenzie of Rosehaugh and James Dalrymple, Viscount Stair, in the late seventeenth century.<sup>22</sup> Mackenzie and most of his contemporaries relied on the authority of Roman civil law to resolve any uncertainties in legal practice.<sup>23</sup> Stair, however, preferred customary law which he placed in the context of Grotian natural law.<sup>24</sup> In practice both traditions were used and, by 1700, Scots law was a blend of Roman law and local usage.<sup>25</sup>

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<sup>17</sup> Luig, p. 201.

<sup>18</sup> John W. Cairns, ‘The formation of the Scottish legal mind in the eighteenth century: themes of humanism and enlightenment in the admission of advocates’ in *The legal mind: essays for Tony Honoré*, ed. by Neil MacCormack and Peter Birks (Oxford: Clarendon, 1986), pp. 253-78 (pp. 262-3).

<sup>19</sup> *Ibid.*, pp. 259-60.

<sup>20</sup> *Ibid.*

<sup>21</sup> John W. Cairns, ‘Attitudes to codification and the Scottish science of legislation, 1600-1830’, *Tulane European and Civil Law Forum*, 22 (2007), 1-78 (pp. 31-2).

<sup>22</sup> Jane Rendall, *The origins of the Scottish Enlightenment, 1707-1776* (London: Macmillan, 1978), p. 5.

<sup>23</sup> Cairns, ‘Attitudes’, pp. 15, 18.

<sup>24</sup> *Ibid.*, pp. 19-20.

<sup>25</sup> *Ibid.*, p. 24.

## Books as physical legal transplants

Manlio Bellomo has observed that the vast quantity of legal texts produced in the early modern period must have catered for a wide audience of interested buyers since a customer base made up of ‘a handful of cultivated humanists eager to know that past’ could not have sustained the market for them. Legal book buyers therefore ‘must have included judges, lawyers, professors, and students, who used that rich legacy of works in their everyday activities and who used them as tools and as a vital part of their present, not their past’.<sup>26</sup> Bellomo goes on to point out that ‘for nearly two centuries, the printing presses worked ceaselessly to print works on the *ius commune*, slowing only in the 1620s or 30s’. Furthermore, ‘no judge or lawyer of any prominence failed to own in his personal library at least one glossed corpus of civil law and of canon law’.<sup>27</sup> Areskine’s eighteenth century collection reflected these practices. He had an edition of what his catalogue described as ‘Corpus Juris Civilis Glossatūm. 6 Vol:’ which was produced in Lyon in 1627 (F 2). This edition featured not only the gloss of the medieval commentator Accursius but also the observations of the later jurists Pierre Brosses, Jacques Cujas, Denis Godefroy, and Antoine Leconte. The volumes were therefore the product of humanist scholarship and carried the influences of both Accursius and of humanist jurists into Areskine’s library. Areskine’s copy of ‘Corpus Juris Canonici’ of 1624 (F 174) was also produced in Lyon.

A book was a physical ‘transplant’.<sup>28</sup> Legal books carried ideas across regions and their readers were able to interpret them and graft or weave them into their own legal systems. Douglas Osler has suggested that geography and religious difference could prevent books from travelling to different parts of Europe.<sup>29</sup> Scottish legal scholars, however, enjoyed good access to the continent and to the thriving book markets of Britain. They were able to import their books and the ideas that they contained from a variety of sources. Areskine’s library was his collection of texts that he found useful as sources for his study and practice of law.

Alan Watson has pointed out that ‘law that is in writing, hence readily available, is *an* or *the* obvious source for borrowing’.<sup>30</sup> Roman-Dutch law was articulated by talented

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<sup>26</sup> Bellomo, p. 216.

<sup>27</sup> Ibid.

<sup>28</sup> Alan Watson, *Legal history and a common law for Europe: mystery, reality, imagination* (Stockholm: Institutet för Rättshistorisk Forskning, 2001), p. 109.

<sup>29</sup> Douglas J. Osler, ‘The fantasy men’, *Rechtsgeschichte*, 10 (2007), 169-90 (pp. 181-2)

<sup>30</sup> Alan Watson, *The evolution of law* (Oxford: Blackwell, 1985), p. 95.

jurists, including Grotius, Huber, and Voet, and this meant that ‘Dutch sources were very rich and persuasive’ both domestically and in other jurisdictions.<sup>31</sup> ‘Legal development depends on the lawyers’ culture’, and lawyers ‘habitually seek authority’ to resolve legal issues.<sup>32</sup> In their search for the ‘best law’, lawyers select particular systems as sources of law.<sup>33</sup> Scottish advocates who had completed their legal educations in the Low Countries appreciated the scholarship of Dutch jurists. Their continental educations exposed them to Dutch jurisprudence and their similar legal systems ensured that many of their laws were compatible. The Scottish legal elite had easy access to Dutch law books.<sup>34</sup> But it is also important to note that jurists from across Europe were published or re-printed in the Netherlands.<sup>35</sup> Furthermore, there were very close links between Dutch and German scholarship. Osler, as a result of his bibliographical research, recommends thinking of Roman-Dutch law ‘as a series of concentric circles’ with the first as ‘the legal system of the province, particularly that of Holland’. The second as the law of the ‘other provinces of the Netherlands’, the third as the ‘wider circle of the whole Germano-Dutch legal family’, and the fourth as ‘works that might be borrowed or adapted from other European legal families’.<sup>36</sup> This is plausible.

Areskine’s library included works by major jurists from the Netherlands including Joost van Damhouder (Q 146), Cornelius van Nieustad (Q 204), Johan van den Sande (F 96), Henricus Zoesius (F 99), Arnold Vinnius (Q 7, QM 17, O 33, O 52, O 53), Paul Voet (Q 6), Simon Groenewegen van der Made (Q 16), Simon van Leeuwen (F 77, O 52), Ulrich Huber (Q 52, Q 53, Q 187), Johannes Voet (F 38, O 138, O 139, O 140, O 253), Gerard Noodt (Q 72, Q 73, Q 74, Q 75), and Cornelius van Bijkershoek (Q 54, Q 172, O 115, O 116).<sup>37</sup> Dutch jurists were looking at some of the same questions about the relationships between civilian law, customary law, and natural law that Scottish

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<sup>31</sup> Patrick Glen, *On common laws* (Oxford: OUP, 2005), p. 59.

<sup>32</sup> Watson, *Evolution*, p. 117.

<sup>33</sup> *Ibid.*, p. 118.

<sup>34</sup> So much so that Dutch law books from the early modern period now found in modern collections across Europe often have Scottish provenances. Osler, ‘Fantasy men’, pp. 182-3.

<sup>35</sup> Douglas J. Osler, ‘A survey of the Roman-Dutch law’, in *Iuris historia: liber amicorum Gero Dolezalek*, ed. by Vincenzo Colli and Emanuele Conte (Berkeley, CA: Robbins Collection, 2008), pp. 405-22 (p. 415).

<sup>36</sup> *Ibid.*, p. 416.

<sup>37</sup> For a survey of these, see J. W. Wessels, *History of the Roman-Dutch law* (Grahamstown, Cape Colony; African Book Co., 1908; repr. with a new introduction by Michael H. Hoeflich, Clark, NJ: Lawbook Exchange, 2005), pp. 201-340.



jurists were considering and they were writing books and treatises which showed their awareness of customary law even as the universities provided training in Roman law.<sup>38</sup>

While he certainly had – and cited – works by Dutch jurists on his bookshelves, Areskine also had books by German scholars of natural law, Scottish decisions, practicks, and compilations of the legal system, multiple copies of the *Corpus iuris civilis* with commentaries by an international array of scholars, and collections of French and Italian customary law. But Scottish lawyers turned to any available written form of law including the collected customary law of other regions, books on and about the civil law tradition, and even the opinions of classical poets. Some of Areskine’s contemporary jurists, notably Bankton, even sought common ground with the English legal tradition. As we shall see below, Bankton made a study of comparing Scots and English law in his *Institute*. Areskine’s library encompassed multiple legal traditions from multiple places and different times.

Some of the books in Areskine’s library, as we saw in Chapter III above, helped his son to obtain an education in English law. But Areskine also had professional and intellectual reasons to be interested in the English legal tradition. The Union of Scotland with England in 1707 inspired a renewed Scottish interest in the English legal system north of the border. Some of this was for practical purposes. Scottish institutions, such as the new Court of the Exchequer, introduced procedures from English practice.<sup>39</sup> Other introductions from England included English legal terminology and juries.<sup>40</sup> Scottish lawyers also acted in London: the House of Lords acted as a final appeal court for civil cases<sup>41</sup> and Areskine frequently appeared there professionally throughout the 1730s and into the early 1740s.<sup>42</sup>

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<sup>38</sup> M. L. Hewett, ‘The Roman law in Roman-Dutch law – weft or woof?’ in *Roman law at the crossroads: papers of the congress organized by the Department of Roman Law at the University of Utrecht and the Faculty of the University of Namibia* (Windhoek, 30 June-1 July 1997), ed. by J. E. Spruit, W. J. Kamba and M. O. Hinz (Cape town: Juta, 2000), pp. 53-63 (p. 57).

<sup>39</sup> John W. Cairns, ‘Natural law, national laws, parliaments and multiple monarchies: 1707 and beyond’, in *Northern antiquities and national identities: perceptions of Denmark and the North in the eighteenth century*, ed. by Knud Haakonssen and Henrik Horstbøll (Copenhagen, 2008), pp. 88-112, 322-31 (pp. 97-9).

<sup>40</sup> A. L. Murray, ‘The post-Union Court of Exchequer’, in *Miscellany five by various authors*, ed. by Hector L. MacQueen (Edinburgh: Stair Society), pp. 103-32 (pp. 108-10).

<sup>41</sup> Cairns, ‘Attitudes’, p. 29. For House of Lords appeals see John Finlay, ‘Scots lawyers and House of Lords appeals in Eighteenth-Century Britain’, *Journal of Legal History*, 32 (2011), 249-77.

<sup>42</sup> Areskine may have combined his House of Lords appeals activity with his duties as an MP in London. He does not seem to have been involved in any appeals cases after 1741: he lost his Westminster seat in March 1742. For cases in which Areskine played a part see John Craigie, John Shaw Stewart, and Thomas S. Paton, *Reports on cases decided in the House of Lords, upon appeal from Scotland from 1726 to 1757* (Edinburgh: T. & T. Clark, 1849).

Although the Scottish and English legal systems remained separate, Scottish lawyers acquired knowledge of the workings of the English legal system. Furthermore, ‘interest in English law is...very clear from...sources such as the observations on the law of England inserted systematically in Bankton’s *Institute*’.<sup>43</sup> Those, like Areskine, who wanted to know about English law were able to take advantage of the availability of the texts English law students used and the lively publishing market that derived from them to create their own comprehensive collections.

The library Charles Areskine collected included a wide range of legal texts. Chapter IV above looked at Areskine’s books on Roman law. For the remainder of this chapter we will consider two further important aspects of law which are particularly relevant to eighteenth century Scotland: natural law and Scots law.

### **Natural law**

Areskine’s appointment as the first Regius Professor of the Law of Nature and Nations at the University of Edinburgh in 1707 shows the recognition in Scotland of the importance of natural law. Areskine’s early eighteenth century grand tour provided an opportunity for him to buy continental books on the subject. Secular natural law theories had developed throughout the seventeenth century and their ideas took root across Europe. These had a special resonance in a Scotland where the role of law was being carefully considered in the light of changing sovereigns and religious conflict. Natural law was also closely studied by English lawyers who used it as a source of law.<sup>44</sup> It is worth recalling that Areskine held his chair until 1734: he may not have taught the subject but the books in his library show that he had a scholar’s interest in natural law.

Continental theorists like Hugo Grotius and Samuel Pufendorf ‘built a system of law upon what were seen as evident and obvious facts of nature’.<sup>45</sup> By the time he came to publish his *Institutions of the law of Scotland*, Stair was able to ally himself with ‘the learnedest Lawyers, who have thought it both feasible and fit, that the Law should be formed as a Rational Discipline’.<sup>46</sup> A system like this doubtless had appeal for the

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<sup>43</sup> William M. Gordon, *Roman law, Scots law and legal history: selected essays* (Edinburgh: EUP, 2007), p. 315.

<sup>44</sup> D. J. Ibbetson, ‘Natural law and Common Law’, *Edinburgh Law Review*, 5 (2001), 4-20 (p. 10).

<sup>45</sup> Rendall, p. 24.

<sup>46</sup> Stair, James Dalrymple, Viscount of, *The institutions of the law of Scotland, deduced from its originals, and collated with civil, canon, and feudal-laws; and with the customs of neighbouring nations: the first part* (Edinburgh: Printed by the heir of Andrew Anderson, 1681), p. 14. Stair’s interest in the natural sciences was sincere. His *Physiologia nova experimentalis in qua, generales notiones Aristotelis, Epicuri, & Cartesii suppleuntur* was published in

former regent Areskine given his teaching of natural philosophy at the university and his encouragement of his students to discuss the theories of Descartes, Leibniz, and Newton.<sup>47</sup>

Thus, given Areskine's professorial appointment, the law of nature and nations is an area of legal study which is well-represented in his library. Areskine's selection of books on the topic encompasses a wide variety of writings on natural law including books which incorporate aspects of natural law thinking. His 1731 list includes Alberico Gentili's *De iure belli, libri III* (O 61) and writers from the Spanish natural law tradition, which influenced Grotius, like Antonio Agustín (F 58, Q 128, O 21-O 23), Diego Covarruvias (F 4, O 75), Francisco Suárez (F 191, O 280), and Francisco de Vitoria (OM 212). This implies that Areskine was interested in the development of natural law theory before Grotius.

Hugo Grotius's *De jure belli ac pacis*, usually seen as inaugurating the tradition of secular natural law, was originally published in 1625. It was printed in twenty-six Latin editions by 1700 and was also translated into Dutch (by 1626), English (by 1654), French (by 1687), and German (by 1707).<sup>48</sup> Areskine's interest in Grotian texts may also reveal his book collector's instinct since he acquired not only multiple copies of the text but also early editions published in Paris in 1625 (Q 68) and in Frankfurt in 1626 (O 3).<sup>49</sup> He also had French translations by Antoine de Courtin (O 7) and the very influential one by Jean Barbeyrac (Q 188). In all he had ten copies.

*De jure belli ac pacis* inspired a range of commentaries, textbooks, and critiques by authors from across Europe. Areskine also collected these. The editions with commentaries that Areskine owned included one with the author's notes (O4) and others with the notes of Joannes Fredericus Gronovius (O 5), Johann Heinrich Boecler (O 9), Johann von Felden (O 10), and Kaspar Ziegler (O 11). Areskine's textbooks of

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Leyden in 1686. Roger L. Emerson, *Essays on David Hume, medical men and the Scottish Enlightenment: 'Industry, knowledge and humanity'* (Farnham: Ashgate, 2009), p. 8.

<sup>47</sup> Cairns, 'Erskine, Charles'. Areskine outlined his ideas in a set of theses he wrote for his students to defend at their graduation in 1704. See Charles Areskine, *Theses philosophicae, quas, auspice summo numine, generosi aliquot & ingenui juvenes universitatis Jacobi Regis Edinburgensae alumni, hac vice cum laurea emittendi, eruditorum examini subjicient, ad 12. diem Maii, H. Lq. S.* (Edinburgh: Andreae Symson, 1704) and, on these theses, Chapter II above.

<sup>48</sup> Watson, *Making*, p. 92.

<sup>49</sup> Areskine's list also includes copies of Grotius' history, *De rebus Belgicis* (OM 194; OM 199) and *Poemata* (OM 59). Like the Enlightenment scholars who emulated him, Grotius was active in more than one area of intellectual endeavour.

Grotius included versions by Johann Georg von Kulpis (Q 79) and William Scott's textbook for Scottish students (Q 213).<sup>50</sup>

Samuel von Pufendorf (1632-1694) and his followers further developed Grotian natural law as a science.<sup>51</sup> Areskine seems to have collected books by these authors in preference to others. Pufendorf's *De jure naturae et gentium* (Q 65, Q 66)<sup>52</sup> set out his vision of the law of nature by using Stoic philosophy and by emphasising the importance of sociability.<sup>53</sup> Pufendorf clarified his ideas about the sources of law in his *De officio hominis et civis iuxta legem naturalem* (O 37, O 38) where he explicitly divided law from theology.<sup>54</sup> He was also an able historian who turned to both ancient and recent history to develop his theories of law. When he was the official state historian for Sweden, Pufendorf wrote *Commentariorum de rebus Suecicis libri XXVI* (FM 46). His anonymously published *De statu imperii Germanici* (O 34, O 35) used history to criticise the current relations between the Holy Roman Emperor, the Pope, and the German states.<sup>55</sup> Pufendorf also used his historical expertise in his legal works: his *De jure naturae et gentium* includes 3,000 citations from 148 ancient writers.<sup>56</sup>

Pufendorf's followers included Christian Thomasius, Jacob Gottlieb Heineccius, Joannes Franciscus Buddeus, and Johann Nikolaus Hertius. These authors were Areskine's contemporaries and that he collected their books shows that his library held the latest books on natural law and legal theory. Thomasius (1655-1728) developed Pufendorf's rational approach to natural law. While teaching at Leipzig, Thomasius offered courses on Grotius's *De jure belli ac pacis* and Pufendorf's *De officio hominis et civis*. He published his lectures as *Institutiones jurisprudentiae divinae* (Q 96) in which he explored the interdependent nature of reason and sociability and challenged the idea that God's law was anything other than mysterious since it is impossible to know of it beyond what

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<sup>50</sup> Scott had offered a private class on the law of nature and nations at the University of Edinburgh before 1707. For a discussion of his relationship with Areskine and of the appointment of Areskine as the first Professor of the Law of Nature and Nations see Cairns, 'Origins', pp. 326-9.

<sup>51</sup> T. J. Hochstrasser, *Natural law theories in the early Enlightenment* (Cambridge: CUP, 2000), p. 3.

<sup>52</sup> Areskine also had an edition of 1744 which is not listed in his catalogue: AL, Alva Coll., 113 contains his bookplate. He also had Barbeyrac's French translation in an edition of 1734 (Q 64).

<sup>53</sup> Knud Haakonssen, *Natural law and moral philosophy: from Grotius to the Scottish Enlightenment* (Cambridge: CUP, 1996), p. 41.

<sup>54</sup> Ibid, pp. 43, 45. Pufendorf was widely read in England. Ibbetson, p. 5.

<sup>55</sup> Michael Seidler, 'Natural law and history: Pufendorf's philosophical historiography', in *History and the disciplines: the reclassification of knowledge in early modern Europe*, ed. by Donald R. Kelley (Rochester, NY: University of Rochester, 1997), pp. 203-22 (pp. 206-7).

<sup>56</sup> Seidler, p. 205. Pufendorf's extensive library contained more than 4,000 historical works in a variety of languages. Ibid, pp. 207-08.

was revealed in scripture.<sup>57</sup> Thomasius followed Pufendorf's example of using history to illustrate his arguments. He took a humanist approach to his study of Roman law while considering its relevance to contemporary German law in his *Naeavorum jurisprudentiae Romanae antejustinianae libri duo* (Q 94) and he argued that the mingled German and Roman law as found in the *usus modernus* should be separated.<sup>58</sup>

Heineccius (1681-1741) was a pupil of Thomasius. Heineccius's textbooks developed his teacher's idea that Roman law should be studied alongside German customary law.<sup>59</sup> Areskine did not list Heineccius's influential textbook of natural law, *Elementa juris naturae et gentium*, or George Turnbull's translation of it,<sup>60</sup> but he did own the German scholar's humanistic works on Roman jurisprudence (Q 176, O 306).

The natural law theories developed by Pufendorf and his followers were defended in what T. J. Hochstrasser has identified as a series of 'histories of morality'. Published between 1680 and 1750, these show how 'natural law was progressively refined and revised' as it developed.<sup>61</sup> Areskine's library included works by Buddeus (1667-1729) and Hertius (1651/2-1710) from this tradition. Buddeus, a pupil of Thomasius, defended his teacher's concepts of natural law and claimed that Thomasius had resolved problems in defining law and morality in Buddeus's introduction to Philippus Reinhardus Vitriarius's *Institutiones juris naturae et gentium* (O 14). Buddeus expanded on these themes in his own *Selecta iuris naturae et gentium* (O 15).<sup>62</sup> He also published textbooks on the history of philosophy and law. Areskine had two copies of his *Elementa philosophiae practicae* (O 16, O 32).<sup>63</sup> Hertius's 'Commentatio de jurisprudentia universali', which appeared in the first volume of his *Commentationum atque opusculorum de selectis et rarioribus ex jurisprudentia universali, publica, feudali et Romana* (Q 59), continued the expression of the school of Pufendorf's approach to natural law.<sup>64</sup>

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<sup>57</sup> Hochstrasser, p. 116-18.

<sup>58</sup> Luig, p. 208. For a study of Thomasius and Roman law see Thomas Ahnert, 'Roman law in early Enlightenment Germany: the case of Christian Thomasius' *De aequitate celebrata leges secundae codicis de rescindenda venditione* (1706)', *Ius Commune*, 24 (1997), 152-70.

<sup>59</sup> Hochstrasser, p. 143.

<sup>60</sup> For these see Cairns, 'Alexander Cunningham's proposed edition (part II)', p. 357 and Hochstrasser, pp. 16-17, 148.

<sup>61</sup> Hochstrasser, p. 1.

<sup>62</sup> Hochstrasser, pp. 38, 150.

<sup>63</sup> Areskine's library catalogue includes the note: 'N. B. No. 16 and 32 are ye same Book, only different Editions.'

<sup>64</sup> Hochstrasser, pp. 38, 150.

In eighteenth century Scotland, natural law eventually ‘came to be viewed as a theory of justice’.<sup>65</sup> It overtook Roman law as the focus of intellectual reflection on law<sup>66</sup> and Scottish moral philosophy came ‘to be defined in terms of the natural law of Grotius and Pufendorf’ in the eighteenth century.<sup>67</sup> Natural law was cited in the courts.<sup>68</sup> The influential Scottish jurist John Erskine continued the tradition of Grotius, Pufendorf, and Stair in his *Principles* (O 273) and his *Institutes*.<sup>69</sup> By the early eighteenth century, natural law was a transnational force and ‘was established as the most important form of academic moral philosophy in most of Protestant Europe’.<sup>70</sup> Jurists recognised that its theories offered a possible replacement for the *ius commune* since its set of undoubted rules applied to all peoples and nations.

### Scots law manuscripts and books

Scots had recognised that their legal system was unique long before Montesquieu published *The spirit of the laws* (O 283) in 1748.<sup>71</sup> For Montesquieu, the establishment of a universal law was impossible since nations had different climates, religions, employment, manners, and customs.<sup>72</sup> *The spirit of the laws* had an ‘immediate impact in Scotland’ where its ‘ideas were taken up by a group of philosophical thinkers’ and, although its ‘influence took longer to permeate the outlook of the practitioners of Scots law’, ‘by the end of the century the profession was more conscious than it had been to keep the law in touch with the changing social and economic state of the country’.<sup>73</sup> Lord Kames (1696-1782) and Adam Smith (1723-1790) appreciated and developed Montesquieu’s concept that laws were linked to the stages that societies went through as they developed and used the idea in their own theories.<sup>74</sup> Kames applied an idea of historical

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<sup>65</sup> Cairns, ‘Natural law’, p. 108.

<sup>66</sup> Cairns, ‘Alexander Cunningham’s proposed edition (part II)’, p. 357.

<sup>67</sup> John W. Cairns, ‘Hamesucken and the major premises in the libel, 1672-1770: criminal law in the age of enlightenment’, in *Justice and crime: essays in honour of the Right Honourable the Lord Emslie*, ed. by Robert F. Hunter (Edinburgh: T & T Clark, 1993), pp. 138-79 (p. 171).

<sup>68</sup> Ibid, p. 172.

<sup>69</sup> Cairns, ‘Attitudes’, p. 36.

<sup>70</sup> Haakonssen, p. 61.

<sup>71</sup> Erskine’s copy was a ‘Nouvelle edition, avec les dernieres corrections & illustrations de l’auteur’ published in Edinburgh in 1750.

<sup>72</sup> Peter Stein, *The character and influence of Roman civil law: historical essays* (London: Hambledon, 1988), p. 368.

<sup>73</sup> Peter Stein, ‘Law and society in eighteenth-century Scottish thought’, in *Scotland in the age of improvement: essays in Scottish history in the eighteenth century*, ed. by N. T. Phillipson and Rosalind Mitchison (Edinburgh: EUP, 1970; repr. 1996), pp. 148-68 (p. 156).

<sup>74</sup> Cairns, ‘Natural law’, p. 108.

states to Montesquieu's framework in his *Historical Law Tracts* (O 285)<sup>75</sup> and Smith combined 'the sociology of Montesquieu with the historicism of Kames' in *The theory of moral sentiments*.<sup>76</sup>

Scottish legal literature developed as the judges recorded their activities and thoughts about cases they presided over and the decisions they made. The Court of Session generated 'its own case-law, usually described as "practick".<sup>77</sup> Judges made collections of 'Practicks' and decisions which were copied and passed throughout the legal profession in manuscript during the early modern period. Sir James Balfour, Lord Pittendreich (c.1525–1583), for example, compiled between 1574 and 1583,<sup>78</sup> gathered judicial decisions, statutes, and Scottish customary law in his 'Practicks'. Areskine had three copies of Balfour's 'Practicks', two in manuscript (F 219)<sup>79</sup> and one of the printed edition of 1754 (F 231). The first printed collection of decisions appeared in the late seventeenth century when Sir James Dalrymple published *The decisions of the Lords of council & session, in the most important cases debate before them, with the acts of sederunt* in two parts in 1683 and 1687 (F 135).<sup>80</sup>

In the early eighteenth century manuscript 'Practicks' and collections of decisions, both retrospective and contemporary, were becoming increasingly available in print. Areskine had these in his library including Sir Robert Spottiswood's *Practicks of the laws of Scotland* (1706; F 133), Sir Thomas Hope of Craighall's *Minor practicks, or, a treatise of the Scottish law* (1726; O 202), edited by Alexander Bayne, and John Spottiswood's critical edition of it, *Practical observations upon divers titles of the law of Scotland* (1734; O 202a). Areskine also had copies of published decisions from his own time. Early eighteenth century collections of decisions in Areskine's library included William Forbes's from 1705 to 1713 published in 1714 (F 136), Alexander Bruces's published from 1714 to

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<sup>75</sup> Stein, *Character*, p. 371.

<sup>76</sup> *Ibid.*, p. 372. Areskine's copy, with his bookplate, is now in the University of Toronto, Thomas Fisher Rare Books Library, B-11 03389. It is not listed in his 1731 catalogue.

<sup>77</sup> Cairns, 'Attitudes', p. 5.

<sup>78</sup> John W. Cairns, 'Historical introduction', in *A history of private law in Scotland, 1: Introduction and property*, ed. by Kenneth Reid and Reinhard Zimmermann (Oxford: OUP, 2000), pp. 14-184 (p. 96).

<sup>79</sup> Only about twenty copies of the manuscript in varying versions survive today. Peter G. B. McNeill, 'Balfour, Sir James, of Pittendreich (c.1525–1583)', in *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/1188>> [accessed 26 April 2011]. Areskine's copies in manuscript are now in the NLS at MS Adv.22.3.3 and MS Adv.22.3.4. For a full description of these see Gero Dolezalek, *Scotland under jus commune: census of manuscripts of legal literature in Scotland, mainly between 1500 and 1660*, 2 (Edinburgh: Stair Society, 2010), pp. 138-9, 139-45.

<sup>80</sup> Cairns, 'Historical introduction', p. 134.

1715 printed by John Moncur in 1720 (F 137), and Henry Home's *Remarkable decisions of* 1716 to 1728 published in 1728 (F 138).

### **'Institutional' books**

The natural way of Learning in all Arts in Sciences, to know first, The Terms used in them, and the Principles upon which they are founded, with the Origins of the one and the Reasons of the other. A Collection of these Terms and Principles, is in Law called *Institutions*....<sup>81</sup>

'Institutional' writings were not designed to have any particular authority in Scots law when they were published and, just as Justinian's original *Institute* had been, were often created as teaching aids.<sup>82</sup> However, they came to be seen as a source of Scots law.<sup>83</sup>

Areskine's library included all of the works now recognised as institutional in Scotland that were published both before and during his lifetime. Although the 'modern canon of institutional writers' varies, the list always includes Craig's *Jus feudale*, Stair's *Institutions*, Bankton's *Institute*, Erskine's *Institute*, and Bell's *Commentaries on the laws of Scotland*.<sup>84</sup>

Thomas Craig's *Jus feudale* of about 1600 (F 128, F 128a) was 'the first major analytical work on Scots law'.<sup>85</sup> Craig wanted to demonstrate the similarities between feudal law in Scotland and England and, arguably, to synthesise Roman and Scots law.<sup>86</sup> He also acknowledged that Roman law could be used in Scotland as long as it was compatible with reason and the laws of nature.<sup>87</sup> When Andrew MacDowall, later Lord Bankton came to publish the first volume of his *Institute* in 1751 (F 246), he praised the 'excellent Book' as 'very much esteemed at home, and celebrated abroad' but he thought the text was limited in its scope since 'it concerns only feudal subjects, and some particulars incident to them...as they took place in his time'.<sup>88</sup> Furthermore, it 'was never intended for a complete system of our law'.<sup>89</sup>

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<sup>81</sup> George Mackenzie, 'Epistle dedicatory', in *The institutions of the law of Scotland*, 4th edn (Edinburgh: Printed by James Watson, for John Vallange Book seller, 1706).

<sup>82</sup> John W. Cairns, 'Institutional writings in Scotland reconsidered', *Journal of Legal History*, 4/3 (1983), 76-117 (pp. 106-07).

<sup>83</sup> *Ibid.*, p. 98.

<sup>84</sup> *Ibid.*, p. 99. Erskine and Bell will not be discussed here since their important works were published after Areskine's death.

<sup>85</sup> Cairns, 'Attitudes', p. 11.

<sup>86</sup> Watson, *Legal history*, p. 109; J. D. Ford, *Law and opinion in Scotland during the seventeenth century* (Oxford: Hart Publishing, 2007), pp. 35-52.

<sup>87</sup> Alan Watson, *Legal transplants: an approach to comparative law* (Edinburgh: Scottish Academic, 1974), p. 37.

<sup>88</sup> Bankton, Andrew MacDowall, Lord, *An institute of the laws of Scotland in civil rights: with observations upon the agreement or diversity between them and the laws of England. In four books. After the general method of the Viscount of*



James Dalrymple, Viscount Stair promoted the use of customary law as found in the decisions of the court in his *Institutions of the law of Scotland* first published in 1681 (F 129) and again in a revised edition of 1693 (F 130a).<sup>90</sup> Stair's ambitious plan was 'to give a Description of the Law and Customes of SCOTLAND'.<sup>91</sup> Scotland's customary law, according to Stair, was 'much borrowed' from civil, canon, and feudal law.<sup>92</sup> Alan Watson describes this as a 'frank declaration that in Scotland customary law is often borrowed...from more a more developed system that is also accessible in writing'.<sup>93</sup> Scottish lawyers chose these sources because they were accessible in written form. According to Watson, the written law selected was 'also more elaborated (because it has to provide and answer) and will have the *general* admiration of the lawyers'.<sup>94</sup>

Areskine's library included books designed for educational use which considered Scots law. Among these were George Mackenzie's *Institutions of the law of Scotland* which Areskine had in editions edited by Alexander Bayne (O 209) and William Forbes (O 210). Mackenzie's *Institutions* was used as a textbook of Scots law until the 1750s.<sup>95</sup> Bayne particularly liked the book's concise but informative style.<sup>96</sup> Forbes was also among the professors who used Mackenzie's work until he wrote his own textbook, *The institutes of the law of Scotland* (O 203).<sup>97</sup>

Mackenzie took a different line than Stair on the place of the decisions of the Court of Session as a source of law. John Cairns has pointed out that for Mackenzie 'court decisions were...an unsatisfactory source, often reached corruptly or hastily by ignorant judges' but he acknowledged that they could sometimes have authority.<sup>98</sup> A better source was, as Mackenzie put it, 'the Writings of Learned Lawyers who give their Judgement in abstract Cases wherein none are concerned but their own Souls, Reputation and Posterity, which generally tye men to be Just, and who have great

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*Stair's Institutions*, 1 (Edinburgh: Printed by R. Fleming, for A. Kincaid and A. Donaldson, and sold by them and other booksellers, 1753), p. v.

<sup>89</sup> Ibid.

<sup>90</sup> Cairns, 'Attitudes', p. 19.

<sup>91</sup> Stair, *Institutions*, p. 1.

<sup>92</sup> Ibid., p. 11.

<sup>93</sup> Watson, *Evolution*, p. 92.

<sup>94</sup> Ibid., p. 118.

<sup>95</sup> John W. Cairns, 'Rhetoric, language, and Roman law: legal education and improvement in eighteenth-century Scotland', *Law and History Review*, 9 (1991), 31-58 (p. 33).

<sup>96</sup> Ibid., p. 36.

<sup>97</sup> Ibid., p. 33.

<sup>98</sup> Cairns, 'Attitudes', p. 16.

Leisure to meditate upon what they transmit to Posterity as Law'.<sup>99</sup> Whether they followed Stair or Mackenzie, lawyers needed access to books if they were to practice effectively. Either way, they needed access to statute law, decisions, the procedures of the courts, and the learned commentaries of law.

Craig, Stair, and Mackenzie all wrote their influential legal works in the seventeenth century. Bankton's mid-eighteenth century *Institute* was written for the use of legal professionals rather than for students. The work referred to earlier writers on Scots law including Stair, Mackenzie, and Forbes and its author saw his book as a project to bring Stair's *Institutions* up to date.<sup>100</sup> This was necessary since new statutes passed since Stair's second edition of 1693 had changed the law, particularly of inheritance.<sup>101</sup> The Union of 1707 had also had an impact on Scots law that needed attention and Bankton 'subjoined...a kind of parallel between our laws and those of England' since the

Lord Stair had no occasion to observe any thing of this kind, nor was it of great use in his time; but now...there is much intercourse between the subjects of South and North Britain, that it must be of great moment, that the laws of both be generally understood, and their agreement or diversity attended to.<sup>102</sup>

Bankton provided a comprehensive survey of the law of his time and included citations of the *Corpus iuris civilis*, the bible, statutes of Scotland and England, Craig, *Regiam Majestatem*, Voet, Huber, and English authors like Coke and Bacon throughout his *Institute*. Henry Home, Lord Kames shared Bankton's enthusiasm for English law and wrote his treatise *Principles of equity* (F 238) published in 1760 with the object of unifying the laws of Scotland and England.<sup>103</sup>

It is important to remember that lawyers and judges like Areskine were making legal arguments in the courts and considering particular cases. Their defining of law was a by-product and not the focus of their professional activities. That is why Mackenzie distrusted practicks and decisions as sources of law and why he preferred the carefully considered reasoning of jurists as written in their commentaries and treatises to the proceedings of the courts. This also explains why Areskine had so many different types

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<sup>99</sup> George Mackenzie, quoted in Cairns, 'Attitudes', pp. 17-18.

<sup>100</sup> Cairns, 'Institutional writings', p. 92.

<sup>101</sup> Bankton, p. ix

<sup>102</sup> Ibid.

<sup>103</sup> Cairns, 'Institutional writings', p. 101.

of law books in his library. For Areskine and his contemporary Scottish legal practitioners, books were part of a living legal system. They used books as sources of law that could be used to support contemporary legal arguments and to determine what the law actually was. Books were tools for lawyers and the libraries lawyers collected were essential parts of their professional lives.

## **Areskine's Enlightened Miscellanies: History, Religion, Modernisation, and Poetry**

### **Polite learning: Areskine's 'Miscellaneous' books**

More than half of Charles Areskine's library was a collection of legal books which he used for the study and practice of law. The rest consisted of 'Libri Miscellanei' and these were listed separately from the titles described as 'Books' in his manuscript library catalogue of 1731. The study of law informed the development of the Scottish Enlightenment but other disciplines also inspired the thoughts and activities of Edinburgh's intellectual elite. Areskine's miscellaneous collection shows that he had interests beyond the law and its immediate concerns. He was informed about the big ideas of the early eighteenth century and he engaged with the cultural concerns of his age.

Although he owned books which belong to an eighteenth century tradition of polite learning, many of Areskine's 'Miscellaneous' texts roughly follow the recommendations for forming a legal collection that Sir George Mackenzie of Rosehaugh outlined in his inaugural oration of 1689 in celebration of the foundation of the Advocates Library. Mackenzie, who was one of the founders of the advocates' collection in Edinburgh as well as being a prolific scholar and legal professional, nominated 'Historia, Critica, & Rhetorica' as 'Jurisprudentiae inservientia'<sup>1</sup> and, therefore, necessary additions to a legal collection. Areskine's library included texts related to all three of these attendant disciplines. Mackenzie's own works on politics, the Scottish legal system, and criminal law were also included in Areskine's library. As if following Mackenzie's directives, Areskine added classical authors such as Cicero, Tacitus, and Virgil, histories of various nations, and collections of essays and speeches to his shelves. The divisions in the collection are not always clear and the two basic

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<sup>1</sup> George Mackenzie, *Oratio Inauguralis habita Edenburgi Id. Mar. 1689. A Dom. Georgio Mackenzieo, De structura bibliothecae purè juridicae, et hinc De vario in jure scribendi genere* (London, 1689), p. 24. For a translation see George Mackenzie, 'Oratio inauguralis' in *Oratio inauguralis in aperienda jurisconsultorum bibliotheca*, trans. by James H. Loudon, with notes by John W. Cairns (Edinburgh: Butterworth, 1989), pp. 46-86. For the early development of the library and its collection see Brian Hillyard, 'The formation of the library, 1682-1729', in *For the Encouragement of Learning: Scotland's National Library, 1689-1989*, ed. by Patrick Cadell and Ann Matheson (Edinburgh: HMSO, 1989), pp. 23-66.

categories seem quite fluid. What is certain, however, is that Areskine's library went beyond the books he needed to understand and serve the law. If his legal library showed his knowledge of the law, his engagement with legal humanism and continental law, and his abilities as a lawyer, Areskine's miscellaneous books demonstrated his taste, his familiarity with philosophical ideas and debates, his interest in and involvement with the desire to 'improve' the nation via scientific progress, and his engagement with the study of its history.

Books were a key component of the Enlightenment. Although there is no set list of which were 'enlightened', the books of the Enlightenment addressed a shared set of concerns. Richard B. Sher has summarised these as improvement, that is the 'commitment to bettering the human condition, morally and perhaps spiritually as well as materially'; cosmopolitanism; sympathy with fellow human beings; awareness of humanity's social nature; toleration; liberties of worship, speech, and writing; and intellectualism.<sup>2</sup> The Scottish Enlightenment was especially 'dedicated to the proliferation of polite, morally and intellectually edifying literature and learning during the eighteenth century'.<sup>3</sup> Well read *virtuosi* had also dedicated themselves to the study of the natural sciences including chemistry, medicine, and mathematics from the late seventeenth century.<sup>4</sup> The literature generated by these various studies was written and discussed by a new group of *literati* that emerged in early eighteenth century Scotland.

The Edinburgh *literati*, as described by Nicholas Phillipson, came from a variety of backgrounds including the legal profession, the church, and the landed gentry.<sup>5</sup> From this group, 'an elite emerged who were preoccupied with polite learning'.<sup>6</sup> Polite learning had its expression in books and in discussions about them. Areskine's library contained books he could have used to engage with some of the key concerns of the Scottish Enlightenment. These interests include history, religious issues, modernisation, and poetry. The presence of books like these in his collection shows how enlightened ideas spread throughout Edinburgh's elite. They also place him within this elite intellectually.

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<sup>2</sup> Richard B. Sher, *The Enlightenment and the book: Scottish authors and their publishers in eighteenth-century Britain, Ireland and America* (Chicago; London: University of Chicago, 2006), p. 16.

<sup>3</sup> *Ibid.*, p. 20.

<sup>4</sup> Roger L. Emerson, *Essays on David Hume, medical men and the Scottish Enlightenment: 'Industry, knowledge and humanity'* (Farnham: Ashgate, 2009), p. 12, 16.

<sup>5</sup> Nicholas Phillipson, 'Culture and society in the 18th century province: the case of Edinburgh and the Scottish Enlightenment', in *The university in society, 2: Europe, Scotland and the United States from the 16th to the 20th century*, ed. by Laurence Stone (Princeton: Princeton University, 1975), pp. 407-48 (p. 425).

<sup>6</sup> *Ibid.*

His library included works by Dante in the original Italian, scores for operas, and biographies of classical and modern figures. There were works on religious controversy, literary criticism, and natural philosophy. Some of his books about religion were by authors and of the type that, as we saw in Chapter II above, cost the Edinburgh student Thomas Aikenhead his life when he persisted in quoting them at the close of the seventeenth century. Meanwhile, the works of history Areskine owned considered the legacy of feudalism and addressed the histories of Scotland and other nations and the philosophy of history. These topics and the cultural milieu that they represented were important to those who wanted to participate in the intellectual world of eighteenth century Britain.

This brief survey of some of the books that his catalogue described as miscellanies will show that Areskine shared some interests with the intellectual elite of his age. This chapter considers the meanings of some of Areskine's miscellaneous books as providers of clues about his interest in contemporary debates about history, religion, modernisation, and poetry.

### ***An advocate's library***

In Edinburgh, Areskine had access to an important model for his library. By 1711, the year Areskine became an advocate, John Spotiswood was able to report in his *Form of process, before the Lords of Council and Session* (O 208) that the advocates had developed their shared professional library, the Advocates Library, to such an extent that it was 'already the best in *North-Britain*, & in Process of time, may come to be the best in the Isle...by reason of the *Number, & Goodness of the Books*, for the *Advocats* bestow yearly very liberally that way, and their Stock...is dayly increasing'.<sup>7</sup> Spotiswood also noted that the advocates were remaining true to George Mackenzie's 1680s vision of creating a law collection for lawyers and that, although 'Men are of different Geniuses' and 'the Library may be furnished with the *Best Books* in all Sciences', those 'which have a Tendance towards *Knowledge of the Law*' were favoured.<sup>8</sup> Spotiswood went on to say that the

*Advocats* satisfy themselves with few *Books of Divinity*, the *Old Greek and Latin Fathers* of the *Church* excepted, & *Church History*; But all Sorts of *Canon Law*

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<sup>7</sup> John Spotiswood, *The form of process, before the Lords of Council and Session, observed in advocations, ordinary actions, suspensions* (Edinburgh: Printed by John Moncur, 1711), p. xlv.

<sup>8</sup> *Ibid.*

*Books* are taken in, nor are they fond of the late *Books of Medicine*, or *Philosophy*, except such as are *Ethical*, and are *Illustrations of the Lams of Right Reason*, and of *Nature*, which some of the *Modern Philosophers*, have done to very good purpose.<sup>9</sup>

Individual advocates may have chosen to develop their private libraries along similar lines.<sup>10</sup> Although he had books which addressed religious concerns or controversies, Areskine seems to have left sermons and guides to Christian life mostly to his wife whose library catalogue also survives.<sup>11</sup> He possessed collections of sacred poetry and the collected sermons but the few religious works in his library probably represent Areskine's personally tolerant attitude rather than any zest for religious controversies. Areskine's bibles, meanwhile, are notable for their variety of languages, their printing formats, and their heritage as humanist and protestant printing projects: he owned a copy of the so-called 'Bear's Bible' (QM 74) in Spanish and copies which featured Greek text (e.g. FM 26). His works of church history meanwhile are few (FM 8, FM 48, OM 246) and some (FM 27, FM 49, OM 247) combine their subject with political history.

Areskine owned books of canon law or the law of the western church before the Reformation and after the Reformation law of the Roman Catholic Church, in a small selection of reference works. These included Gratian's *Corpus iuris canonici* in an edition of 1618 (F 174) and Pope Boniface VIII's *Liber Sextus* in an edition of 1624 (F 175). Areskine's library held discussions and commentaries of canon law by Franciscus Florens and Janus Costa (Q 183), Costa alone (Q 159), Jean Cabassut (Q 189), Johannes Goeddaeus (O 154a), Daniel Maresius (OM 151), and Giovanni Paolo Lancellotti (O 307).

Of medicine, too, there was little. A work published late in his life on the 'history of health'(OM 258), a book promoting the virtues of 'Dunse Spaw' (OM 256), and another recommending 'sea-voyages' for health (OM 257) represent the extent of Areskine's concern for medical matters in his library. There was only one work on medical jurisprudence in the collection Areskine recorded in his manuscript (F 211).<sup>12</sup>

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<sup>9</sup> Ibid, p. xlvi.

<sup>10</sup> John W. Cairns, 'Historical introduction', in *A history of private law in Scotland*, 1: *Introduction and property*, ed. by Kenneth Reid and Reinhard Zimmermann (Oxford: OUP, 2000), pp. 14-184 (p. 141).

<sup>11</sup> NLS MS 5161. See Appendix D below for a transcription.

<sup>12</sup> It is worth noting that, compared with other legal topics, publications about medical jurisprudence had a shorter publishing tradition and the topic was a fairly new interest for theorists and practitioners.

Modern ethical and philosophical works fare better. Areskine had copies of John Locke's *Two treatises of government* (OM 17), the earl of Shaftesbury's *Characteristicks of men, manners, opinions, times* (OM 3), Leibniz's *Essais de theodicée sur la bonté de Dieu, la liberté de l'homme et l'origine du mal* (OM 2), and David Hume's *Essays, moral and political* of 1741 (OM 227) in his miscellaneous collection of books. As we saw in the previous chapter, he also had a good selection of books about natural law.

### **Reading for pleasure**

By the time Areskine was collecting, books for leisure had long been included in gentlemen's libraries. By the seventeenth century reading for pleasure was recognised as a valid way for a gentleman to spend his time. Books on topics that were not connected with a professional man's employment could be included in his collections and these could be kept purely for enjoyment.<sup>13</sup> Journals appeared which directed gentlemen to books they might like to read in order to better themselves or simply to pass the time. These included the *Journal des Savants* (from 1665), the *Weekly Memorial for the Ingenious* (from 1683), and the *Gentleman's Magazine* (from 1731).<sup>14</sup> The short-lived *Edinburgh Review* started in 1755 with the goal of promoting books deemed polite to its projected gentlemanly readership.<sup>15</sup>

Given his rich educational background, Areskine's collection was probably more intellectually serious than those of many of his contemporaries. The Edinburgh lawyer Andrew Buckney (d. 1758), for example, also kept a private library. Buckney possessed legal texts by Grotius and Bankton's *Institutions* but the bulk of his collection seems to have been focused on polite learning rather than on the law. His collection included French plays, English fiction, Scottish poetry, histories by George Buchanan and Gilbert Burnet, and books about gardening and painting.<sup>16</sup> Areskine listed books which were

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Areskine's *Pauli Zacchiae Romani, Totius status ecclesiastici proto-medici generalis quaestionum medico-legalium tomi tres* (Francofurti: Schönwetterus, 1666) was the 'first systematic treatise of legal medicine': the first edition was published between 1621 and 1635. See Silvia De Renzi, 'Medical expertise, bodies, and the law in early modern courts', *Isis*, 98 (2007), 315-22 (pp. 320-1).

<sup>13</sup> T. A. Birrell, 'Reading as pastime: the place of light literature in some gentleman's libraries of the 17th century', in *Property of a gentleman: The formation, organisation and dispersal of the private library, 1620-1920*, ed. by Robin Myers and Michael Harris (Winchester: St Paul's Bibliographies, 1991), pp. 113-31 (p. 114).

<sup>14</sup> *Ibid.*, p. 128.

<sup>15</sup> Richard B. Sher, *Church and university in the Scottish Enlightenment: the moderate literati of Edinburgh* (Edinburgh: EUP, 1985), pp. 68-9.

<sup>16</sup> Marion Lockhead, *The Scots household in the eighteenth century: A century of Scottish domestic and social life* (Edinburgh: Moray, 1948), p. 348; Heather Holmes, 'Reading and study', in *Scotland's domestic life*, ed. by



unconnected with his profession but he seems to have taken a generally serious approach to the pursuit of knowledge. Areskine's 'miscellaneous' books show his intellectualism and learning. As we saw in Chapter II above, Areskine's educational background and career as an Edinburgh regent may have influenced his selection of books relating to Newtonian physics and mathematics as well as his interest in texts which dealt with religious controversy. These were certainly indicators of enlightened thought.

The books on law and legal theory that lawyers like Areskine used in their profession, meanwhile, were also important additions to the collections of polite gentlemen throughout the eighteenth century even when they did not practice law. Lord Chesterfield 'particularly' recommended '*Puffendorf's Jus Gentium*, and *Grotius de Jure Belli et Pacis*: the last...well translated by Barbeyrac' as 'valuable' books which his son should take care to 'read every passage twice over...till you...are master of the subject'.<sup>17</sup> In Scotland, John Erskine's *Principles of the law of Scotland* of 1754 (O 273) retained its popularity for the rest of the century and was found in 41 per cent of the libraries surveyed by Mark Towsey in his study of Scottish provincial libraries of the second half of the eighteenth century.<sup>18</sup> Law was a polite subject for study in its own right.

### ***Intellectual change: humanism and politeness***

Humanistic learning in a general sense, meanwhile, was evolving in the early eighteenth century. One of the major critics of the humanist tradition was Jean Le Clerc, an author Areskine had lectured on during his regenting career. Le Clerc and others judged that humanism had failed because its translation exercises had been carried out by inadequate scholars and because its publications had not provided enough historical context for their work to be understood.<sup>19</sup> Furthermore, the humanist tradition had

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Susan Storrier, vol. 6 of *Scottish life and society: A compendium of Scottish ethnology* (Edinburgh: John Donald, 2006), pp. 377-99 (p. 393).

<sup>17</sup> Chesterfield, Philip Dormer Stanhope, Earl of, *Lord Chesterfield's Advice to his son on men and manners: or, A new system of education, in which the principles of politeness, the art of acquiring a knowledge of the world, with every instruction necessary to form a man of honour, virtue, taste, and fashion, are laid down in a plain, easy, & familiar manner. The second edition. To which is now added, the Marchioness de Lambert's Advice to her son* (London: Printed for Richardson and Urquhart, at the Royal-Exchange, 1775), p. 95.

<sup>18</sup> Mark Towsey, 'Reading the Scottish Enlightenment: Libraries, readers, and intellectual culture in provincial Scotland, c. 1750-c. 1820' (PhD, St Andrews, 2007), p. 40. Unsurprisingly, the same work was present in 70 per cent of libraries owned by legal professionals. *Ibid.*

<sup>19</sup> Jonathan I. Israel, *Enlightenment contested: philosophy, modernity, and the emancipation of man, 1670-1752* (Oxford: OUP, 2008), pp. 414-15.

failed to make its learning relevant and accessible to the educated lay reader.<sup>20</sup> The polite learning of the Enlightenment offered a fresh approach by encouraging top scholars to look at texts anew and to offer fresh comments and interpretations.<sup>21</sup>

This approach to polite learning was not new for legal scholars, especially those connected with ‘elegant’ jurisprudence, who had been looking at texts critically and composing commentaries since the seventeenth century.<sup>22</sup> Although they shared humanistic concerns about the proper use of language and the use of rhetoric, these jurists also put law into historical context and provided commentaries. In the Scottish context, meanwhile, humanistic and enlightened themes were both present. As humanism’s traditions and concepts took on new meanings during the eighteenth century,<sup>23</sup> there was a tension between the types of learning that the *literati* were able to resolve. They had the education needed to process the material and they were interested in sharing, explaining, and discussing knowledge with their peers as well as with interested lay scholars. They adopted an interactive approach to learning.

The new impulses in learning were evident in another way: authors, like Hobbes and Descartes, who had been distrusted for their potentially atheistic approaches at the turn of the eighteenth century were, thanks to their use of mathematics, rehabilitated as harbingers of rationalism.<sup>24</sup> Although he did not include any works by Hobbes,<sup>25</sup> Areskine owned works by and about Descartes and his ideas, including one by the notorious atheist Spinoza.<sup>26</sup> By the early eighteenth century books like these could be

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<sup>20</sup> Ibid., p. 416.

<sup>21</sup> Ibid., p. 415. Although a fiction and a stereotype of a much later date, Mr Casaubon from George Eliot’s novel *Middlemarch* provides an example of the type of humanist scholar Le Clerc had in mind. Casaubon’s unwillingness to share his knowledge beyond a small group of scholars and his inability to study subjects beyond his interests limit his achievements: despite his undoubted learning he is neither ‘enlightened’ nor ‘polite’.

<sup>22</sup> The traditions of glossing and commenting on legal texts were, of course, long standing and had been practiced since the middle ages.

<sup>23</sup> John W. Cairns, ‘The formation of the Scottish legal mind in the eighteenth century: themes of humanism and enlightenment in the admission of Advocates’, in *The legal mind: essays for Tony Honoré*, ed. by Neil MacCormick and Peter Birks (Oxford: Clarendon, 1986), pp. 253-77 (p. 258).

<sup>24</sup> David Allan, *Virtue, learning and the Scottish Enlightenment: Ideas of scholarship in early modern history* (Edinburgh: EUP, 1993), p. 150. Dutch professors like Hermann Boerhaave had developed the idea that natural sciences should be studied without invoking sectarian concerns. This model entered the Edinburgh educational establishment following the introduction of the professorial system. Simon Schaffer, ‘The Glorious Revolution and medicine in Britain and the Netherlands’, *Notes and Records of the Royal Society of London*, 43/2: *Science and civilization under William and Mary* (1989), 167-90 (p. 182).

<sup>25</sup> There is, however, one book which criticises Hobbes, see Edward Hyde, Earl of Clarendon, *A brief view and survey of the dangerous and pernicious errors to church and state, in Mr. Hobbes’s book, entitled Leviathan* ([Oxford]: Printed at the Theater [sic], 1676) at QM 6.

<sup>26</sup> At QM 53, René Descartes, *Discours de la methode: pour bien conduire sa raison, & chercher la verité dans les sciences; plus La dioptrique; Les meteores; et La geometrie. Qui sont des essais de cete methode* (A Leyde: De

read by the enlightened elite who were deemed to have the powers of understanding needed to stop them slipping into atheism. To borrow a term from the Whig historical tradition, this was progress. Book publishing helped to mark these changes. David Allan nominated 1740, the year David Hume's *A treatise of human nature* was completed and John Major's *Historia Majoris Britanniae* (QM 76)<sup>27</sup> was republished as a 'pivotal point in the problematic historiography of Scotland's intellectual life' since from then on 'Scotland is unashamedly regarded as a country in the grip of an Enlightenment'.<sup>28</sup>

## History

In 'Of the Study of History', which appeared in his *Essays, moral and political* of 1741 (OM 227), David Hume outlined the benefits of historical studies saying

The Advantages of History seem to be of three kinds, as it amuses the Fancy, as it improves the Understanding, and as it strengthens Virtue. In reality, what more agreeable Entertainment to the Mind, than to be transported into the remotest Ages of the World, and to observe human Society in its Infancy, making the first faint Essays towards the Arts and Sciences: To see the Policy of Government, and the Civility of Conversation refining by Degrees, and everything that is ornamental to human Life advancing towards its Perfection.<sup>29</sup>

History was therefore both polite and progressive. It was also practical since

Mankind are so much the same, in all times and places, that history informs us of nothing new or strange....Its chief use is only to discover the constant and universal principles of human nature, by showing men in all varieties of circumstances and situations, and furnishing us with materials from which we may form our observations and become acquainted with the regular springs of human action and endeavour.<sup>30</sup>

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l'Impimerie de Ian Maire, 1637) which Areskine may have had access to as early as 1704 when he wrote his *Theses philosophicae* for his students to defend at their graduation. At QM 84, René Descartes, *Renati Descartes Epistolæ, partim ab auctore Latino sermone conscriptæ, partim ex Gallico translatae. In quibus omnis generis quæstiones philosophicæ tractantur, & explicantur plurimæ difficultates quæ in reliquis ejus operibus occurrunt. Pars prima* (Londoni: Impensis Joh: Dunmore, & Octaviani Pulleyn, ad insigne regis, in vico Little Brittainæ dicto, 1668). At QM 39, Benedictus de Spinoza, *Renati Des Cartes principiorum philosophiæ pars I, & II, more geometrico demonstrata* (Amstelodami: Apud J. Riewerts, 1663).

<sup>27</sup> 'The Honourable Charles Areskine, His Majesty's Advocate' supported the publication of this work as a subscriber.

<sup>28</sup> Allan, p. 15.

<sup>29</sup> David Hume, *Essays, moral and political* (Edinburgh: Printed by R. Fleming and A. Alison, 1741), pp. 69-77 (pp. 72-3).

<sup>30</sup> David Hume, *An enquiry concerning human understanding*, section 8, pt 1, pp. 83-4, quoted in Alexander Broadie, 'What was the Scottish Enlightenment?', in *The Scottish Enlightenment: an anthology*, ed. by Alexander Broadie (Edinburgh: Canongate Classics, 1997), pp. 1-31 (p. 24).

Law and history had close links in early modern Scotland. As the ‘elegant’ school of jurisprudence and Scottish lawyers had long realised, an understanding of the historical contexts of law was essential. Areskine’s judicial colleague Lord Kames declared that

In order to form a solid judgment about any statute, and to discover its spirit and intendment, we ought to be well informed about how the law stood at the time, what defect was meant to be supplied, or what improvement made. These particulars require historical knowledge; and therefore, with respect to statute law at least, such knowledge appears indispensable.<sup>31</sup>

This approach encompasses the concerns of polite learning while respecting the traditions of Scottish jurisprudence. By the eighteenth century Scottish lawyers were comfortable with enlightened thinking and with understanding the importance of historical contexts. Lawyers studied history to put law into context but the discipline had uses beyond legal concerns, and, as Kames put it, the ‘history of mankind’, was ‘a delightful subject’.<sup>32</sup> History went on to become ‘a discipline of major importance’ during the Scottish Enlightenment.<sup>33</sup>

The origins and development of societies within their historical contexts were particular concerns during the Scottish Enlightenment. One of the major strands of historical study was the place of feudalism in the nation’s history. Seventeenth century authors like Thomas Craig had taken a humanistic approach to defining feudal concepts as they were used in Scottish law.<sup>34</sup> Questions about the realities of feudalism still inspire debate<sup>35</sup> but for eighteenth century historians the feudal era was part of a bigger historical story of progress.

It is important to note that more traditional forms of lordship were by no means extinct in eighteenth century Scotland.<sup>36</sup> A landowner like Areskine’s

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<sup>31</sup> Henry Home, *Historical law-tracts* (Edinburgh: Printed for A. Millar, at Buchanan’s Head in the Strand, London; and A. Kincaid, and J. Bell, Edinburgh, 1758), p. ix. Areskine shelved his copy with his law books at O 285.

<sup>32</sup> Home, p. v.

<sup>33</sup> Cairns, ‘Formation’, p. 262.

<sup>34</sup> John W. Cairns, ‘Craig, Cujas, and the definition of feudum: Is a feu a usufruct?’, in *New perspectives in the Roman law of property*, ed. by P. Birks (Oxford: Clarendon, 1989), pp. 75-84.

<sup>35</sup> See e.g., Hector L. MacQueen, ‘Tears of a legal historian: Scottish feudalism and the *ius commune*’, *Juridical Review* (2003), 1-28 where he disputes Susan Reynold’s thesis ‘that feudalism and feudal law are essentially late-medieval and later academic constructs’ (p. 1).

<sup>36</sup> Feudalism was not abolished in Scotland until 28 November 2004 when the *Abolition of Feudal Tenure Act* (2000) came into effect. MacQueen, p. 1. See also Kenneth G. C. Reid, ‘Vassals no more: feudalism and post-feudalism in Scotland’, *European Law Review*, 3 (2003), 282-300.

patron, the duke of Argyll was also a clan chief who ‘reckoned...wealth not in sheep, cattle, or acres, but in the size of his following’.<sup>37</sup> Members of the clan, both gentry and commoners, ‘depended on the bounty of the chief to provide them with land’.<sup>38</sup> Dependents worked farms, raised and traded cattle, and provided military service domestically or in continental armies. The chief had obligations to his dependents which included providing land, protection, and hospitality, and relieving hardship.<sup>39</sup> Eric Cregeen has argued that the idea that the old highland system of clan chief and dependent ‘died on the field of Culloden in 1746...is naïve and superficial’.<sup>40</sup> Changes had emerged in the seventeenth century and they continued throughout the eighteenth and into the nineteenth.<sup>41</sup> By the 1740s and until his death in 1761, the third duke of Argyll ‘played a dual role, half traditional chief, half modern landlord and entrepreneur’.<sup>42</sup>

Areskine shelved his copy of Sir John Dalrymple’s *An essay towards a general history of feudal property in Great Britain* of 1757 (O 286) with his law books. Areskine dealt with issues of inheritance throughout his career so he may have found this book useful as a practical text as well as a theoretical one. However, the book was also a text of the Enlightenment.<sup>43</sup> Dalrymple dedicated it to Lord Kames and frequently cited Montesquieu throughout his discussion of the progressive history of legal and societal change in Scotland and England. Both Dalrymple and Kames viewed the feudal system negatively since they linked it with decline.<sup>44</sup> The different situations of England as a mercantile and therefore advanced nation and Scotland which had ‘little or no commerce’<sup>45</sup> explained why the two nations had developed so differently. Until the Union, Scotland had suffered since

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<sup>37</sup> Eric Cregeen, ‘The changing role of the House of Argyll in the Scottish Highlands’, in *Scotland in the age of improvement: essays in Scottish history in the eighteenth century*, ed. by N. T. Phillipson and Rosalind Mitchison (Edinburgh: EUP, 1970; repr. 1996), pp. 5-23 (p. 6).

<sup>38</sup> Ibid.

<sup>39</sup> Ibid., pp. 6-7.

<sup>40</sup> Ibid., p. 8.

<sup>41</sup> Ibid., pp. 8-10.

<sup>42</sup> Ibid., p. 16.

<sup>43</sup> I am grateful to John Cairns for pointing out the importance of the work in this context to me.

<sup>44</sup> R. J. Smith, *The Gothic bequest: medieval institutions in British thought, 1688-1863* (Cambridge: CUP, 2002), p. 75.

<sup>45</sup> John Dalrymple, *An essay towards a general history of feudal property in Great Britain, under the following heads, I. History of the introduction of the feudal system into Great Britain. II. History of tenures. III. History of the alienation of land property. IV. History of entails. V. History of the laws of succession or descent. VI. History of the forms of conveyance. VII. History of jurisdictions, and of the forms of procedure in courts. VIII. History of the constitution of Parliament* (London: Printed for A. Millar, in the Strand, 1757), p. 327.

The constitution of Scotland, till incorporated with England, was in fact a mixture of monarchy and oligarchy: the nation consisted of a commonalty without the privilege of chusing their own representatives; of a gentry intitled indeed to represent by election, but unable to serve the nation; and of a nobility, who oppressed the one, and despised both.<sup>46</sup>

For Dalrymple, the Union represented progress since

our lords and commons being incorporated with those of the English, the constitution of Scotland is settled upon the just poise, betwixt monarchy, aristocracy, and democracy, which has made the constitution of England the wonder of mankind.<sup>47</sup>

The power of the clan chiefs was waning. Dalrymple's message was clear on his final page: England was more advanced than Scotland and should provide a model for the adoption of a balanced constitution as Scotland evolved into a fellow mercantile nation. He wrote

In the declensions of almost every part of the feudal system, the English have gone before us: at the distance of one, and sometimes of many centuries, we follow. However distant, at present, the prospect may appear, there is no impossibility, in a future age, that the limitation of electors, which subsists at present, from the lingering of the feudal system amongst us, may give way, to the more extended, and allodial right of election, which takes place among the English.<sup>48</sup>

Feudalism had political resonances and the study of Scottish medieval history in general was of interest to intellectuals who wanted to explore Scotland's story in a European context. It also insulated against a misplaced and 'dangerous nostalgia particularly of the Jacobite variety'.<sup>49</sup> History could be used to explain England's dominance as a feature of geography and economic success after 1707 and again after the '45.<sup>50</sup> Scottish philosophers were greatly influenced by Montesquieu's *The spirit of the laws* of 1748 (O 283) and enhanced its idea that that societies developed in stages.<sup>51</sup> Many, like Dalrymple and Kames, also believed that Scotland had nearly reached the highest level of development.

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<sup>46</sup> Ibid., p. 330.

<sup>47</sup> Ibid., p. 331.

<sup>48</sup> Ibid., p. 332.

<sup>49</sup> Smith, p. 74.

<sup>50</sup> Ibid., p. 75.

<sup>51</sup> John W. Cairns, 'Natural law, national laws, parliaments and multiple monarchies: 1707 and beyond', in *Northern antiquities and national identities: perceptions of Denmark and the North in the eighteenth century*, ed. by Knud Haakonssen and Henrik Horstbøll (Copenhagen, 2008), pp. 88-112, 322-31 (p. 108).

Specific events and personalities interested historical writers because they could help illustrate these historical stages within a Scottish context. The reign and personality of Mary, Queen of Scots inspired political and historical critiques beginning with those of her contemporary George Buchanan. Buchanan, who had read the Roman historian Livy to Mary and, as her tutor, had tried to give her a humanist education, later wrote works defending her overthrow.<sup>52</sup> Debates about Mary's influence in the national story continued well into the eighteenth century. Publications like James Anderson's *Collection relating to the history of Mary, Queen of Scotland* (Edinburgh, 1727-1728; QM 5), James Freebairn's *The life of Mary Stewart, Queen of Scotland and France* (Edinburgh, 1725; OM 9), and William Tytler's *An historical and critical inquiry into the evidence produced by the earls of Moray and Morton, against Mary, Queen of Scots* (Edinburgh, 1760; OM 244) considered her life, times, and the legal, political, and religious legacies and controversies which surrounded her. Of the last, Horace Walpole commented that he could not 'say I am surprised to hear that the controversy on the Queen of Scots is likely to continue'<sup>53</sup> when the book was published in 1760.

After 1707, Scottish printers and editors with Jacobite sympathies like Robert Freebairn, James Watson, and Thomas Ruddiman published collections, including George Buchanan's works (Edinburgh, 1715; FM 1) and the works of William Drummond of Hawthornden (Edinburgh, 1711; FM 56), which reminded their readers of the proud tradition of the humanistic learning of Renaissance Scotland.<sup>54</sup> Publications like James Anderson's *An historical essay shewing the crown and kingdom of Scotland is imperial and independent* (Edinburgh, 1705; OM 183) and *Critical essay on the ancient inhabitants of the northern parts of Britain, or Scotland* (London, 1729) by the exiled Jacobite priest Thomas Innes (QM 91 – where he is described as 'M. Tho: Innes') meanwhile used historical studies to make their arguments about the uniqueness of the Scottish identity.<sup>55</sup>

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<sup>52</sup> Arthur Williamson, 'Education, culture and the Scottish civic tradition', in *Shaping the Stuart world, 1603-1714: the Atlantic connection*, ed. by Allan I. Macinnes and Arthur H. Williamson (Leiden: Brill, 2006), pp. 33-54 (pp. 33, 37).

<sup>53</sup> Horace Walpole, in Horace Walpole and David Dalrymple, *Horace Walpole's correspondence with Sir David Dalrymple*, ed. by W. S. Lewis, Charles H. Bennett and Andrew G. Hoover, vol. 15 of *The Yale edition of Horace Walpole's correspondence* (London; New Haven: OUP; Yale University, 1952), pp. 61-2.

<sup>54</sup> John Robertson, *The case for the enlightenment: Scotland and Naples, 1680-1760* (Cambridge: CUP, 2005), p. 116.

<sup>55</sup> *Ibid.*, pp. 134-5.

Scottish historians expanded their activities throughout the century and saw their discipline as an enlightened one.<sup>56</sup> Furthermore, the ‘study of history’ was one of the best ways for an ambitious citizen to become ‘public spirited, eloquent, active and learned’.<sup>57</sup> Historians explored their discipline with various approaches including biographical accounts, histories of institutions, and histories of places. Areskine’s library of miscellaneous books contained examples of all of these historical genres and the scope and subjects of his history books went beyond Scottish borders. The oldest book Areskine listed was an incunable: Suetonius’s *Lives of the Caesars* printed in Venice in 1471 (FM 7).<sup>58</sup> His other biographies included lives of people both ancient and modern throughout history from Conyers Middleton’s *The history of the life of Marcus Tullius Cicero* (QM 103) to, unsurprisingly given his brother Robert’s involvement with their subject, two histories of the life of Peter the Great by John Mottley (OM 208) and Alexander Gordon (OM 249).<sup>59</sup> Some history books, like Sarah Scott’s *The history of Gustavus Ericson, King of Sweden. With an introductory history of Sweden, from the middle of the twelfth century* (OM 250), combined the study of a person with the history of a place. Areskine’s national and institutional histories included books like John Spottiswood’s *The history of the church and state of Scotland, beginning the year of our Lord 203, and continued to the end of the reign of King James the VI* (FM 49), David Calderwood’s *The true history of the Church of Scotland, from the beginning of the reformation, unto the end of the reign of King James VI* (FM 9), and Robert Lindsay’s *The history of Scotland; from 21 February, 1436. to March, 1565. in which are contained accounts of many remarkable passages altogether differing from our other historians* (FM 4). William Maitland’s *The history of Edinburgh: from its foundation to the present time* (FM 54) brought the historical narrative up to date for its target market of the Edinburgh elite.

The history books Areskine owned demonstrate his interest in the discipline and help to confirm his status as an ‘enlightened’ reader in a society devoted to books.

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<sup>56</sup> Allan, p. 148.

<sup>57</sup> *Ibid.*, p. 194.

<sup>58</sup> *Begin. Versus Ansonii in libros Suetonii...Caii Suetonii Tranquilli de vita XII. Caesarum liber primus Divus Julius Caesar incipit foeliciter. End. Caii Suetonii Tranquilli de vita XII. Caesarum liber duodecimus Domitianus Imperator Augustus foeliciter finit.*

<sup>59</sup> Robert Areskine was a physician, librarian, and advisor at Peter’s court.



## Religion

Although there is no evidence in his library that his religious beliefs were in any way controversial or unconventional, Areskine did own some books which addressed religious controversies. As we saw in Chapter II above, ‘atheistical’ texts could cause problems for readers who were not protected by their status. Areskine’s interest in religious subjects does not seem to have been a cause for concern among his peers. His professed Newtonianism may have insulated him from accusations of unorthodox religious belief during his regenting career and throughout the rest of his life.

Furthermore, Areskine participated the formal and informal government of the Church of Scotland. Areskine’s children were baptised by not one but two Moderators of the Church of Scotland, William Carstares and James Grierson.<sup>60</sup> It is important to note that the Kirk was ‘increasingly favourable to enlightened notions’ by the 1720s<sup>61</sup> and this tolerance may have increased its appeal for Areskine and other moderates. He represented the Burgh of Sanquhar as their commissioner at the General Assembly from 1726 to 1729.<sup>62</sup> As we saw in Chapter II above, Areskine managed the moderate party on behalf of Archibald Campbell during the General Assembly of 1729 when Professor John Simson of Glasgow was accused of heresy. Simson argued that Newtonian natural philosophy and Calvinism were compatible. His tolerant religious views alarmed orthodox members of the Kirk who feared that his openness would cause his students to become atheists.<sup>63</sup> Areskine’s engagement with Newtonianism as a regent and his support of Simson shows his sympathy for religious tolerance.

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<sup>60</sup> See NLS MS 5161, ff. 7-7<sup>v</sup>. *Acts of the General Assembly of the Church of Scotland, MDCXXXVIII-MDCCCXLII reprinted from the original edition, under the superintendence of the Church Law Society* (Edinburgh: Edinburgh Printing and Publishing, 1843), p. 1206. MS 5161 notes the baptisms of five of Charles and Grizel’s children from 1714 to 1719. William Carstares performed the first of these while James Grierson, ‘minister of the College Kirk’, did the next four. Carstares was principal of the University of Edinburgh and minister at various Edinburgh parishes. He was Moderator of the General Assembly in 1705, 1708, 1711, and 1715. James Grierson was the minister at the College Kirk from 1710 until 1714. He was Moderator of the General Assembly in 1719. The ‘College Kirk’ was Trinity College Kirk at the foot of Calton Hill. A. Ian Dunlop, *The kirks of Edinburgh: the congregations, churches, and ministers of the Presbytery of Edinburgh, Church of Scotland, 1560-1984*, Scottish Record Society, new ser., 15-16 (Edinburgh: Scottish Record Society, 1988), pp. 49, 82, 359, 364.

<sup>61</sup> Roger L. Emerson, *Essays on David Hume, medical men and the Scottish Enlightenment: ‘Industry, knowledge and humanity’* (Farnham: Ashgate, 2009), p. 242.

<sup>62</sup> James Brown, *The history of Sanquhar* (Edinburgh; Glasgow: John Menzies, 1891), p. 43.

<sup>63</sup> Anne Skoczylas, *Mr Simson’s Knotty case: divinity, politics, and due process in early eighteenth-century Scotland* (Montreal: McGill-Queen’s University, 2001), pp. 14, 22.

Areskine was ‘Unanimously Chosen’ by the Presbytery of Dumfries to ‘represent them as Elder in the next General Assembly’ in 1739 since the ‘difficulty and Importance of Some affairs they apprehend will come under the consideration of that Court make them more earnestly wish the presence of your Lordships Known Abilitys Moderation and Influence’.<sup>64</sup> The General Assembly considered the cases of Ebenezer Erskine and his followers who had left the Church of Scotland throughout the 1730s and early 1740s.<sup>65</sup> The Dumfries Presbytery clearly wanted Areskine to use his experience and his political and legal skills at these meetings. Although there is nothing in his life to suggest unbelief, Areskine’s attitude about religion seemed ambivalent to at least one of his fellow Church of Scotland representatives, James Boswell’s grandfather, James Boswell of Auchinleck. The younger Boswell reported that ‘when Charles Areskine said in the General Assembly that he was a Presbyterian, but according to law, My Grandfather said, “Moderator, I was a Presbyterian when it was against law”’.<sup>66</sup>

Evidence for his moderate attitude to religion is found in Areskine’s manuscript library list of 1731. Although a professed Presbyterian, Areskine owned works which demonstrated his respect for other views. These included books like John Spottiswood’s *The history of the church and state of Scotland* (London, 1677; FM 49) which ‘was unquestionably an apologia for the royalist and Episcopal cause in Scotland’<sup>67</sup> and William Chillingworth’s *The religion of Protestants a safe way to salvation* (London, 1684; FM 58) which promoted toleration among Christians.<sup>68</sup> Chillingworth was also represented by Pierre Des Maizeaux’s biography, *An historical and critical account of the life and writings of W. Chillingworth* (London, 1725; OM 197). Bernard Mandeville’s *Free thoughts on religion, the church, and national happiness* (London, 1723; OM 12) urged toleration while criticising the conflict caused by clergy who sought to codify and enforce religious belief.<sup>69</sup> Spottiswood, Chillingworth, and Mandeville had very different views but they all agreed that intolerance was wrong.

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<sup>64</sup> Walter Stewart, ‘Letter’ (March 1739), NLS MS 5074, f. 143.

<sup>65</sup> The debates continued for many years after the expulsion of these by the General Assembly. The moderate party’s journal the *Edinburgh Review* criticised the ‘crude, pious sermons of Ebenezer Erskine’ in 1755. Sher, *Church and university*, pp. 68-9.

<sup>66</sup> Mary Margaret Stewart, ‘James Boswell and the National Church of Scotland’, *Huntington Library Quarterly*, 30 (1967), 369-87 (pp. 375-6).

<sup>67</sup> A. S. Wayne Pearce, ‘Spottiswoode, John (1565–1639)’, *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/26167>> [accessed 31 January 2011].

<sup>68</sup> Warren Chernaik, ‘Chillingworth, William (1602–1644)’, *ODNB* (Oxford: OUP, 2004; online edn, January 2010) <<http://www.oxforddnb.com/view/article/5308>> [accessed 31 January 2011].

<sup>69</sup> Robertson, p. 265.

Perhaps the most intriguing of his religious books are those that Areskine possessed which explore mystical Christianity. These include the complete works of the Silesian mystic Jakob Bohme translated into English and published in four volumes in London between 1649 and 1662 (QM 88).<sup>70</sup> Bohme was a theosophist who promoted the development of a personal spiritual relationship with God. His ideas appealed to those who did not like religious factionalism. He was also popular among natural philosophers who agreed with his idea that science offered the key to understanding the universe.<sup>71</sup> Areskine's only two editions of collected sermons were those of Robert Leighton (OM 293) and Gilbert Burnet (OM 11) both of whom believed in promoting personal spiritual development as a means of limiting the sectarianism caused by institutionalising belief.<sup>72</sup> Leighton was an influential neo-Stoic who encouraged the use of reason when considering questions of conscience and Burnet was his favourite protégé.<sup>73</sup> The continental mystical tradition meanwhile is represented by works like Abbel Bertot's *Le directeur mystique, ou Les oeuvres spirituelles de Monsr. Bertot* (OM 228) and Charles Hector de St. George Marsay's *Discourses on subjects relating to the spiritual life* (OM 285). Bertot and Marsay followed the Behemist tradition in their promotion of personal spiritual development. Marsay was particularly popular in Scotland perhaps not least because his mystical approach did not concern itself with the politics of organised religion.<sup>74</sup>

Areskine seems to have been interested in a variety of approaches to religion. His library included a wide spread of religious literature such as Pierre Boyer's anti-Jesuit *A parallel of the doctrine of the pagans: with the doctrine of the Jesuits* (OM 15), Muhammad Rabadan's *Mabometism fully explained* (OM 16) and Stephen Lobb's *The growth of error: being*

<sup>70</sup> For these, see K. Grudzien Baston, 'Sparrow, John (1615–1670)', *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/26087>> [accessed 13 October 2010].

<sup>71</sup> *Ibid.*

<sup>72</sup> Martin Greig, 'Burnet, Gilbert (1643–1715)', *ODNB* (Oxford: OUP, 2004; online edn, January 2008) <<http://www.oxforddnb.com/view/article/4061>> [accessed 31 January 2011]; Hugh Ouston, 'Leighton, Robert (*bap.* 1612, *d.* 1684)', *ODNB* (Oxford: OUP, 2004; online edn, January 2008) <<http://www.oxforddnb.com/view/article/16402>> [accessed 31 January 2011]. Areskine's wife listed Burnet's 'Letters of Travelling' as being in her library. This was his *Some letters containing an account of what seemed most remarkable in Switzerland, Italy &c* (Rotterdam: Printed by Abraham Acher, 1686) which included a description of the lawyer Giuseppe Valletta's famous library in Naples. This put Valletta's library on the map for visiting intellectuals and it is the sort of place Areskine may have visited when he was in Naples. NLS MS 5161, f. 19; Robertson, p. 139.

<sup>73</sup> Robertson, p. 138-9.

<sup>74</sup> Geoffrey Rowell, 'The marquis of Marsay: a quietist in "Philadelphia"', *Church History*, 41 (1972), pp. 61-77 (pp. 62, 63, 73, 75-6). For Scottish Pietists, who were mostly Jacobites, see David E. Shuttleton, 'George Cheyne and "The catechism": a missing title from the press of Samuel Richardson', *Library*, 7th ser., 12 (2011), 37-49 (pp. 40-1).

*an exercitation concerning the rise and progress of Arminianism, and more especially Socinianism, both abroad and now of late, in England* (OM 219).

Whatever his private beliefs might have been, it is interesting that Areskine owned at least one pro-Spinozan work which was clandestinely printed. This is found at OM 30 which is listed as 'Heinsij Operũm historicũm Collectio Lug: Bat: 1673'. This is a false author and title for an underground work. The STCN notes that Lodewijk Meijer's *Philosophia S. Scripturae interpres* (1673) was an

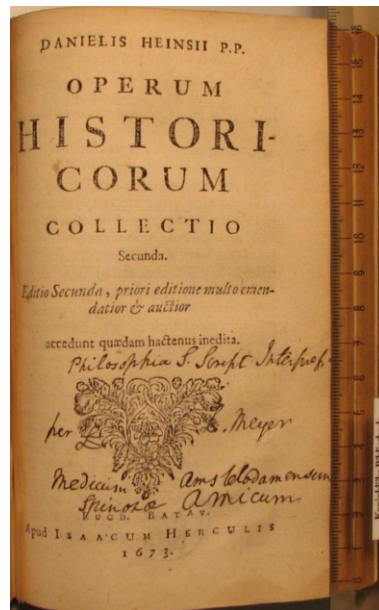
Edition with three fictitious titles: F.H. de Villacorta, *Opera chirurgica omnia* (Amstelodami: Apud J. Paulli, 1673); D. Heinsius, *Operum historicorum collectio secunda* (Lugd. Batav.: Apud I. Herculis, 1673); and F. Deleboe Sylvius, *Totius medicinae idea nova, pars secunda* (Amstelodami: Apud C. Gratiani, 1673). Issued as 2nd volume of Benedictus de Spinoza, *Tractatus theologico-politicus* (1673) (with fictitious titles) and as part of *Idem*, 1674.<sup>75</sup>

Meijer's book, originally published in 1666, was banned by the Dutch Republic along with Spinoza's *Tractatus* in 1674. Both works used philosophy 'to undermine the status of Scripture'.<sup>76</sup> Whether Areskine knew what he was buying is, of course, open to question as is any interpretation about why he placed it on his shelves and recorded it in his list. It may be the case that whoever wrote the catalogue knew nothing of the controversial nature of the book and merely wrote what the title page said.

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<sup>75</sup> STCN, <<http://picarta.pica.nl/DB=3.11/XMLPRS=Y/PPN?PPN=115758038>> [accessed 14 September 2011].

<sup>76</sup> Israel, p. 34.



**Fig. 1 Title page of the book listed at OM 30. The title and author information is false.<sup>77</sup>** The inscription shows that the owner of this copy, now in the Koninklijke Bibliotheek, The Hague (shelf mark 344 J 26[2]) knew that Spinoza's friend Lodewijk Meijer was the real author and was aware of the book's real title.

One of the few novels found in Areskine's 1731 list also expressed Spinozian ideas. Areskine's copy of Simon Tyssot de Patot's *Voyages et aventures de Jaques Massé* (OM 107) was a clandestine publication which was allegedly published in Bordeaux in 1710. Tyssot was a mathematics teacher at Deventer who eventually lost his position because of his persistent Spinozism.<sup>78</sup> His novel questions the morality of organised religions and promotes a moral way of life based on equality and fairness.<sup>79</sup>

Areskine's small collection of bibles, meanwhile, seems more focussed on languages than on their contents. Areskine's bibles were in Italian, Greek, and Spanish and they all had impeccable humanist Protestant credentials. What Areskine's list described as 'A Spanish Bible...1569' (QM 74) was most likely the first version of the bible translated into Spanish by the Spanish Protestant humanist Casiodoro de Reina, a former priest.<sup>80</sup> This translation came to be known as the 'Bear Bible' from its printer's

<sup>77</sup> STCN, <[http://resources43.kb.nl/stcn/STCN\\_115758038\\_01.jpg](http://resources43.kb.nl/stcn/STCN_115758038_01.jpg)> [accessed 14 September 2011].

<sup>78</sup> Israel, p. 393.

<sup>79</sup> Ibid., pp. 594-5.

<sup>80</sup> A. Gordon Kinder, *Casiodoro de Reina: Spanish reformer of the sixteenth century* (London: Tamesis, 1975), pp. 18-19.

device and was an ‘agent of Protestant propaganda’.<sup>81</sup> Reina had gone back to the earliest sources available in Greek and Hebrew and his work had taken a decade to complete.<sup>82</sup> Reina’s methodology was similar to that of legal humanist scholars who employed the same *ad fontes* approach to their translation and emendation projects relating to legal texts. Although it was already a rare book by 1602, Reina’s work provided a template for the English King James Bible of 1611.<sup>83</sup>

Areskine’s Italian bible was Antonio Brucioli’s translation which was published in Venice in 1538 (QM 102). The Florentine Brucioli also had humanist credentials. He had fled from Florence in 1522 for political reasons and picked up Lutheran ideas in France before settling in Venice.<sup>84</sup> Areskine’s ‘*Vetus Testamentum Græcum, Ex Versione Septuaginta Interpretum*’ (OM 213) was an edition of the Septuagint edited by the English controversialist John Biddle<sup>85</sup> and Areskine also owned Biddle’s critique of earlier translators.<sup>86</sup> Gerhard van Maestricht’s new testament of 1711 (OM 57) was also notable for its critical approach to the text. The edition of John Mill’s Greek edition of the new testament of 1710 (FM 26) that Areskine owned was so heavily annotated by Mill that his variant readings attracted criticism for distracting too much from the text.<sup>87</sup> The bibles Areskine collected shared a similar humanistic approach to his scholarly legal books. They are not works of devotion but of scholarship combined with pro-Protestant propaganda. The vernacular translators of Areskine’s bibles had used learning as a means of discovering the truths hidden within the original biblical texts. They believed that these had been distorted during the centuries that the Roman Catholic Church had dominated Christian belief and they thought their translations offered more valid versions of the Christian story in accessible languages.

If it is possible to learn about a person by looking at the books on his shelves, we can conclude from this brief survey of some of his religiously themed books that

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<sup>81</sup> Ludwig Rosenthal, ‘“Bear Bible”, Spanish’, *Notes and Queries*, 10th ser., 4/92 (1905), 274-5; Kinder, p. 52.

<sup>82</sup> Kinder, p. 54.

<sup>83</sup> *Ibid.*, p. 55.

<sup>84</sup> Paolo Rossi, ‘Brucioli, Antonio (1490/1500-1560)’, in *The Oxford companion to Italian literature*, ed. by Peter Hainsworth and David Robey (Oxford: OUP, 2002), p. 86.

<sup>85</sup> Stephen D. Snobelen, ‘Biddle, John (1615/16-1662)’, *ODNB* (Oxford: OUP, 2004; online edn, October 2007) <<http://www.oxforddnb.com/view/article/2361>> [accessed 2 February 2011]. OM 213 is described in the index to Areskine’s catalogue simply as ‘The Greek Septuagint’. NLS MS 3283, f. 213.

<sup>86</sup> *In sacra Biblia Græca ex versione LXX. interpretum scholia; simul et interpretum caterorum lectiones variants* (Londoni: Excudebat Rogerus Daniel: prostat autem venale apud Joannem Martin & Jacobum Allestrye, sub signo campanæ in Coemeterio D. Pauli, 1653) at OM 214.

<sup>87</sup> Stuart Handley, ‘Mill, John (1644/5-1707)’, *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/18710>> [accessed 2 February 2011].

Areskine took a moderate protestant approach to religious belief and practice, that he may have been interested in developing his personal spirituality, that he was confident in his selection of potentially controversial books, and that he was interested in studying religious texts with the same scholarly approach he employed with his legal texts.

An anonymous broadsheet poem of about 1733 may sum up many of Areskine's attitudes about religion and religious politics. *The moderate man's confession* sets out the tolerant, reasonable approach of its eponymous spokesman who says

I think freely, I own, yet I firmly believe;  
I'm not vain of my Judgment, nor pinn'd on a Sleeve.  
To sift Truth from all Rubbish I do what I can;  
And GOD knows, if I err, I'm a fallible Man....  
Any faults of my Friends I would scorn to expose...  
For Immodesty shocks both good Breeding and Sense  
No Man's Person I hate, tho' his Conduct I blame;  
I can censure a Vice, without stabbing a Name.  
To amend, not reproach, is the Bent of my Mind,  
(A Reproof is half lost when ill Nature is join'd)...  
Cool Reason I bow to, wheresoever 'tis found,  
And rejoice when sound Learning with Favour is crown'd....  
I dote on my Country, and am Leige to my King...  
Tho' Length of Days I desire, yet, with my last Breath,  
I'm in Hopes to betray no mean Dreadings of Death;  
And as to the Ways after Death be trode,  
I submit to the will of an infinite GOD.<sup>88</sup>

## Improvement

There is no doubt that Charles Areskine was interested in modernising Scotland. He expressed this not only by owning books but also by participating in organisations dedicated to improving Scotland's economy and by improving the quality of his estates at Tinwald and Alva. His position in society meant that he could encourage modernisation both as a private estate owner and more generally as a member of the Scottish ruling elite.

Areskine's membership in important new institutions and his involvement with attempts to modernise Scotland confirm his commitment to an 'improving' ideal which he shared with his patron, the earl of Ilay, and other members of elite Scottish society. Many members of this elite came together to form groups which then played active roles in promoting culture or invigorating extant organisations with their wealth and

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<sup>88</sup> *The moderate man's confession* (Edinburgh: Printed for and sold by William Yetts on the pier of Leith, 1733?).

influence. Areskine was a member of the Edinburgh Musical Society, a member of the Honourable the Improvers in the Knowledge of Agriculture of Scotland, and a shareholder in the three major Scottish banks, the Bank of Scotland, the Royal Bank of Scotland, and the British Linen Company.<sup>89</sup>

One of the most important of the organisations dedicated to improvement in early eighteenth century Scotland was the Philosophical Society of Edinburgh.<sup>90</sup> The Society was proposed in 1737 as a non-religious and non-political association for scientific discussion and for the promotion of projects to modernise Scotland. The Society came into life in 1739 with Areskine as one of its founder members. Areskine fits the template of the ‘typical member’ described by Roger L. Emerson. He was

...an active professional man from the landed gentry who was politically involved and held a patronage post which enhanced an income not wholly derived from rents...he was aware of the backwardness and provincialism of his country, and patriotic enough to wish to remedy it. Relying on provincial institutions for his status and income, he sought to raise it both through improvements which would modernize the country, and allow it and him to play a greater role in the world.<sup>91</sup>

Of the original forty-six Scottish members of the Edinburgh Philosophical Society twelve were advocates.<sup>92</sup> Although the demographics of its membership changed over its first few decades, the Society retained its focus on practical and useful approaches to modernisation.<sup>93</sup> Unfortunately the membership lists between 1739 and 1769 do not survive<sup>94</sup> so it is not known how active Areskine was in the Society. However, the books in his library offer some clues about his improving concerns. Areskine’s interest in the benefits of agriculture and science went beyond his book shelves and he may have referred to his books when he made decisions about ‘improving’ his estates, especially at Alva in Clackmannanshire.

Entries in Areskine’s library list indicate that he was interested in agriculture and husbandry. His selections range from the ancient books of Lucius Junius Moderatus

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<sup>89</sup> Roger L. Emerson, ‘The Philosophical Society of Edinburgh, 1737-1747’, *British Journal for the History of Science*, 12 (1979), 154-91 (p. 190).

<sup>90</sup> *Ibid.*, pp. 181-2.

<sup>91</sup> *Ibid.*, p. 173.

<sup>92</sup> *Ibid.*, p. 172.

<sup>93</sup> Roger L. Emerson, ‘The Philosophical Society of Edinburgh, 1748-1768’, *British Journal for the History of Science*, 14 (1981), 133-176 (p. 165).

<sup>94</sup> *Ibid.*



Columella which are present in both Latin and English (QM 92, O 93)<sup>95</sup> to Robert Maxwell's *Select transactions of the Honourable the Society of Improvers in the Knowledge of Agriculture in Scotland. Directing the husbandry of the different soils for the most profitable purposes* of 1743 (OM 191) which offered innovative modern farming techniques.<sup>96</sup> Although he was not pleased to take on responsibility for it, Areskine actively sought to improve the family estate at Alva by planting trees there. Two books would have been useful in this context. At OM 18, Moses Cook's *The manner of raising, ordering, and improving forest-trees: With directions how to plant, make, and keep woods, walks, avenues, lawns, hedges, &c.* offered the practical instructions offered in its title. Areskine also owned Philip Miller's learned, practical, and popular *Gardener's dictionary* in a Dublin edition of 1741 (FM 40).<sup>97</sup> Areskine's brother had begun improving the land before he died and his son would continue the process<sup>98</sup> until he eventually sold the estate in 1775 when it was advertised for sale with the enticement that the 'woods are thriving, and of great value'.<sup>99</sup> Areskine's own contribution included planting forty-four apple, twenty-three pear, twelve plum, and fourteen cherry trees in the 'Gard<sup>en</sup> of Alva' and giving instructions for growing and shaping hedges on the estate in 1756.<sup>100</sup>

Areskine was also interested in the industrial processes and developments relating to linen manufacture. His library included Francis Home's *Experiments on bleaching* of 1756 (OM 255) and *A collection of the acts of Parliament, now in force, relating to the linen manufacture* of 1751 (NLS, Alva.55). Home's work was notable for its use of science to improve the effectiveness and profit of linen bleaching by replacing sour milk with dilute sulphuric acid.<sup>101</sup> Scottish improvers identified the linen industry as one in which Scotland had the potential to excel. The Board of Trustees for Manufactures was

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<sup>95</sup> Columella's books may also have been useful for Areskine as a lawyer since he could have used them to understand the mechanics of Roman society and how law worked within it. I am grateful to John W. Cairns and Paul du Plessis for this observation.

<sup>96</sup> W. A. S. Hewins, 'Maxwell, Robert (1695–1765)', rev. Rosalind Mitchison, *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/18411>> [accessed 5 February 2011].

<sup>97</sup> For the publication history of Miller's *Gardener's dictionary* see Sue Minter, *The Apothecaries' Garden: a new history of the Chelsea Physic Garden* (Stroud: Sutton, 2000), pp. 27–8, where the Dublin edition is not included.

<sup>98</sup> Robert Paul, 'Alva House two hundred years ago', *Stillfoots Record* [Alva], 27 March–10 April 1901. Paul credited Sir John with 'most of the plantations which now surround the enclosures and fields immediately below the house' while Lord Alva had planted the sides of the hill above the house.

<sup>99</sup> Clackmannanshire Archives, MS PD239/108/11.

<sup>100</sup> NLS, MS 5077, f. 202. The hedges may have been installed as protection for the new trees from the wandering goats of the Ochil Hills which regularly feature in complaints in the Alva Barony Court Book held in the Alloa Archives at MS PD239/203/1.

<sup>101</sup> Iain Milne, 'Home, Francis (1719–1813)', *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/13640>> [accessed 5 February 2011].

established in 1727 and one of its key policies was developing the linen trade.<sup>102</sup> The linen industry was recognised as having the potential for economic success in Scotland and the British Linen Company emerged from the Board of Trustees when it was established by royal charter in 1746 to promote linen production and trade.<sup>103</sup> Areskine's judicial colleague Lord Milton owned linen manufactories at Saltoun in East Lothian and at Brunstane near Edinburgh.<sup>104</sup> Milton encouraged the duke of Argyll's involvement in of the British Linen Company: Argyll subscribed £3,000 to the Company and duly became its first governor.<sup>105</sup> Milton meanwhile endorsed Argyll's inclusion of facilities for weaving at his Inverary New Town.<sup>106</sup>

Areskine also had close links to linen. His property at Drumsheugh House near Edinburgh adjoined a small linen manufactory.<sup>107</sup> The Barony Court at Alva, although without Areskine's direct involvement, managed weavers on his estate there although the type of cloth they were making is not stated.<sup>108</sup> Edinburgh lawyers like Areskine and Milton were not only the instigators of the linen industry: they were also its target market. Demand increased from the 1750s when tea drinking and new dining customs meant that more linen was needed for home use in the polite society in which lawyers played a prominent role.<sup>109</sup>

Areskine's interest in improvement also extended to the mining industry. His eldest brother had successfully mined silver from the family lands at Alva. Areskine may not have been enthusiastic about the potential prospects at Alva but he conceded that if '...one could turn over the Ochils like a bee-hive, something might be got worth

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<sup>102</sup> Vanessa Habib and Helen Clark, 'The linen weavers of Drumsheugh and the linen damask tablecloth woven to commemorate the visit of George IV to Scotland in 1822', *Proceedings of the Society of Antiquaries in Scotland*, 132 (2002), 529-53 (p. 530).

<sup>103</sup> Alistair J. Durie, *The British Linen Company, 1745-1775* (Edinburgh: Scottish History Society, 1996), pp. 5-7.

<sup>104</sup> Habib and Clark, p. 532. For more on Milton and the Scottish textile industry see Michael Fry, 'Fletcher, Andrew, Lord Milton (1691/2-1766)', *ODNB* (Oxford: OUP, 2004; online edn, January 2007) <<http://www.oxforddnb.com/view/article/9721>> [accessed 5 February 2011].

<sup>105</sup> Durie, p. 7.

<sup>106</sup> Ian G. Lindsay and Mary Cosh, *Inverary and the dukes of Argyll* (Edinburgh: EUP, 1973), pp. 145, 171. Inverary New Town also featured a school for spinning from 1751 until 1758 when it closed because everyone in the district had by then learned the skill. *Ibid.*, pp. 171-3.

<sup>107</sup> Habib and Clark, p. 531. Areskine acquired the 'Mansion House' at Drumsheugh in 1755. It was probably built for James Donaldson, the linen manufacturer, in the 1730s. The manufactory stayed in business until 1769 when it was converted for residential use. James Erskine bought the property in 1786. Drumsheugh House was taken down to make way for the development of Alva Street in 1819. John Clark Wilson, 'Lands and houses of Drumsheugh', *Book of the Old Edinburgh Club*, 25 (1945), 71-89 (pp. 86-7).

<sup>108</sup> 'Alva Barony Court Book', Alloa Archives MS PD 239/203/1.

<sup>109</sup> Habib and Clark, p. 537.

while'.<sup>110</sup> He re-opened the silver mining operation in 1757 but, instead of finding silver, his workers found a rich source of cobalt. The identity of this valuable commodity was confirmed by the chemist Joseph Black.<sup>111</sup> Black wrote to Areskine's son James in 1759 to report that the quality of the cobalt he had analysed from Alva 'seems very good' and might be useful for the decoration of porcelain.<sup>112</sup> One porcelain manufacturer was particularly interested in the find. William Littler (1724-1784) had moved to Scotland sometime in the early 1760s after his factory in Staffordshire failed. He set up a new company at West Pans near Musselburgh where he produced glass and porcelain.<sup>113</sup> Littler was famous for his collaboration with Aaron Wedgwood which involved covering white-glazed stoneware with 'a brilliant blue ground, which has come to be called "Littler's blue" or "Aaron's blue"'.<sup>114</sup> Cobalt was essential for their process. Littler wrote to James Erskine sometime after Areskine's death to request a delivery of cobalt to supply his kiln at West Pans.<sup>115</sup> Erskine seems to have provided Littler with the cobalt he needed. Littler conducted a nine day long sale of his wares in Aberdeen in July 1766. His 'neat collection of Scots made China, brought here by the manufacturer from West Pans' included 'fine Mazzarine blue and gold china, or neatly enamelled'.<sup>116</sup>

Areskine's library list does not contain any evidence of specific interests in mining or minerals but his copy of the second edition of Chambers's *Cyclopædia: or, an universal dictionary of arts and sciences* of 1738 (FM 31) could have supplied him with any information he needed on these subjects.

Areskine and landowners like him wanted to create estates which improved the Scottish economy while increasing their private wealth. Both the second duke of Argyll and his brother, the third duke, were modernising landlords and their activities inspired those in their patronage networks. The dukes developed their Highland lands by building furnaces and factories, promoting innovative agricultural methods, and planting

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<sup>110</sup> Charles Areskine, quoted in Stephen Moreton, *Bonanzas and Jacobites: the story of the Silver Glen* (Edinburgh: National Museums of Scotland, 2008), p. 51. I have not located the original source of this quote.

<sup>111</sup> Moreton, pp. 51, 53.

<sup>112</sup> Joseph Black, 'Letter' (17 January 1759), NLS MS 5098, f. 19.

<sup>113</sup> George R. Haggerty, *Out of the blue: 18th century Scottish porcelain* (Edinburgh: Museum of Edinburgh, 2008), p. 5.

<sup>114</sup> David Barker and Sam Cole, 'William Littler at Longton Hall', in *Digging for early porcelain: the archaeology of six 18th-century British porcelain factories*, ed. by David Barker and Sam Cole (Stoke-on-Trent: City Museum and Art Gallery, 1998), pp. 4-21 (p. 40).

<sup>115</sup> Haggerty, p. 9

<sup>116</sup> William Littler, 'Advertisement', quoted in Haggerty, p. 9. For an image of a sweetmeat stand made at the West Pans factory, see the Mint Museum (Charlottesville, SC) decorative arts homepage at <<http://www.mintmuseum.org/decorative-arts.htm>> [accessed 14 September 2011].

trees.<sup>117</sup> Walter Scott retrospectively gave an idealised account of the second duke of Argyll's activities in *The heart of Mid-lothian* where his happy tenants enjoyed the latest agricultural and technological advances. On the peninsula of Roseneath, the virtuous and resourceful heroine Jeanie Deans is rewarded for her goodness by the duke by his offer residence on and management of 'a sort of experimental farm on the skirts of his immense Highland estates'.<sup>118</sup> Modernisation was good both for increasing personal wealth and for improving the condition of Scotland.

## Poetry

Poets are the unacknowledged legislators of the world.<sup>119</sup>

Areskine's miscellanies included works of sacred and secular poetry both ancient and modern. His selection of classical authors included Horace,<sup>120</sup> Homer,<sup>121</sup> Virgil,<sup>122</sup> and Ovid.<sup>123</sup> Among Scottish authors are found George Buchanan,<sup>124</sup> David Hume of Godscroft,<sup>125</sup> John Harvey,<sup>126</sup> and the epigrammatist John Leech.<sup>127</sup> Verse in Latin was represented by the collected works of Nicolaas Heinsius and Johannes Rutgers<sup>128</sup> and the poems of Hugo Grotius.<sup>129</sup> Areskine's appreciation for Latin verse was well known enough for William Lauder to dedicate a collection of sacred poems by Scottish

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<sup>117</sup> Cregeen, p. 16.

<sup>118</sup> Walter Scott, *The heart of Mid-lothian*, ed. by David Hewitt and Alison Lumsden (Edinburgh: EUP, 2004), p. 377. The duke doubtless wanted his protégée to provide a good example to the other residents of Roseneath. For a less romantic view of Argyll's improvement efforts, see Cregeen, pp. 17-19. In reality, the second duke attempted to fill the island of Tiree with his Campbell dependents starting in 1737. Rival Macleans, already resident on the remote island, blocked successive Argyll attempts at 'improvement' which included constructing a harbour and roads, enclosing farms, introducing new crops, training for industries, and encouraging fishing. It took 120 years and various levels of success for the dukes of Argyll to overcome the hostility of the residents of Tiree.

<sup>119</sup> Percy Bysshe Shelley, 'A defense of poetry', in *The major works*, ed. by Zachary Leader and Michael O'Neill (Oxford: OUP, 2003), pp. 674-701 (p. 701).

<sup>120</sup> Including Alexander Cunningham's edition of 1721 at OM 27, English translations at OM 28 and OM 206 and the Foulis edition of 1756 at OM 262. One of the oldest books in Areskine's collection was his edition of Horace edited by Christopher Landino which was published in Venice in 1483 (FM 15).

<sup>121</sup> In Greek and Latin, at OM 155 and OM 156.

<sup>122</sup> In Latin and Italian, at QM 21-5, OM 45 and OM 151.

<sup>123</sup> In Latin at OM 92-3.

<sup>124</sup> In Latin, at FM 1, OM 203 and OM 287.

<sup>125</sup> In Latin, at OM 61.

<sup>126</sup> *The life of Robert Bruce, king of Scots, a poem*, at QM 8. Areskine is listed as a subscriber to this work.

Areskine also subscribed to the second volume of Allan Ramsay's *Poems* (Edinburgh: Printed by Thomas Ruddiman, for the Author, 1728) but this is not listed in his 1731 manuscript.

<sup>127</sup> In Latin, at OM 152.

<sup>128</sup> At OM 60.

<sup>129</sup> At OM 59.

authors,<sup>130</sup> *Poetarum Scotorum musæ sacræ: sive quatuor sacri codicis scriptorum, Davidis & Solomonis, Jobi & Jeremiae, poetici libri* (OM 207), to him in 1739.

Poetry was not just read for pleasure in the eighteenth century: it was a force for reform and a source for understanding human nature and history and these two aspects were closely linked to the law and legal understanding.

The first of these aspects, reform, is represented by the theories of the jurist Gianvincenzo Gravina, whom, as we saw above in Chapter III, Areskine probably met in Rome. Gravina promoted the practical uses of poetry in his literary theories. Poetry had a special power in Gravina's thinking. 'Poets and artists, as bringers of truth, through imagination, into untutored minds' were for him the 'founders of civilization'.<sup>131</sup> Poetry was the medium for expressing truths<sup>132</sup> and its form could be used to educate all members of society.<sup>133</sup> Gravina had achieved international fame with his *Origines iuris civilis* of 1708 (Q 147) which took a rational approach to law and saw jurists as the administrators of good government.<sup>134</sup>

Gravina was a founding member of the *Accademia degli Arcadi*, an intellectual discussion group in Rome. The *Accademia*, for which Gravina was a driving force and publications editor, sought to reform literature by encouraging clear, understandable writing. Good writing would then help to educate all classes, but especially the lower classes, about their rights and duties in society.<sup>135</sup> Homer and Dante provided models as authors whose style and morality inspired Gravina's set of ideal poetical rules.<sup>136</sup> Areskine owned Gravina's works of aesthetics, *Della ragion poetica* of 1708 (QM 68) which outlined his theories of poetry and *Della tragedia* of 1715 (QM 98) in which he

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<sup>130</sup> Lauder had undoubted abilities as a Latinist but was a controversial figure. His professed Jacobitism and hatred of John Milton led him to attempt the re-writing of British history according to his political inclinations. See Paul Baines, 'Lauder, William (c. 1710-c. 1771)', *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/16121>> [accessed 27 July 2010]. Areskine also possessed his 1750 *An essay on Milton's use and imitation of the moderns, in his Paradise lost* (OM 264). This was dedicated to the universities of Oxford and Cambridge.

<sup>131</sup> Gianvincenzo Gravina, quoted in John A. Marino, 'The state and the shepherds in pre-Enlightenment Naples', *Journal of Modern History*, 58 (1986), 125-42 (p. 129).

<sup>132</sup> Susan M. Dixon, *Between the real and the ideal: the Accademia degli Arcadi and its garden in eighteenth century Rome* (Newark: University of Delaware, 2006), p. 27.

<sup>133</sup> Harold Samuel Stone, *Vico's cultural history: the production and transmission of ideas in Naples, 1685-1750* (Leiden: Brill, 1997), p. 200.

<sup>134</sup> *Ibid.*, p. 202.

<sup>135</sup> *Ibid.*

<sup>136</sup> Gino Bedani, 'Gian Vincenzo Gravina (1664-1718)', in *The Oxford companion to Italian literature*, ed. by Peter Hainsworth and David Robey (Oxford: OUP, 2002), p. 277. Areskine owned works by both. Homer at OM 155 and OM 156. Dante at QM 20 and OM 162.

expressed his theory that tragedy was the ideal form for encouraging the development of civil society,<sup>137</sup> as well as his legal works.

Areskine particularly commended the quality of society during his visit to Rome in 1710.<sup>138</sup> He may have been influenced by Gravina. His decision to enter into public life when he returned to Scotland after his grand tour may have been in part based on a Gravina-inspired wish to reform society by playing an active role in legal practice: he may also have found intellectual support for his personal ambition.

Poetry was not just a potential agent of reform: it could also be used to study human nature and history. Hugh Blair summarised the unique attributes of the form in 1763, saying

...the most natural pictures of ancient manners are exhibited in the ancient poems of nations. They present to us...The history of human imagination and passion. They make us acquainted with the notions and feelings of our fellow-creatures...discovering what objects they admired, and what pleasures they pursued....<sup>139</sup>

Although Blair was specifically writing of the fraudulent 'Ossian' poems which he believed were the authentic works of a pre-historic Scottish bard, his ideas about the revelations poetry can offer about society stand. Poetry was a complement to history because it could help in understanding human behaviour and human responses over time. This was why people wanted to believe that Ossian and Fingal were real pre-historic Scots. An ancient poetic tradition could put Scots on a level with the Greeks and Romans of the classical past whose literature had defined so much of learned culture. Ossian offered a chance to reach back into history by the means of poetry to restore a lost past. Areskine owned both *Fingal, an ancient epic poem* and Blair's validation of it (both at QM 121).

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<sup>137</sup> Ibid.

<sup>138</sup> I have not determined if Areskine attended any meetings of the *Accademia* but as a foreign professor of law and legal scholar he certainly would have been welcome at their gatherings. Gravina was aware of opportunities for book publishing outside Italy and especially at Leipzig where his *Origines iuris civilis* had already been published. In a letter of 26 July 1710 he mentioned 'della prosperiá che in contra oltre le Alps, utlissima allo stampatore de Lipsia'. If he knew Areskine was considering a visit to Germany, Gravina may have sought him out as a trustworthy courier. See Gianvincenzo Gravina, *Curia Romana e Regno di Napoli: cronache politiche e religiose nelle letter a Francesco Pignatelli*, ed. by Antonio Sarubbi (Naples: Guida Editori, 1972), p. 327.

<sup>139</sup> Hugh Blair, *A critical dissertation on the poems of Ossian, the son of Fingal* (London: Printed for T. Becket and P. A. De Hondt, at Tully's-Head, in the Strand, 1763), p. 1. Areskine's copy (QM 161) was probably one of the last books he bought before his death in April 1763.

The final book listed in Areskine's 1731 manuscript is Alexander Pope's satirical poem *The Dunciad* (OM 299). This work did not seek to reform society or to restore history. Pope's mock-epic incorporates classical allusions and forms while creating something new. The edition of 1729 that Areskine owned included extensive notes on the 'Imitations of the Ancients...to gratify those who either never read, or may have forgotten them'.<sup>140</sup> A reader like Areskine did not need these translations and keys to classical allusions. His library stocked the relevant texts. That Pope included these references shows how poetry had changed from an elite pursuit requiring a traditional education which included classical languages and history to a form that anyone who could read English could enjoy. Gravina and the promoters of polite learning would have approved of the sentiment if not the poem's disrespectful attitude about the power and dignity of poetry. *The Dunciad* was wry and sarcastic but it articulated some of the intellectual concerns of learned society in eighteenth century Britain while inviting a new set of readers to share the pleasures of poetry.

Given his general interests it is fitting that Areskine's 'last composition was a prayer in classical Latin for his king and country'.<sup>141</sup> History, religion, improvement, and poetry were thus all addressed in Areskine's last days as they had been throughout his life.

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<sup>140</sup> Alexander Pope, 'Advertisement', in *The Dunciad, variorum. With the prolegomena of Scriblerus* (London: Printed for A. Dob, 1729).

<sup>141</sup> John Ramsay, *Scotland and Scotsmen of the eighteenth century*, ed. by Alexander Allardyce, 1 (Edinburgh: William Blackwood, 1888), p. 110.

## A Scottish Gentleman's Library: Storing and Sharing Books

Cicero...stopt a while...at *Antium*, where he had lately rebuilt his house, and was now disposing and ordering his library, by the direction of Tyrannio....*Atticus lent him two of his Librarians to assist his own*, in taking Catalogues, and placing books in order; which he calls *the infusion of a soul into the body of his house*.<sup>1</sup>

Book collecting intellectuals like Areskine had an important practical matter to consider. Areskine's library of nearly 1,300 books was of a considerable enough size for him to need to work out where and how to keep it. The early eighteenth century Scottish library was more than a place for storage: it could be at the very heart of a gentleman's social life. Scottish legal professionals came to be noted not only for the quality of the libraries they kept but for the statements they made in storing them and by sharing access to them. Although it is not known where Areskine kept his books, other contemporary library rooms or buildings were documented or have survived. Areskine's 1731 list acted as a shelf list and his books were identified with shelf marks. This demonstrates that the books were kept in order with some sort of shelving system and that they were organised in a way that made them easily accessible for their owner. The eighteenth century Scottish gentleman's library was a social space. Institutional libraries like the Advocates Library and private libraries were places to meet, converse, and share books and ideas. This chapter looks at some of the libraries early eighteenth century Scottish collectors built to house, display, and share their books.

### Keeping books

Areskine had a multi-disciplinary private library any *litteratus* could be proud of but, in the sociable world of early eighteenth century Britain, it was not enough to collect and record a personal collection. The private library was a useful tool for cementing political alliances and for developing a family legacy. As we saw in Chapter I above, political rivalries could be acted out by aristocratic collectors like the earls of Oxford and the earl

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<sup>1</sup> Conyers Middleton, *The history of the life of Marcus Tullius Cicero*, 2 (London: Printed for W. Innys, at the West-End of St Paul's, 1741), p. 57. Areskine's copy was listed at QM 103.



of Sunderland who competed for books as well as power. Professional men, meanwhile, could use their private book collections to demonstrate that they deserved their places in intellectual society. On the other hand, an avid book collector like Sir Hans Sloane might forgo buying books he wanted to curry favour with a more powerful bibliophile like Robert Harley. The roles they took on varied but it is important to note that early eighteenth century private libraries were at the heart of gentlemen's social lives. Although none of Areskine's own libraries survive, we can consider some of the library spaces which were developed by his contemporaries, including those created by his patron.

Charles Areskine's patron, Archibald Campbell, earl of Ilay, was, as we saw in Chapter I above, a notable book collector. Campbell may have had as many as five different book collections at his various residences but he kept his largest library at his house in London. The inconvenient design of Argyll House, which had two entrances via both Marlborough Street and Argyll Street, seems to have been inspired in part by Ilay's need to accommodate his growing library. Ilay had two subsequent libraries at Argyll House. The first was at the end of his garden and a second larger version expanded the first to connect the library with the main house. The resulting library was a large galleried room which had dimensions of ninety by twenty feet and featured two bow windows which overlooked what remained of the still-large garden and which projected out another seven feet each. The bow window wall had three further windows between the bow windows: the entire wall therefore was designed to let light into the library. Two fireplaces faced the bow windows and there was a gallery at each end of the room.<sup>2</sup> The library provided office or meeting space for Ilay and his guests as a letter Areskine's son Charles wrote to his brother 'Jemmie' in 1746 shows:

I write this from the Libray [sic] where I have just mentioned your affair; & the upshot of Conference is that...it will be proper for you to secure as Many Votes as possible, in case there should be an Alteration....The Duke

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<sup>2</sup> 'Argyll Street Area', *Survey of London: volumes 31 and 32: St James Westminster, Part 2* (1963) <[http://british-history.ac.uk/report.aspx?compid=41478&strquery=argyll house](http://british-history.ac.uk/report.aspx?compid=41478&strquery=argyll+house)> [accessed 12 May 2010]; Roger Emerson, 'Catalogus Librorum A. C. D. A., or, The library of Archibald Campbell, third duke of Argyll (1682-1761)', in *The culture of the book in the Scottish Enlightenment* (Toronto: Thomas Fisher Rare Book Library, 2000), pp. 13-39 (p. 15). For Ilay's building projects in London, Whitton and 'The Whim' in Peebleshire see Mary Cosh, 'Lord Ilay's eccentric building schemes: two dukes and their houses, 2', *Country Life* (20 July 1972), 142-5. None of these survive but all included libraries in their designs. Ilay did not include a specific library room at his Inverary Castle. Murray C. T. Simpson, 'Housing books in Scotland before 1800', *Journal of the Edinburgh Bibliographical Society*, no. 4 (2009), 11-31 (p. 18).

says He will write very readily to Principal Campbell for the West-Country & to the sheriff of Argleshire.<sup>3</sup>

The library was used for meetings, discussions, political planning, and letter writing as well as a place for storing and referring to books. The multi-purpose approach to library design at Argyll House was typical of its time. Lord Chesterfield thought his library, completed in 1749, was the best room in his London house and it was his preferred place to receive visitors.<sup>4</sup> Ilay's galleried library was a focal point in his London life and his friends came to say they were 'calling at the Library' when they were going to pay him a visit.<sup>5</sup> Ilay's collection, like that of book collectors from the professional classes, was more than a background decoration for his favourite social space. His books were available to his visitors and his knowledge of their contents was renowned. Ilay and his contemporaries saw their libraries just as Cicero had done many centuries before: their libraries gave their houses 'the infusion of a soul'.

### **Storing books and building libraries**

Over the course of the eighteenth century, the purpose of the private library changed, and its form changed to reflect this. At the beginning of the century, individuals' libraries reflected their personal tastes and their reading habits. By the end of the century, the private library had moved to a more public room and the

gentleman's library shelves were...exposed to the inquisitive gaze of his guests: he now has to show that he has got all the right books, that is to say, all the fashionable books, whether of not he has actually read them, or wants to read them.<sup>6</sup>

The move towards having a dedicated room for storing books seems to have been a late seventeenth century innovation in Scotland and it was not until John Slezer's engraving of the plan for Thirlestane Castle of c. 1690 that a country house plan included a room designated as a library. The engraving shows alterations made for the Duke of Lauderdale in the 1670s. As Simpson points out, this was concurrent with Lauderdale's

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<sup>3</sup> Charles Erskine, 'Letter' [1746], NLS MS 5075, fols. 212-13.

<sup>4</sup> M. H. Port, 'Library architecture and interiors', in *The Cambridge history of libraries in Britain and Ireland, 2: 1640-1850*, ed. by Giles Mandelbrote and K. A. Manley (Cambridge: CUP, 2006), pp. 459-78 (p. 472).

<sup>5</sup> Cosh, p. 143.

<sup>6</sup> T. A. Birrell, 'Reading as pastime: the place of light literature in some gentlemen's libraries of the 17th century', in *Property of a gentleman: the formation, organisation and dispersal of the private library 1620-1920*, ed. by Robin Myers and Michael Harris (Winchester: St Paul's Bibliographies, 1991), pp. 113-31 (p. 129).

building works at Ham House near London which also included a designated library room.<sup>7</sup> However, the idea that the private library became more public needs to be considered in a specific Scottish context. The creators of early eighteenth century library rooms in Scotland maintained that their spaces were separate from their households even as they shared their collections with their guests. The Scottish country house library was paradoxically ‘often unusually architectural and grand while...it was often the most comfortable and welcoming room in the house’.<sup>8</sup>

Scottish country houses libraries tended to take one of two forms. They sometimes featured ‘skied’ libraries in their top floors.<sup>9</sup> An important example of a skied library survives at Arniston House which William Adam designed and built for Robert Dundas (1685-1753) between 1726 and 1732. Dundas was a successful lawyer and rival of Areskine who went on to become Lord President in 1748. In the late 1720s, he was politically in opposition and he had a growing family. Either of these factors may have inspired his remodelling of the family home at Arniston.<sup>10</sup> The new library was one of the most important rooms in the house and was (and is) positioned above the hall.<sup>11</sup> The ‘high library’ at Arniston with its upper floor position proved popular and Adam included similar plans for the library in his designs at Traquair House in Peebleshire, at the House of Dun near Montrose, and at Haddo House in Aberdeenshire.<sup>12</sup> The skied library offered a quiet working space for the gentleman’s reading and study away from the noise of household.

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<sup>7</sup> Simpson, p. 13. The library at Ham House was built from 1672 to 1674 to replace an older library room to accommodate Lauderdale’s growing collection and it featured 572 feet of additional shelving. Lauderdale’s books were sold between 1688 and 1692. Christopher Rowell and others, *Ham House, Surrey* (London: National Trust, 1995), p. 30. John Newman describes the Ham House library thus: ‘Cedar bookshelves line three walls almost to their full height, and in one corner, close to the door to the stairs, is a large built-in writing desk with numerous drawers and a broad flap which can be raised and lowered. The room was clearly intended primarily as a study, not for display’. John Newman, ‘Library buildings and fittings’, *The Cambridge history of libraries in Britain and Ireland, 2: 1640-1850* ed. by Giles Mandelbrote and K. A. Manley (Cambridge: CUP, 2006), pp. 190-211 (p. 209). It is worth noting that the bibliophile Archibald Campbell was born at Ham House. Alexander Murdoch, ‘Campbell, Archibald, third duke of Argyll (1682–1761)’, *ODNB* (Oxford: OUP, September 2004; online edn, October 2006) <http://www.oxforddnb.com/view/article/4477> [accessed 18 May 2010].

<sup>8</sup> Ian Gow, “‘The most learned drawing room in Europe?’: Newhailes and the classical Scottish library”, in *Visions of Scotland’s past: essays in honour of John R. Hume*, ed. by Deborah C. Mays. Michael S. Moss and Miles K. Oglethorpe (East Linton: Tuckwell, 2000), pp. 81-96 (p. 81).

<sup>9</sup> *Ibid.*; Newman, p. 211.

<sup>10</sup> Mary Cosh, ‘The Adam family and Arniston’, in *Architectural History, 27: Design and practice in British architecture: Studies in architectural history presented to Howard Colvin* (1984), pp. 214-230 (p. 215).

<sup>11</sup> Cosh, p. 219.

<sup>12</sup> Pat Wigston, ‘A grain of truth’, *Architectural Heritage*, 12 (2001), 13-26 (p. 13).

Although they were popular, skied libraries were not the only form of library space created in early eighteenth century Scotland. Adam designed elaborate pavilion libraries which were never built for Hopetoun House near Edinburgh, Yester House near Gifford, and Duff House near Banff.<sup>13</sup> The introduction of pavilion libraries into Scotland may reflect an English influence. The English fashion was for house libraries to be ‘on the periphery of the plan’ or ‘sited in a pavilion’.<sup>14</sup> The duke of Lauderdale’s libraries at both Thirlestane and Ham featured this placement for his libraries. The libraries built by the earl of Ilay and Richard Mead in London were developed as afterthoughts which grew from outbuildings in their gardens. The earl of Sunderland helped to entrench this fashion when he built a library wing for his London house which was 150 feet long, had five apartments, and had shelving fourteen shelves high along its walls in 1719.<sup>15</sup>

An example of an early eighteenth century Scottish pavilion library survives at Newhailes near Edinburgh. The Newhailes library was constructed by an unknown architect between 1718 and 1722 for the Dalrymple family.<sup>16</sup> The library at Newhailes seems to have been designed to function as a working space: the large windows let in the light from almost floor to ceiling on one side of the room and the oak-lined walls originally featured little decoration.<sup>17</sup> Its creator, Sir David Dalrymple (c. 1660-1721), was the youngest son of Viscount Stair and a notable book collector. As Areskine would later do, Dalrymple had studied abroad in the Low Countries, had a career in public life, and was active in the legal establishment. He bought the house that he renamed Newhailes in 1709.<sup>18</sup> The library wing he commissioned doubled the size of the house and every inch of the library’s wall space was designed to hold books.<sup>19</sup> Dalrymple’s descendants developed the collection but by the late eighteenth century the room had lost its function as a serious study space and it acted as a drawing room.<sup>20</sup>

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<sup>13</sup> Ibid.; Simpson, p. 16. Adam’s planned library and leisure pavilion at Hopetoun House became a large ballroom instead.

<sup>14</sup> Newman, p. 211.

<sup>15</sup> Katherine Swift, ‘The formation of the library of Charles Spencer, 3rd earl of Sunderland (1694-1722): A study in the antiquarian book trade’ (D.Phil thesis, Oxford, 1986), p. 37.

<sup>16</sup> Gow, “Most learned”, pp. 84-5.

<sup>17</sup> Ibid., p. 88.

<sup>18</sup> John W. Cairns, ‘Legal study in Utrecht in the late 1740s: The education of Sir David Dalrymple, Lord Hailes’, in *Summa eloquentia: Essays in honour of Margaret Hewett* (Unisa: University of South Africa, 2002), pp. 30-74 (p. 35.)

<sup>19</sup> Gow, “Most learned”, p. 85.

<sup>20</sup> Ibid., p. 94.

The skied library at Arniston and the pavilion library at Newhailes were both designed to hold the large book collections created by legal families. There were more than 4,000 volumes at Arniston by 1819<sup>21</sup> and the still extant seventeen-foot tall adjustable oak shelving at Newhailes can hold about 7,000 books.<sup>22</sup> Large libraries like these required special places to store them but a collection of the size described in Areskine's 1731 manuscript would have fitted on shelving of a much smaller scale. It is worth remembering, however, that Areskine's list does not include all of the books he owned<sup>23</sup> and that other members of the family, including his wife who listed 158 titles in her own library catalogue of 1729,<sup>24</sup> needed places to store and study their own collections.

The difference in the location within the houses for the libraries at Arniston and Newhailes shows that there were 'two separate ideas going on simultaneously'<sup>25</sup> in early eighteenth century Scotland regarding placing the private library within the home. Both arrangements agreed, however, that the gentleman's library should be placed in a space away from the noise of the household. John Clerk of Penicuik combined the trends by choosing to place his library in the 'upper part of the house' at Penicuik while having in 'the lower part of the house...a chamber fitted up with my private and domestic things, and consecrated to study and quiet, that it, remote from the noise of my children and servants' where he kept 'many books to be read'.<sup>26</sup> Clerk's wish to share his intellectual treasures inspired his description of his scholarly arrangements. He wrote to his friend the Leyden professor Hermann Boerhaave whom he very much wanted to welcome to

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<sup>21</sup> Wigston, p. 13.

<sup>22</sup> Simpson, p. 16. Arniston House has retained its books. The Newhailes books were allocated to the National Library of Scotland in 1978 in lieu of death duties. Gow, p. 96. As of 2004, the Scottish National Trust, which acquired Newhailes in 1997, was 'in negotiation with the National Library to return many of these books to...their original home'. Hilary Horrocks, *Newhailes* (Edinburgh: National Trust for Scotland, 2004) pp. 5, 28.

<sup>23</sup> Copies of books with Areskine provenances, including his copies of Adam Smith's *The theory of moral sentiments* (Edinburgh, 1759) and Christopher Irvine's *Historiae Scoticae nomenclatura Latino-vernacula* (Edinburgh, 1682), are not listed but they contain his bookplate. Despite the survival of the 1731 list, it is impossible to say how many books Areskine had at any one time and how much space he would have needed to store them. See Appendix C below for books with Areskine provenances outwith the Alva Collections.

<sup>24</sup> NLS MS 5161.

<sup>25</sup> Simpson, p. 16.

<sup>26</sup> John Clerk, 'Description of the estate and old house at Penicuik, in a letter from the Baron to Boerhaave', tr. by T. Graves Law, in *Memoirs of the life of Sir John Clerk of Penicuik, Baronet Baron of the Exchequer, extracted by himself from his own journals, 1676-1755*, ed. by John M. Gray (Edinburgh: EUP, 1892), p. 237.

Scotland for a visit. He hoped his library and the chance to use it would prove to be sufficient enticements.

Areskine commissioned William Adam, the favourite architect of members of Edinburgh's elite legal establishment,<sup>27</sup> to build him a house at Tinwald in Dumfriesshire in 1738. Tinwald House was small compared to Adam's previous project Arniston House and his subsequent commission at the House of Dun.<sup>28</sup> Building a country house was a way for Areskine to 'improve' his estate while demonstrating his taste. Building a house was a collaborative process for an Adam patron. Areskine's personal level of architectural knowledge is uncertain and his library manuscript lists only a small selection of books about architecture. His library included a text by the Italian architect Sebastiano Serlio in folio which was bound with a work by Jean Cousin on the mathematics of perspective (FM 12).<sup>29</sup> However, the travel guides he picked up while on his grand tour contained descriptions and illustrations of the great buildings of the continent. It is notable that all of these are described as 'Cum Figuris' in his catalogue.<sup>30</sup> Areskine would have been aware of the Palladian style, based on continental models that Adam favoured.

Areskine later recalled that when he came to the Resolution of building a House at Tinwal [sic], he met with Mr. Adams...and some others of his Friends, and when they had resolved the size of the House, he desired Mr. Adams to make out a Plan for him, which accordingly Mr. Adams made out and delivered to him.<sup>31</sup>

Two of the plans Adam made for 'Tindwell House' were reproduced in *Vitruvius Scoticus*, a retrospective collection of Adam's work published in 1812. Plate 153, 'The West Front

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<sup>27</sup> John Gifford, *William Adam, 1689-1748: A life and times of Scotland's universal architect* (Edinburgh: Mainstream, 1989), p. 29; A. A. Tait, 'William Adam and Sir John Clerk: Arniston and "The Country Seat"', *Burlington Magazine*, 111 (March 1969), pp. 132-41 (pp. 132, 135).

<sup>28</sup> James Macaulay, *The classical country house in Scotland, 1660-1800* (London: Faber and Faber, 1987), p. 74. Adam designed the House of Dun for Areskine's kinsman David Erskine, who used the judicial title Lord Dun, with the advice of the exiled earl of Mar. Murray G. H. Pittock, 'Erskine, David, Lord Dun (*bap.* 1673, *d.* 1758)', *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/8849>> [accessed 05 September 2011].

<sup>29</sup> It is important to note that both of these books have mathematical contents which may have interested Areskine.

<sup>30</sup> See e.g., Famiano Nardini, *Roma antica* (Rome, 1704; QM 62); Lorenzo Pignoria, *Le origini di Padova* (Padua, 1625; QM 65); Pompeo Sarnelli, *La guide des etrangers curieux de voir les choses plus memorables de Poussol, et de ses environs* (Naples, 1702; OM 120); and Pompeo Sarnelli, *La vera guida de'forestieri, curiosi di vedere...le cose più notabili della regal città di Napoli e del suo...distretto, ritrovata colla lettura de'buoni scrittor* (Naples, 1713; OM 133).

<sup>31</sup> *Depositions of witnesses, &c. In the cause William Adams architect in Edinburgh; Against William Lord Braco; Taken by virtue of an Act and Commission of the Lords of Council and Session* (21 March 1743), p. 28.

of Tindwall House toward the Court', shows an elevation of the house which features Areskine's coat of arms in the pediment. The main block of the house is flanked by pavilions.<sup>32</sup> Although it seems the masons made a start on one of them, the pavilions were never completed.<sup>33</sup>

Adam also planned houses for several of Areskine's colleagues and contemporaries including Robert Dundas's house at Arniston and Sir John Clerk of Penicuik's Mavisbank. Adam's plans for homes at Arniston House, the House of Dun, Hopetoun House, and Duff House included spaces for libraries of varying sizes. At the time Tinwald House was being built, Areskine had two sons who were finishing their educations and starting their own legal careers. The examples of the libraries created by the likes of his legal colleagues the Dundases and the Dalrymples cannot have escaped his notice. If he was typical of his profession and class, it is likely that Areskine would have wanted to include a library since the 'country house library could be viewed as an educational investment for the heirs of a dynasty'.<sup>34</sup>

After he approved Adam's plan, Areskine depended on associates and agents to oversee the building works at Tinwald House. When he was thinking of visiting Dumfriesshire in April 1739, Sir John Clerk of Penicuik wrote to Areskine to offer his services as a messenger: 'if I go I'll pay a visite to your Masons if you have any commands for them'.<sup>35</sup> Later in the same month, John Hope reported on a visit to the site with the architect, writing 'M<sup>r</sup>. Adam...join'd me, & we went to Drumfries [sic] together...to Tindwall, where we spent a good Part of the Day in viewing what is already done & concerning all the necessary measures for finishing the Work...'.<sup>36</sup> Both visitors were patrons and friends of Adam. Clerk was more a partner than a client when the two designed Mavisbank and Clerk's country house ideals influenced Adam's design for Arniston.<sup>37</sup> During the 1730s, Hope and Adam were completing their plans for Hopetoun House. These included a south pavilion which would contain a library, study,

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<sup>32</sup> William Adam, *Vitrivius Scoticus; Being a collection of plans, elevations, and sections of public buildings, noblemen's and gentlemen's houses in Scotland: Principally from the designs of the late William Adam, Esq. Architect* (Edinburgh: Printed for Adam Black, and J. & J. Robertson, Edinburgh; T. Underwood, and J. Taylor, London, [1812]), plates 152-3.

<sup>33</sup> '...a Part of the Pavilions having been carried some length, as to...which there had been no previous Agreement.' *Depositions*, p. 28.

<sup>34</sup> Gow, "Most learned", p. 81.

<sup>35</sup> John Clerk, 'Letter' (5 April 1739), quoted in John Gifford, *William Adam, 1689-1748: A life and times of Scotland's universal architect* (Edinburgh: Mainstream, 1989), p. 123.

<sup>36</sup> John Hope, 'Letter' (11 April 1739), quoted in John Gifford, *William Adam, 1689-1748: A life and times of Scotland's universal architect* (Edinburgh: Mainstream, 1989), pp. 123-4.

<sup>37</sup> Tait, p. 132.

laboratory, and billiard room.<sup>38</sup> Both Clerk and Hope were talented amateur architects in their own rights: Areskine was fortunate to have their help and he readily turned to his friends throughout the building process. When he needed advice about the costs of the house, Areskine admitted that 'how far as Prices were equal, [he] was no Judge, but submitted it to the Opinion of others, acquainted in these matters, and was determined by it'.<sup>39</sup> Adam, meanwhile, was fortunate in having clients like Clerk, Hope, and Areskine: he did not enjoy smooth relations with all of those who employed him. His relationship with William Duff, Lord Braco, turned sour when Braco accused Adam of overcharging him for stone and labour used at Duff House in the 1730s. Braco also objected to Adam's method of sending delegates to supervise projects instead of managing them himself. A protracted legal battle followed<sup>40</sup> which was resolved in 1748 when none other than pleased client Lord Tinwald made the decree arbitral which found in Adam's favour.<sup>41</sup>

Areskine could have planned either a skied or a pavilion library at Tinwald House. Adam's original design for the house included pavilions on each side which were never built. The Tinwald House plans do not include descriptions of what each room was to be used for and there are no obvious clues from the shapes of the rooms. Any of the rooms on the plan for the attic floor of the house, which was built, would have easily been large enough to accommodate a library of the size recorded in the 1731 manuscript catalogue. It is possible that Adam and Areskine were planning for one of the pavilions at Tinwald to form a library like that at Newhailes or the one projected for Hopetoun but this can only be a guess. In the event, Areskine had to sell his new house and estate at Tinwald in 1753 to finance the purchase of his ancestral estate at Alva from his nephew to keep it in the family.<sup>42</sup> The sale of Tinwald may have therefore scuppered any further plans Areskine had for the development for a dedicated private library there. If there was ever any built-in shelving or other physical evidence for an

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<sup>38</sup> Alistair Rowan, 'The building of Hopetoun', *Architectural History*, 27: *Design and practice in British architecture: Studies in architectural history presented to Howard Colvin* (1984), pp. 183-209 (p. 193).

<sup>39</sup> *Depositions*, p. 28.

<sup>40</sup> A selection of papers about the case dating from 1743 is preserved in the NLS at AB.10.210.03(1-10).

<sup>41</sup> William R. M. Kay, 'What's his line: Would the real William Adam please stand up?': Some recent research discoveries', in *Architectural Heritage: Journal of the Architectural Heritage Society*, 1: *William Adam* (Edinburgh: EUP, 1990), pp. 49-61 (p. 56). Adam's original plan for Duff House included a gallery which was later developed into a library. This space may have been a 'fail-safe against the late-arrival of the wings' which were planned for the house. Ian Gow, 'The history of Duff House', *Duff House* (Edinburgh: National Galleries of Scotland, 1995), pp. 29-43 (p. 36).

<sup>42</sup> Cairns, 'Origins', p. 345.



early eighteenth century private library at Tinwald House it has been lost: Tinwald House was gutted by a fire in 1946 which destroyed the Adam interior.<sup>43</sup>



**Fig. 1 William Hogarth, *Mr Woodbridge and Captain Holland* (1730)<sup>44</sup>**  
A lawyer in consultation with a client with books shelved by size on shelves in the background

However, any of Areskine's other houses could also have accommodated his book collection. A surviving plan of Alva House dating from 1789 shows that it had a large gallery.<sup>45</sup> If he had decided to use Ilay's Argyll House library as a model, Areskine could have created a long library at Alva House without needing to do any building work. His large town house in Edinburgh in Mylne Square, meanwhile, consisted of the second and third floors on the west side of the square.<sup>46</sup> Since this was his residence

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<sup>43</sup> John Gifford, *Dumfries and Galloway* (London: Penguin Books; Buildings of Scotland Trust, 1996), p. 552. Simpson and Brown Architects restored the original floor plan and the exterior in 1990. Images of the house are available at <<http://www.simpsonandbrown.co.uk/projects/tinwald.html>> [accessed 05 September 2011] and from the Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS) at <<http://canmore.rcahms.gov.uk/en/site/212862/details/tinwald+house/>> [accessed 05 September 2011].

<sup>44</sup> Licensing information as at 05 September 2011: 'This image (or other media file) is in the public domain because its copyright has expired. However - you may not use this image for commercial purposes and you may not alter the image or remove the WikiGallery watermark. This applies to the United States, Canada, the European Union and those countries with a copyright term of life of the author plus 70 years'.

<sup>45</sup> Robert Adam, 'Alva House', 3rd Floor plan' (1789), RCAHMS, CLD/27/4 P.

<sup>46</sup> Robert Chambers, *Traditions of Edinburgh* (Edinburgh: Chambers, 1824; repr. 1996), p. 204.

when the court was in session, it is likely that Areskine kept his law books, or a selection of them, at Mylne Square (see Fig. 1). Areskine bought a suburban retreat at Drumsheugh near Edinburgh in 1755. The house there was big enough to be described as a mansion house.<sup>47</sup> Books were certainly kept at Drumsheugh later in the century and it is likely that Areskine kept the bulk of his collection there after 1755. An inventory taken after the death of James Erskine's widow, Jean Stirling, in 1797 shows that the house at Drumsheugh had a room designated as a library which had a closet attached and which was furnished with a 'Mahogany book press with drawers', an 'Old Cabinet and Charter Chest', a 'Telescope and Microscope', an 'Ebony Cabinet', and 'Books belonging to M<sup>r</sup>. Baron Areskine'.<sup>48</sup> Two further 'Mahogany book shelves' were kept in the dressing room.<sup>49</sup>

If Areskine had a library room or rooms, whether at his country properties at Tinwald and Alva, his Edinburgh town house, or his suburban villa at Drumsheugh, it or they need not have had built in shelves like those found at the Arniston and Newhailes libraries. Bookcases, cupboards, and presses could all be used to store books and 'bureau-bookcases...became available after 1700'.<sup>50</sup> Book storage did not need to be elaborate. When he died in his study in 1704, John Locke was surrounded by his 3,000 volumes of books 'housed in boxes around the room and in his chamber above'.<sup>51</sup> The surviving labels found on the books in the Alva Collections show that Areskine arranged his books by size and in a particular order which was recorded in his manuscript library catalogue.

## Sharing books

Justin Champion has described the library of the Rotterdam merchant Benjamin Furly, who counted among his friends John Locke, John Toland, and Anthony Collins, as 'both a used space where a network of individuals met for conversation and inter-action,

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<sup>47</sup> John Clark Wilson, 'Lands and houses of Drumsheugh', *Book of the Old Edinburgh Club*, 25 (1945), 71-89 (p. 85). When offered for sale in 1721 it was described as 'a convenient Mansion House, consisting of five Fire-Rooms, with some other Conveniencies. Also, a Brew-house, Bake-House, well and several Cellars, two good Gardens, and a Grass Park, [and] about three Acres of Ground'. *Edinburgh Evening Courant* (7 March 1721).

<sup>48</sup> NLS MS 5114, ff. 28, 32v. The 'Old Cabinet and Charter Chest' may have belonged to Areskine. When J. Erskine Murray recorded the papers kept inside a family heirloom in 1910 he described them as 'Some of the Papers in Brown veneered Cabinet (Lord Justice Clerk Erskine's)'. The papers found inside post-dated Areskine's lifetime. NLS MS 5114, f. 93.

<sup>49</sup> NLS MS 5114, f. 28.

<sup>50</sup> Simpson, p. 19.

<sup>51</sup> John Harrison and Peter Laslett, *The library of John Locke* (Oxford: OUP, 1965), p. 1.

and also a material resource: a collection of books and manuscripts'.<sup>52</sup> He goes on to say in general terms that a 'good library was the premise for being cosmopolitan'<sup>53</sup> and to advance the idea that 'making libraries was a collaborative act'.<sup>54</sup>

This was very much the case for Scottish advocates. Their shared educational backgrounds, need for similar books in their profession, and cultural ideals inspired advocates to create book collections and thereby stimulated the market for books in early eighteenth century Edinburgh. As a group they had the economic power to influence what books were printed and imported. The Advocates Library, the collection those in their profession shared and which was guided by the recommendations of the bibliophile Sir George Mackenzie as well as skilled librarians like Thomas Ruddiman, provided an example of a learned and cultured collection that they could emulate or even compete with as they assembled their own collections. They would have met not only at the Advocates Library or at each other's library spaces, but also at book sales and auctions and in coffee houses, taverns, and other places the learned gathered.

Collections of books held by family members also played important roles in education and in the formation of literary taste. As a travelling student John Clerk of Penicuik tried to remember which of his father's books he had read before he set off for his continental education. Clerk wanted to shop for books efficiently: there was no point in duplicating books already in the family collection. When he considered which Roman authors to buy, Clerk decided that he

Shall buy no more till I be certain which you have already. I have a good guess of all the books you have, for I have had all the books which you have in the great study through my fingers a hundred times. And I have seen the catalogue of books you have in the little study.<sup>55</sup>

In addition to the collection they shared as members of the Faculty of Advocates, Scottish advocates would be able to recall the collections they had visited during their educational grand tours and the conversations they had enjoyed at them. The Italian collections of intellectuals like Giuseppe Valletta and Giambattista Vico in Naples were well known to Scottish travellers of the late seventeenth and early

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<sup>52</sup> Justin Champion, "The fodder of our understanding": Benjamin Furly's library and intellectual conversation, c. 1680-1714', *Royal Holloway Eprints* <<http://eprints.rhul.ac.uk/165>> [accessed 18 February 2009], pp. 1-19 (pp. 1-2)

<sup>53</sup> *Ibid.*, p. 8.

<sup>54</sup> *Ibid.*, p. 9.

<sup>55</sup> Kees van Strien and Margreet Ahsmann, 'Scottish law students in Leiden at the end of the seventeenth century: the correspondence of John Clerk, 1694-1697', *LLAS*, 20 (1993), 1-65 (p. 28).

eighteenth centuries. Valleta's library in particular was a 'meeting place for the learned and curious, Neapolitans and visitors to the city'.<sup>56</sup> Among his visitors were Gilbert Burnet and the earl of Shaftesbury.<sup>57</sup> Collections back in the British Isles also attracted Scottish visitors. Clerk visited Sir Hans Sloane's house and saw his impressive collection and library on a visit to London in 1727.<sup>58</sup> There were, however, some limits to sociability. When 'Mr Hay brought Mr Maule of Panmuire [sic]' to see the Harleian collection one day in 1724 'it being upon the Stroke of 11 a-clock, & my Dinner just ready', Humfrey Wanley declined to show them around but said they could 'call again sometime next week, at a more seasonable hour'.<sup>59</sup>

Book collectors who shared access to their libraries could expect to have their collections – and themselves – praised by grateful scholars. Thomas Ruddiman thanked both Sir David Dalrymple and Andrew Fletcher of Saltoun for their help in the preface to his edition of George Buchanan's *Opera omnia* of 1715 (FM 1). Ruddiman had quite different political views to his book suppliers but was nonetheless able to obtain access to their bookshelves.<sup>60</sup> As we saw above in Chapter I, Alexander Cunningham fully expected to have access to books in the Harleian library for scholarly purposes despite his position as the earl of Sunderland's buying agent and therefore an employee of a rival collector. The courtesies of social scholarship overrode political concerns.

Acknowledging a patron's learning was a sure way to gain favour. When he wrote the 'Epistle Dedicatory' to his *The laws and customs of Scotland, in matters criminal* in 1678 (Q 168), Sir George Mackenzie praised its dedicatee, the duke of Lauderdale, as a 'Schollar' and not only that but

the greatest Schollar, who is a states-man in Europe: For to hear you talk of books, one would think you had bestowed no time in studying men; and yet

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<sup>56</sup> John Robertson, *The case for the Enlightenment: Scotland and Naples, 1680-1760* (Cambridge: CUP, 2005), p. 106.

<sup>57</sup> Ibid. Although Areskine did not list Burnet's account of his travels, his wife's catalogue includes 'Dr Būrnet's Letters of Travelling' (Rotterdam, 1686), Appendix D below. The work included Burnet's description of his meeting with Valletta and his circle in his library in Naples but tactlessly linked them with atheism. Robertson, pp. 139-40.

<sup>58</sup> John Clerk, *Memoirs of the life of Sir John Clerk of Penicuik, Baronet Baron of the Exchequer extracted by himself from his own journals, 1676-1755*, ed. by John M. Gray (Edinburgh: EUP, 1892), p. 126.

<sup>59</sup> Humfrey Wanley, *The diary of Humfrey Wanley*, ed. by C. E. Wright and Ruth C. Wright, 2 (London: Bibliographical Society, 1966), p. 292.

<sup>60</sup> John W. Cairns, 'Alexander Cunningham, book dealer: scholarship, patronage, and politics', *Journal of the Bibliographical Society of Edinburgh*, 5 (2010), 11-35 (pp. 12-13, 26). Cairns thanks Brian Hillyard for this information in a note to this article as do I for his mention of it at a PhD meeting.

to observe your wise conduct in affairs, one might be induced to believe, that you had no time to study Books.<sup>61</sup>

Authors readily recognised that their endeavours were part of a system that relied on shared learning. When he was Professor of Scots Law at the University of Edinburgh, Areskine's cousin John Erskine published his textbook *The principles of the law of Scotland* in 1754 (O 273). This was written for his students and was intended as a replacement for Mackenzie's *Institutions*. Erskine's *Principles* succeeded in this and the last edition of Mackenzie appeared in 1758: Erskine's *Principles* was thereafter the favoured textbook for the study of Scots law.<sup>62</sup>

In his introductory 'Advertisement' to the work, Erskine acknowledged that he had had help in writing his textbook and declared that

I subjected my Essay, after having employed my utmost skill upon it, to several Gentlemen distinguished by their knowledge of the law: to whom I embrace this public opportunity of offering my sincere acknowledgements, for the trouble they have taken in revising it, and for their judicious remarks and just amendments.<sup>63</sup>

Unfortunately Erskine did not name the learned gentlemen who provided their valuable editorial assistance but it is not outside the bounds of possibility that Areskine was one of them. Areskine's collection was certainly used in the composition in another of Erskine's works. His personal collection of judicial decisions in manuscript was cited fourteen times in Erskine's posthumous *Institute of the law of Scotland* of 1773. All of the 'Tinn.' references in Erskine's *Institute*, as would be expected given Areskine's dates on the Bench as Lord Tinwald (1744-1763), date from the 1740s and 1750s. They were probably loaned to the author by Areskine's son.<sup>64</sup>

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<sup>61</sup> George Mackenzie, 'Epistle dedicatory' in *The laws and customs of Scotland, in matters criminal: wherein is to be seen how the civil law, and the laws and customs of nations do agree with and supply ours* (Edinburgh: Printed by George Swintoun, 1678; facs. edn Clark, NJ: Lawbook Exchange, 2005).

<sup>62</sup> John W. Cairns, 'Institutional writings in Scotland reconsidered', *Journal of Legal History*, 4/3 (1983), 76-117 (p. 93).

<sup>63</sup> John Erskine, *The principles of the law of Scotland: in the order of Sir George Mackenzie's Institutions of that law*, 1 (Edinburgh: Printed by Hamilton, Balfour, and Neill, 1754), p. iv.

<sup>64</sup> John Erskine, *An institute of the law of Scotland in four books: in the order of Sir George Mackenzie's Institutions of that law* (Edinburgh: Printed for John Bell, 1773), pp. 135, 140, 170, 177, 319, 351, 367, 371, 439, 440, 482, 490, 500, 584. Areskine does not seem to have recorded papers from these dates in his library list of 1731. However, Areskine's collection of Session Papers, which survives in the Advocates Library, includes papers for these dates. Many of these papers are annotated in Areskine's hand. For the importance of Erskine's *Institute*, see John W. Cairns, 'Erskine, John, of Carnock (1695-1768)', *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/8869>> [accessed 31 March 2011].

## A sociable family of book collectors

Once he obtained them, Areskine's books were not static: they moved with their owner or were sent to family members as needed. As we saw in Chapter III above, there are several references in the 1731 manuscript list to books either being 'Taken to London' or sent to Areskine's son Charles to assist his legal studies there. These include books on English law like John Selden's *Fleta, seu commentarius juris Anglicani* (Q 164), 'Hobart's Reports' (F 114), 'Vaughan's Reports' (F 113), and an octavo edition of Sir Edward Coke's *Reports* (O 189). Coke's *Institutes* (F 115 – F 116) also made the trip to London on '15 Aug<sup>t</sup> 1735' when manuscript list notes that 'The 4 Books in these three articles taken out by M<sup>r</sup> Areskines orders & sent to London to his son M<sup>r</sup> Charles'.

That the younger Charles was interested in books and had begun his own library before his early death is not in doubt. Several of his books survive in the Alva Collections in Edinburgh. These include textbooks he may have used as a student at the University of Cambridge in the early 1730s<sup>65</sup> and books on English law which may show an antiquarian's interest in the subject.<sup>66</sup> Considering his father's connection with the transportation of Gravina's manuscripts in 1710, it is interesting that Erskine had a copy of Gravina's works as published in a corrected new edition in Leipzig in 1717 with him at Cambridge.<sup>67</sup> After his death in 1749, Charles Erskine's books seem to have been taken by his brother James. None of the books in the Alva Collections with a provenance connection to the younger Charles appear in the 1731 manuscript but several contain his brother's bookplate. James might have preserved the textbooks for his own children. He would have found the books on English law useful in his own career as a Baron of the Exchequer.

The reasons for other books being 'Taken to London' are less clear. Some of these are among the oldest printed books listed in the 1731 manuscript and include Venetian editions of Horace (FM 15) and Valerius Maximus (FM 21) published in 1483 and 1488 respectively, an edition of Virgil published by the Giuntas of Florence in 1520 (OM 45), and an edition of Lucan published in Paris in 1528 (OM 148). There are no indications about when these books travelled or why. Areskine's copies of these books

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<sup>65</sup> E.g. NLS, Alva.280 (Marc Antoine Muret, *Orationes, Epistolae, Hymnique Sacri* (1592)); NLS, Alva.308 (Francisco Sánchez de las Brozas, *Minerva, seu de causis linguae latinae commentarius* (1714)); AL, Alva Coll., 122 (James Stirling, *Methodus differentialis: sive tractatus de summatione et interpolatione serierum infinitarum* (1730)).

<sup>66</sup> E.g. NLS, Alva.76 (John Cowell, *Institutiones Juris Anglicani* (1676)); NLS, Alva.78 (Ranulf de Glanville, *Tractatus de legibus & consuetudinibus regni Angliae* (1673)).

<sup>67</sup> AL, Alva Coll., 132 (Gianvincenzo Gravina, *Opera quae extant omnia, in tres tomos divisa* (1717)).

have not been located so it is also unclear if they ever returned to Edinburgh with their owner.<sup>68</sup>

Book ownership was important in the Areskine household. Charles's wife Grisel Grierson of Barjarg had her own collection and her library catalogue in fact pre-dates her husband's. Now in the NLS as MS 5161, her 'Catalogue of Books belonging to Mistris Areskine of Barjarg', is dated '29<sup>th</sup> August 1729'. Intriguingly, the 1729 and 1731 Areskine manuscripts were written, at least at in its early years in the case of the 1731 manuscript, in the same hand. Although it is not known who wrote the manuscripts, some speculations can be entertained. It is unlikely that the Areskine household would have had the services of a dedicated librarian to tend to their books.<sup>69</sup> It is possible that a legal clerk or a local bookseller wrote the catalogues. The writing is certainly clear and the pages are neatly laid out.

Grisel's catalogue, like her husband's, divided her books by size but also includes a final section for 'Plays and Pamphlets'. As with Areskine's 1731 manuscript, Grisel's list includes places of publication and dates and divides the books by size. Although many of her books are on religious subjects, Grisel's collection also included works of popular fiction such as *Gulliver's Travels*, works of epic poetry such as Butler's *Hudibras* and Milton's *Paradise Lost*, recipe books, French grammars, and the popular periodicals *The Spectator* and *The Tatler*.<sup>70</sup> From looking at her library list, we learn that 'Mistres Areskine' was an avid reader of sermons, could read French, and was fond of works relating to *The Beggar's Opera*.<sup>71</sup> She seems to have shared Areskine's inclination for a personal approach to religion. Grisel passed books to her daughter Christian, 'Lady Laurie', in much the same way that her husband sent books to their son in London. For example, on 19 February 1733, *A collection of the best English plays* published in 1710 in seven volumes was sent to the recently married Christian when she was spending time

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<sup>68</sup> They do not appear in Archibald Campbell's catalogue. I have not yet checked James Erskine's catalogue for them.

<sup>69</sup> Walter Scott noted that the bibliophile John, duke of Roxburgh, had a livery servant who was responsible for 'arranging his books, fetching and replacing the volumes which he wanted, and carrying on all the intercourse which a man of letters holds with his library', This servant 'knew every book, as a shepherd does the individuals of his flock, by what is called head-mark, and could bring his master whatever volume he wanted'. Walter Scott, *The antiquary* (Edinburgh: B & W, 1993), p. 418.

<sup>70</sup> NLS, MS 5161, f. 20-1.

<sup>71</sup> At f. 24 are listed *Beggar's Opera* ('2 Copys'), *Polly. Or the 2d Part of the Beggar's Opera, Polly Peachum's Opera*, and *The Life of Polly Peachum*. All of these were published in London in 1728.

in the country.<sup>72</sup> ‘The Holy Bible in 2 Vol.’ and one of two copies of ‘Stanhope’s Thomas a Kempis’ were ‘given to my Lady Laurie’ at unspecified times.<sup>73</sup> It is clear that the family circulated their books among themselves. Grisel’s collection was smaller than her husband’s but she valued her seven folios, sixteen quartos, and 103 smaller books, along with her collection thirty-two pamphlets and plays, enough to record them.<sup>74</sup>

Although members of the cadet branch of the Erskine family were keen bibliophiles, the attitude of their cousin John Erskine, the earl of Mar and sometime patron to Areskine, to books was more ambivalent. He was well educated and keenly interested in architecture. Books were important to Mar: one of his first acts as a Jacobite exile was to request that a copy of Clarendon’s *History* be sent to him.<sup>75</sup> Mar’s advice to his son written in 1726 however, was to ‘Be not bookish or sedentary; use such sports, diversions, and exercises as you shall like best in a moderate way’.<sup>76</sup> The senior branch of the Erskine family could rely on income from their lands and they could pursue noble activities. Areskine, however, needed his learning and his books to advance himself and his family. Areskine and his sons used their books to enhance their legal careers. His brother Robert’s library, experience of books, and skill in library creation all helped him increase his favour with Peter the Great. The Areskine ladies meanwhile used their collections as demonstrations of their piety and culture. The cadet branch of the family therefore used their books for practical purposes. All of the Areskines used their books as a means of encouraging professional and social relationships within and outwith the family.

Books were not just professional tools for Areskine: they were also very much a part of his life as a sociable eighteenth century gentleman. A friend of his step-daughters who spent time at Alva House remembered her stays there with fondness. As Ramsay of Ochertyre put it: ‘[Areskine] was at uncommon pains to regulate the taste and sentiments of his young friends, by recommending proper books to them’ and would

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<sup>72</sup> Ibid, f. 24. Plays were read for their plots and collections of plays were popular among the gentry from the seventeenth century. T. A. Birrell, ‘Reading as pastime: the place of light literature in some gentleman’s libraries of the 17th century’, in *Property of a gentleman: the formation, organisation and dispersal of the private library, 1620-1920*, ed. by Robin Myers and Michael Harris (Winchester: St Paul’s Bibliographies, 1991), pp. 113-31 (p. 114).

<sup>73</sup> NLS, MS 5161, ff. 18-19.

<sup>74</sup> See Appendix D below for a transcription of Grisel Areskine’s library catalogue.

<sup>75</sup> Edward Gregg, ‘The Jacobite career of John, earl of Mar’, in *Ideology and conspiracy: aspects of Jacobitism, 1689-1759*, ed. by Eveline Cruikshanks (Edinburgh: John Donald, 1982), pp. 179-200 (p. 179).

<sup>76</sup> John Erskine, ‘My legacie to my dear son Thomas, Lord Erskine’, in *Wariston’s Diary and other papers, Publications of the Scottish History Society*, 26 (1896), pp. 157-91 (p. 185).



‘even help them to make verses or puns’.<sup>77</sup> It seems unlikely that Areskine would have been recommending Justinian’s *Corpus iuris civilis* to the young ladies of his family and their associates for their holiday amusement so it is safe to assume that he was well informed about recently published books about sciences, histories, novels, poetry, and sermons. Some of the miscellaneous books he acquired later in his life bear this out. The 1740s saw the publication of Nicholas Saunderson’s *The elements of algebra* (QM 104) and Colin Maclaurin’s *An account of Sir Isaac Newton’s philosophical discoveries* (QM 118): Areskine was a subscriber for both of these works. Titles like these demonstrate that Areskine had not lost his earlier interests in mathematics and natural philosophy and if these books were the sort of thing he was recommending to his ‘young friends’ it shows that he never lost his taste for teaching. Publications from the 1750s like ‘Fielding’s History of Tom Jones. 4 Vol.’ (OM 253), Johnson’s *A dictionary of English language* (FM 52), an edition of *The Spectator* on ‘Large Paper’ printed in Edinburgh in 1753 (OM 271), and in the 1760s Laurence Sterne’s *The life and opinions of Tristram Shandy* (OM 254) all show an engagement with contemporary literary culture. The last of these attracted critical attention among Areskine’s contemporaries. Horace Walpole peevishly wrote to his Scottish friend and fellow book collector, David Dalrymple, the future Lord Hailes, complaining that

At present nothing is talked of, nothing admired, but what I cannot help calling a very insipid and tedious performance: it is a kind of novel called, *The Life and Opinions of Tristram Shandy*: the great humour of which consists in the whole narration always going backwards....It makes one smile two or three times at the beginning, but in recompense makes one yawn for two hours.<sup>78</sup>

Areskine listed his copy of Laurence Sterne’s book in his catalogue without providing any clues about what he thought of it. Clearly this was a book, whatever its faults, which was discussed in polite society and which therefore had to be read.

Reading ‘was inherently a social activity’ throughout the eighteenth century.<sup>79</sup> Reading aloud whether plays, sermons, or other texts ‘was not merely a desirable social

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<sup>77</sup> John Ramsay, of Ochtertyre, *Scotland and Scotsmen of the eighteenth century*, ed. by Alexander Allardyce (Edinburgh: William Blackwood and Sons, 1888), p. 109.

<sup>78</sup> Horace Walpole, in Horace Walpole and David Dalrymple, *Horace Walpole’s correspondence with Sir David Dalrymple*, vol. 15 of *The Yale edition of Horace Walpole’s correspondence*, ed. by W. S. Lewis (London: OUP; New Haven: Yale University, 1952), p. 66.

<sup>79</sup> David Allan, *Making British culture: English readers and the Scottish Enlightenment, 1740-1830* (London: Routledge, 2008), p. 99.

accomplishment but an absolutely vital skill'.<sup>80</sup> Doubtless Areskine, who was known for his considerable 'oratorical powers' in the courts and whose 'soft and harmonious' words at the Bar earned him the nickname 'Sweet-lips',<sup>81</sup> would have been much in demand in the drawing rooms, parlours, and libraries of his friends and family. Surely advocates, who wrote and spoke for a living, were the stars of the social settings of eighteenth century Scotland.

Areskine was a welcome addition to the neighbourhood of Alva which Ramsay characterised as 'consisting of amiable and well-informed people, who lived together on an easy friendly footing'.<sup>82</sup> Book loans, reading aloud, and discussions about books, poetry, and music may all very well have been important parts of Areskine's social life at his country home.

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<sup>80</sup> Ibid., p. 100.

<sup>81</sup> Ramsay, pp. 102-3.

<sup>82</sup> Ramsay, p. 109.

## VIII

### The Fates of Books: The Alva Collections

#### Provenance and early modern libraries

...the evidences of [a book's] earlier history are always of interest (documentary or sentimental) and sometimes of importance. They should never be destroyed, deleted or tampered with, but on the contrary be cherished – and added to.<sup>1</sup>

Provenance is the 'pedigree of a book's previous ownership'.<sup>2</sup> This pedigree can be determined in a variety of ways. Owners may have left marks on their books including writing their signatures on the title page or elsewhere in the book, installing a printed bookplate, adding their names or arms to book's binding, using a code, writing in a motto, or adding a book label. They may also have left marginal notes.<sup>3</sup> There are multiple forms of provenance to draw upon when reconstructing Charles Areskine's library. First, there is the manuscript of 1731 which lists his books. Areskine's books can also be traced in his son's manuscript library catalogue of 1774 and in this chapter we shall find them in sale catalogues dating from the 1850s. This chapter looks at books with Areskine provenances in modern collections. It also considers some of the other owners of his books both before and after Areskine had them in his library in the early to mid eighteenth century.

Although provenance has long been valued by book sellers and collectors, library cataloguers, assuming that the contents of the book were the main consideration, tended historically not to record that of specific copies of books in their care.<sup>4</sup> New digital cataloguing techniques have emerged and these have increased the possibilities for recording provenance and for provenance research. Retrospective cataloguing projects can recognise the importance of previously unrecorded details and add them to

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<sup>1</sup> John Carter and Nicholas Barker, *ABC for book collectors*, 8th edn (New Castle, DE; London: Oak Knoll; British Library, 2004), p. 177.

<sup>2</sup> *Ibid.*

<sup>3</sup> David Pearson, *Books as history: the importance of books beyond their texts* (London; New Castle, DE: British Library; Oak Knoll, 2008), pp. 95, 98.

<sup>4</sup> *Ibid.*, p. 94.

extant records both locally and included in national imprint catalogues like the English Short Title Catalogue (ESTC).<sup>5</sup>

This chapter will describe how part of the work for this thesis involved recording the physical provenance evidence found in the copies of Areskine's books which were identified in the Alva Collections of the National Library of Scotland (NLS) and the Advocates Library (AL). Those who owned and read books are important subjects for study.<sup>6</sup> Important studies of the seventeenth and eighteenth century libraries of Lord George Douglas, John Locke, Adam Smith, and Samuel Jeake of Rye have added to our understanding of these individuals, their thinking, and their times.<sup>7</sup> It is hoped that this thesis and the catalogue that accompanies it will do the same for Charles Areskine.

The provenance details so prized today were not always valued by book owners of the past nor do they routinely occur in the books that survive from their libraries. David Pearson has pointed out that 'it is not uncommon to find a seventeenth-century book with no inscriptions, bookplates or other signs to show what hands it has passed through over the years'.<sup>8</sup> Some early modern book owners preferred their copies to be free of the signs of previous ownership so they removed bookplates and washed out inscriptions.<sup>9</sup> Books may have also lost their provenance evidence over time as they were rebound, re-backed, or repaired.<sup>10</sup> However, many of Areskine's surviving books in the Alva Collections contain provenance evidence as bookplates, signatures, and inscriptions. The Alva Collections, therefore, provide a good case study for the survival of provenance in a small historic library.

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<sup>5</sup> Brian Hillyard, 'Working towards a history of Scottish book collecting', in *Six centuries of the provincial book trade in Britain*, ed. by Peter Isaac (Winchester: St Paul's Bibliographies, 1990), pp. 181-6 (p. 185).

<sup>6</sup> Pearson, p. 94; Hillyard, pp. 182-4.

<sup>7</sup> See W. A. Kelly, *The library of Lord George Douglas (ca. 1667/8?-1693?): an early donation to the Advocates Library* (Cambridge: LP, 1997); Hiroshi Mizuta, *Adam Smith's library: a catalogue* (Oxford: Clarendon, 2000); John Harrison and Peter Laslett, *The library of John Locke* (Oxford: OUP, 1965); *A radical's books: the library of Samuel Jeake of Rye, 1623-90*, ed. by Michael Hunter, Giles Mandelbrote, Richard Ovenden, and Nigel Smith (Woodbridge: D. S. Brewer, 1999).

<sup>8</sup> Pearson, p. 94.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*, p. 173.

## The Alva Collections

The Alva Collections in Edinburgh were presented to the National Library of Scotland and the Advocates Library by the Trustees of the Dollar Academy in 1927.<sup>11</sup> In his report to the Trustees of the National Library of Scotland for that year, NLS Librarian W. K. Dickson described the donation as ‘...a collection of early law books, chiefly the works of Continental Civilians and writers upon the law of nations, which were at one time in the library of Charles Erskine of Tinwald, who was Lord Justice Clerk from 1748 to 1763’.<sup>12</sup>

The NLS had come into being in 1925 and its foundation inspired a spate of donations, bequests, and purchases which included the Moreton Papers, the Lauriston Castle library, the Rosebery early printed books, and some books from the Walter Scott collection at Abbotsford.<sup>13</sup> The NLS Board of Trustees had the right to accept property ‘for the purposes of the Library’.<sup>14</sup> Books once owned by Areskine and members of his family were another early donation to the new national institution.

The Alva Collections take their names from the Areskine family estate at Alva near Stirling in Clackmannanshire. Areskine’s grandfather, Sir Charles Areskine, bought the estate in 1649. Our Charles Areskine purchased the estate from his nephew after his older brother’s mismanagement and debts meant that it might be lost to the family. Areskine went on to develop the estate and the large house at Alva became his holiday home.<sup>15</sup> Areskine was buried in the family vault of the parish kirk at Alva where he was commemorated by a marble monument with a Latin inscription which his son

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<sup>11</sup> *Special and named printed collections in the National Library of Scotland*, ed. by Graham Hogg (Edinburgh: National Library of Scotland, 1999), p. 4; ‘Special and named printed collections at the National Library of Scotland’, available at <<http://www.nls.uk/catalogues/online/snpc/list.cfm?letter=A>> [accessed 11 July 2011].

<sup>12</sup> W. K. Dickson, ‘Report by the Librarian to the Standing Committee of the Trustees for the year 1927’, in *Report by the Standing Committee to the Board of Trustees and Report by the Librarian for the year 1927* (Edinburgh: HMSO, 1928), p. 9. The gift was also acknowledged in the *Scotsman* newspaper the day after the meeting where the reports were published almost word for word. See ‘Meeting of Trustees’, *Scotsman* (10 January 1928), p. 9.

<sup>13</sup> Denis Smith, “‘An actual temple of learning’: The National Library after 1925’, in *For the encouragement of learning: Scotland’s National Library, 1689-1989*, ed. by Patrick Cadell and Ann Matheson (Edinburgh: HMSO, 1989), pp. 266-91 (p. 269).

<sup>14</sup> National Library of Scotland Act 1925, ch. 2, b.

<sup>15</sup> Alva House no longer exists. It was derelict by the Second World War when it was destroyed while being used for tank target practice. This was despite some later additions which may have been the work of Robert Adam. Alva House is mentioned as one of Adam’s demolished works in Ian Gow, *Scotland’s lost houses* (London: Aurum, 2006), p. 109.

commissioned.<sup>16</sup> Alva House and its estate remained in the family until 1775 when Areskine's son sold it.<sup>17</sup> Both Charles Areskine and his son James Erskine were described as 'of Alva'. James used 'Lord Barjarg' as his judicial title from 1761 to 1772 but used 'Lord Alva' from 1772 until his death in 1796. Erskine sold the family estate at Barjarg Tower in 1772 and this may have inspired him to change his title. He remained as 'Lord Alva' despite his sale of the Alva estate.

The modern Alva Collections were consulted in conjunction with NLS MS 3283 to determine if any provenance details for the books Areskine recorded in his 1731 manuscript catalogue survived as bookplates, signatures, or other forms of notation. The recording of provenance details from Areskine's books was an important part of this project since it could help determine the history of the books and their use throughout their working lives.

### ***The Alva Collection in the National Library of Scotland***

The Alva Collection books at the NLS were examined with the help of Dr Brian Hillyard and the staff of the NLS Rare Books Department.<sup>18</sup> The Alva Collection books in the NLS are now shelved at Alva.1-Alva.379. Some of the volumes actually contain multiple titles which have been bound together – some in Areskine's time - so the actual number of separate titles in the collection is 413. Deliveries were organised so that the research could take place in the Rare Books office at the NLS and my preliminary physical survey of the collection took place from December 2008 to January 2009.

Provenance evidence details were added to the NLS database as they were found throughout the survey. Most of the provenance details took the form of bookplates or inscriptions. Training was provided on the Voyager cataloguing system used by the

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<sup>16</sup> Robert Paul, 'Alva House two hundred years ago', *Stillfoots Record* [Alva], 27 March-10 April 1901, pt II. The monument survived a fire which destroyed the church in 1985. It is now in the Johnstone Mausoleum in the Alva Old Kirk yard. The tablet also commemorates Areskine's wife, 'Griseldae Grierson de Barjarg' who was buried at Greyfriars in Edinburgh, their ten children who died young and were buried near their mother, and James's brother Charles who was buried in the chapel of Lincoln's Inn in London. 'Inscription', Johnstone Mausoleum, Alva (transcribed 04 September 2010).

<sup>17</sup> 'Johnstone Mausoleum', *ClacksWeb*, available at <<http://www.clacksweb.org.uk/visiting/johnstonemausoleum/>> [accessed 18 June 2010].

<sup>18</sup> I am especially grateful to George Stanley for the many deliveries of trolleys filled with Alva books and a quick look at the home of the books in the NLS staff floor, to Eoin Shalloo for cataloguing help and a useful auction reference, and to the rest of the Rare Books team for a warm welcome and friendly assistance when I shared their office while working on the survey. I would also like to acknowledge the professionalism and courtesy of all NLS reading room staff during my research over the last three years.

NLS<sup>19</sup> so that the necessary fields could be added to extant records. Most of the details I added to the database had to do with recording provenance information for Areskine and other previous and/or subsequent owners of Alva Collection books. Fig. 1 is an example of a record edited to include information about Areskine's bookplate.

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000 01285 am a2200301K 450
001 1591954 005 20090120122518.0 008 881125s1661 ne 00 lat
035 __ |9 0686-53860
100 10 |a Gentili, Alberico, |d 1552-1608.
240 10 |a Hispanicae advocacionis libri duo.
245 10 |a Alberici Gentilis juriscons. Hispanicae advocacionis (in quo tractatu
diversae illustres quaestiones maritimae secundum jus gentium & hodiernam
praxin quam nitide perlustrantur & deciduntur) libri duo. ...
250 __ |a Editio secunda priori emendator.
260 __ |a Amstelredami, |b apud Joannem Ravesteinium, ... |c 1661.
300 __ |a [16],264,[8]p.; |p 8vo.
500 __ |a Edited by Scipione Gentili.
500 __ |a Includes index.
519 __ |a NHA
519 __ |a SCB 529 __ |a t.e- m.t, |b a.i. tutu 3 |c clslslclxi.
561 __ |a Armorial bookplate of Charles Areskine of Alva Esqr. Ld.
Justice Clerk. on front pastedown. |5 StEdNL : Alva.161
650 _0 |a Maritime law |v Early works to 1800.
650 _0 |a War, Maritime (International law) |v Early works to 1800.
700 10 |a Gentili, Scipione, |d 1563-1616.
700 1_ |a Tinwald, Charles Erskine, |c Lord, |d 1680-1763, |e former
owner. |5 StEdNL : Alva.161
955 __ |a Nha.K236(1) |b NhaDOTK
955 __ |a Nha.K236(2) |b NhaDOTK
956 __ |a NLS
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**Fig. 1**  
**Catalogue Details (MARC) for Alva.161 showing added provenance details (in bold, italic) from the NLS online catalogue <www.nls.uk>**

Bookplates are the most frequently found provenance evidence in the NLS Alva Collection. The bookplates used by Charles Areskine and James Erskine are described in the Franks survey of British and American bookplates.<sup>20</sup> Charles Areskine used at least two different styles of bookplate after his appointment as Lord Justice Clerk in 1748. All of the bookplates in the Alva Collections mention his position: it does not seem that Areskine used any form of bookplate before 1748. Both versions feature the Erskine

<sup>19</sup> I am grateful for the assistance of Rare Books Curator Robert Betteridge for providing this training.

<sup>20</sup> E.R.J. Gambier Howe, *Franks bequest: catalogue of British and American book plates bequeathed to the trustees of the British Museum by Sir Augustus Wollaston Franks*, 1 (London: Trustees of the British Museum, 1903), pp. 23, 346.

family crest and the family motto 'Je pense plus'. The larger format bookplate,<sup>21</sup> Franks 679, uses the abbreviation 'Ld.' for 'Lord' while the smaller bookplate,<sup>22</sup> Franks 680, spells out 'Lord' in full. James Erskine's bookplates are described at Franks 9934 and 9935. As with his father's bookplates, Erskine's bookplates are of two sizes. For both collectors the larger format plates are described in the Franks survey as 'Jacobean Armorial' plates while the smaller formats are in a 'Chippendale Armorial' style.<sup>23</sup>



**Fig. 2**  
**Bookplate of Charles Areskine of Alva, Lord Justice Clerk**  
**Franks 680**  
**Private Collection (Baston)**

When books were signed by Areskine with his full name it is always with the 'Areskine' spelling which also appears on his bookplates. Most of the Areskine bookplates in the Alva Collection books appear on their front pastedowns. Some, however, appear in other places such as at the back of the books (e.g. Alva.127, Alva.151, and Alva.339) or on loose leaves (e.g. Alva.303). These anomalies may indicate that some of the bookplates were installed at speed. Many of Areskine's books were plainly bound: their bindings would not offer clues to the 'right way up' for books to be placed on their shelves. Anyone pasting in bookplates would have needed to pay attention to the task.

While examining the Alva Collection at the NLS, I discovered that the manuscript also acted as a shelf list for Areskine's collection. Some of the Alva books

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<sup>21</sup> The larger format bookplate is 15.75 cm tall x 9.75 cm wide (6.25 x 3.75 in). See e.g. NLS, Alva.101.

<sup>22</sup> The smaller format bookplate is 9.5 cm tall x 9 cm wide (3.75 x 2.5 in). See e.g. NLS, Alva.19.

<sup>23</sup> Howe, pp. 23, 346.



retain small paper labels pasted on their spines which have numbers matching those of the 1731 manuscript. Others have their numbers inscribed directly on their bindings. It was possible to identify some of the books by using these labels to match their books to their listings in the manuscript. Eighty of the books in the NLS Alva Collection retain clearly visible spine labels which match the entries on the manuscript. Many more books have evidence that a spine label once existed but has been removed or has fallen off and several have labels which are too faded or damaged to read. In some cases the number has been written directly onto the binding. The existence of the surviving spine labels and numbers means it is possible to get an idea of the appearance of the collection in Areskine's time.



**Fig. 3**  
**Examples of NLS Alva Collection books with surviving spine labels relating to the 1731 manuscript**

L to R: NLS, Alva.127 (O 36), Pufendorf, Samuel, Freiherr von, *Samuelis Puffendorffii Analecta Politica, quibus multae, rariae, gravissimaeque hujus disciplinae quaestiones variis dissertationibus explicantur et enodantur* (Amstelaedami: Apud Janssonio-Waesbergios, 1698); NLS, Alva.178 (O 41), Ziegler, Kaspar, *Casparis Ziegleri... Dicastice, sive, De judicum officio et delictis, tractatus moralis, in quo tota judicis conscientia excutitur* (Vitembergae, 1702); NLS, Alva.288 (O 51), Vinnius, Arnold, *Arnoldi Vinnii...selectarum Juris Quaestionum libri duo* (Lugd. Batav.: J. & D. Elsevier, 1653); NLS, Alva.152 (O 53), Vinnius, Arnold, *D. Justiniani...Institutionum sive Elementorum libri quatuor, notis perpetuis...*(Amstelodami: Ex officina Elseviriana, 1669)

A useful visual reference for imagining the possible appearance of Charles Areskine's library comes from a contemporary painting by Gawen Hamilton. A group portrait, *Nicol Graham of Gartmore and Two Friends Seated in a Library*, now in the National Gallery of Scotland, dating from c. 1730, is very close in date to Areskine's 1731 library list. The painting shows three gentlemen engaged in a discussion. One of them is Nicol

(or Nicholas) Graham of Gartmore who was called advocate on 17 January 1724.<sup>24</sup> The library shown behind the figures has its books shelved according to their sizes and with spine labels. It is not overly fanciful to assume that the book the men are consulting is the library's catalogue. Although part of it is obscured by a curtain, the shelving shows books of a fairly uniform appearance. The books, however, are not elaborately decorated. They are similar in appearance to many of the books in the NLS Alva Collection in that they are plainly bound. The books are labelled with small red labels at the tops of their spines.<sup>25</sup> This is a lawyer's private collection. Although it is on display and its appearance is pleasing, this purpose of this collection is practical rather than aesthetic.

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<sup>24</sup> *The Faculty of Advocates in Scotland with genealogical notes*, ed. by Francis J. Grant (Edinburgh: Scottish Record Society, 1944), p. 87.

<sup>25</sup> I have not traced a catalogue for this collection.



**Fig. 4**  
**Gawen Hamilton, *Nicol Graham of Gartmore and Two Friends Seated in a Library*, National Gallery of Scotland** (used with the permission of the National Galleries of Scotland)

Internal provenance evidence from books in the Alva Collection allows us to confirm that many of Areskine's books went to his son James as instructed in his will. James inherited Areskine's 'Library of Books' in 1763.<sup>26</sup> Of the NLS Alva Collection Books, 248 have internal shelf marks in the form 'letter.number.number' (e.g. 'a.1.42'). (See Fig. 2 for an example which has been written at the top of Areskine's bookplate.) I have confirmed that these references relate to the manuscript of James Erskine, Lord Alva's library catalogue of c. 1774 now held at the Edinburgh University Centre for Research Studies as MS La.III.755, 'Press catalogue of the Library belonging to Lord Alva'.<sup>27</sup> In contrast with his father's simple numbered spine label system, James shelved his books using a lettered press and numbered shelf system which is described at the beginning of his catalogue. Users could find books by following the instructions that 'The Shelves are numbered from N<sup>o</sup> 1...beginning above the Surbase' with 'Press A Shelf 1<sup>st</sup> in Folio' being a 'Manuscript concerning the Law of England'.<sup>28</sup> Areskine's 1731 library catalogue is itself listed at n.1.1 of his son's catalogue as 'Catalogus librorum D. D<sup>ni</sup> Caroli Areskine ab Alva, e quaestoribus rerum Criminalium ordinariis primarii, perseipsum digestus M. S.'.<sup>29</sup> The 1731 manuscript also has its 'Lord Alva' shelfmark written in ink on its front pastedown.

Of the Alva books in the NLS, 206 (49 per cent) have the bookplate of 'Charles Areskine of Alva Esqr. Lord (or Ld.) Justice Clerk' while 93 (22 per cent) contain the bookplate of his son 'James Erskine of Alva Esqr.' These statistics assume that titles bound together are taken as each containing the bookplate. The 1731 manuscript catalogue shows that most of these were also bound together when Areskine owned them. Two books (Alva.228 and Alva.339) contain the bookplates of both Charles and James. Two books (Alva.188 and Alva.257) have the signature of Charles Areskine without his bookplate. Alva.157(1) has a bookplate and a signature of Charles Areskine.

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<sup>26</sup> Charles Areskine, 'Will', National Archives, Prob. 11/888, ff. 139-41 (f. 139<sup>v</sup>).

<sup>27</sup> I have checked the references found in the books against the manuscript catalogue. Gero Dolezalek has identified this manuscript as a 'Catalogue of books of Charles Erskine Lord Alva 1680-1763'. The manuscript is undated. The only surviving provenance information other than the title is a faint pencil inscription on the front pastedown which reads 'J. Erskine Sept<sup>r</sup> 28 1803'. Areskine was never known as 'Lord Alva'. His son James Erskine used 'Lord Alva' as his judicial title from 1772 to 1796. The 'J. Erskine' of 1803 is James's grandson, James Erskine of Aberdona. See Gero Dolezalek, *Scotland under jus commune: census of manuscripts of legal literature in Scotland, mainly between 1500 and 1660*, vol. 3 (Edinburgh: Stair Society, 2010), p. 277.

<sup>28</sup> University of Edinburgh, Centre for Research Collections, MS La.III.755, f. 1.

<sup>29</sup> EUL, MS La.III.755. The description implies that Areskine played a direct role in creating his catalogue since 'perseipsum digestus' means 'set out by him himself' or 'arranged by him himself'. I am grateful to Brian Hillyard for pointing out the significance of this description.

James Erskine's bookplate also has two formats. Most of his bookplates in the Alva Collections are of the same format as his father's smaller bookplate. James always used the spelling 'Erskine' as did his brother Charles. It is unclear why Areskine's sons preferred this spelling to the one their grandfather, father and uncles used but their choice has been helpful in establishing the ownership of books in the Alva Collections.

Nine books have the signature of 'Charles Erskine' (or the initials 'C. E.'). These books once belonged to Charles Areskine's older son, also Charles (1716-1749). Three of the inscriptions note that he was a student at Corpus Christi, Cambridge in 1733 and 1734.<sup>30</sup> These books do not appear in the Charles Areskine manuscript list and may have come directly to James Erskine at his brother's early death. James's bookplate is in most of them. (See e.g. Alva.76, Alva.78, Alva.122, Alva.133, Alva.280, Alva.286, Alva.308, Alva.311, and Alva.244.)

Not all of the Alva Collection books are listed in the 1731 manuscript. Many postdate Areskine and were owned by later family members. All of the Alva Collection books in the NLS which are not included in the 1731 catalogue, however, are listed in Appendix B of this thesis. It is hoped that the data therein may be used to answer questions about lawyers and eighteenth century book collecting which are beyond the scope of this thesis.

### ***The Alva Collection in the Advocates Library***<sup>31</sup>

As with the NLS Alva Collection, the Alva books the Advocates library holds were donated by the Trustees of Dollar Academy in 1927.<sup>32</sup> The Alva Collection books in the Advocates Library are shelved in the Treasurer's Room at Alva Collection, 1 – Alva Collection, 179. Some of the books originally in the Alva Collection have been moved to other collections (e.g. The Macmillan Collection) but can be traced via the Advocates

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<sup>30</sup> John Venn and J. A. Venn, *Alumni Cantabrigiensis: a biographical list of all the known students, graduates and holders of office at the University of Cambridge, from the earliest times to 1900*, 1: *From the earliest times to 1751*, 2: *Dabbs-Juxton* (Cambridge: CUP, 1922), p. 105.

<sup>31</sup> I am grateful to the Advocates' Library's Senior Librarian Andrea Longson who allowed me to have special access to the collections in her care and found spaces for me to work during a busy time in the library. I am also grateful to Mungo Bovey, QC, the Keeper of the Library, for allowing me access to the Alva Collection and to Alan Dewar, QC, the Treasurer of the Faculty of Advocates, for allowing access to his office which is where the Alva Collection is shelved. Special mention and thanks must also go to Angela Schofield and Rosemary Paterson who went above and beyond (for some of the books quite literally!) to supply the Alva materials during a staff shortage. Thanks must also go to the 'Devils' who, despite some bemusement, let me share their desk space in the library while I completed the book survey.

<sup>32</sup> 'Special collections: Alva', Advocates Library  
<<http://www.advocates.org.uk/library/specialcollections/alva.html>> [accessed 1 September 2011].

Library online catalogue. The number of books examined for this physical survey was 258. As with the NLS books, the increase in titles compared to shelf marks results from multiple titles being bound together. My survey of this collection took place in March 2009.

Of the books examined in the Advocates Library's Alva Collection, 164 (64 per cent) have the bookplate of 'Charles Areskine of Alva Esqr. Lord (or Ld.) Justice Clerk' while 77 (30 per cent) contain the bookplate of his son 'James Erskine of Alva Esqr.'. Only three books have provenance details relating to James's brother, 'Charles Erskine', but as with the examples in the NLS collection these are not listed in the 1731 manuscript and so help to confirm the theory that the younger Charles' books went directly to his brother at his death in 1749. Most of the books identifiable in the 1731 manuscript and now in the Advocates Library are legal folios in Latin. James's books, however, most of which are not in the 1731 manuscript, deal mostly with English law. This is consistent with his career as a Baron of the Exchequer.<sup>33</sup>

The Alva Collection books in the Advocates Library are mostly on legal topics. This concentration on legal books reflects both the ideals of the Advocates Library's founding father Sir George Mackenzie of Rosehaugh and the restatement of the library's aims following the establishment of the National Library of Scotland in 1925. Mackenzie had envisioned a collection consisting of five types of legal texts including books dealing with Roman law, Greek law, feudal law, canon law, and practicks.<sup>34</sup> These subjects were to be supported by three *Jurisprudentiae inservientia*, namely history, criticism, and rhetoric, which would help advocates with their interpretation of the law.<sup>35</sup> Mackenzie's advice, however, was a set of recommendations not rules: the Advocates Library never excluded non-legal books from its collection. Between 1692 and 1742 the library added about 10,000 items and the *Copyright Act of 1710*, which gave it the right to collect a copy of every book registered at Stationers' Hall in London, ensured that a supply of miscellaneous titles regularly entered the collection.<sup>36</sup>

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<sup>33</sup> I am grateful to John Cairns for this observation. For a discussion of the Court including its use of English traditions, see A. L. Murray, 'The post-Union Court of Exchequer', in *Miscellany five by various authors*, ed. by Hector L. MacQueen (Edinburgh: Stair Society, 2006), pp. 103-32.

<sup>34</sup> George Mackenzie, *Oratio inauguralis habita Edenburgi Id. Mar. 1689. A Dom. Georgio Mackenzero, De structura bibliothecae purè juricicae, et hinc de vario in jure scribendi genere* (London, 1689), p. 8.

<sup>35</sup> Mackenzie, p. 24.

<sup>36</sup> Brian Hillyard, 'The formation of the library, 1682-1729', in *For the encouragement of learning: Scotland's National Library, 1689-1989*, ed. by Patrick Cadell and Ann Matheson (Edinburgh: HMSO, 1989), pp. 23-66 (pp. 47-8).

Throughout the eighteenth century, non-members increasingly applied to use the books housed in the Advocates Library. A special desk was supplied for them to use in 1772.<sup>37</sup> Members and non-members alike borrowed or referred to more general works than legal works.<sup>38</sup> By 1799, members took it for granted that they could borrow as many books as they wanted and that they could keep them for as long as they liked.<sup>39</sup> This continued to be a problem into the nineteenth century. In 1826, a disappointed Walter Scott ‘went to the Library but not a book could I get to look at. It is I think a wrong system the lending books to private houses at all and leads to immense annual losses’.<sup>40</sup> Non-members, especially historians, continued to use the collection throughout the nineteenth century.<sup>41</sup> By 1879, the library’s catalogue listed 250,000 entries and by the early twentieth century the library found itself out of storage space and lacking in funds to care for its collections. In 1919, the Faculty decided to investigate the possibility of working with the government to set up a national library which would have responsibility for the nation’s non-legal book collection.<sup>42</sup>

As early as 1808, the Faculty had realised that its library fulfilled the functions of a national library. By the early twentieth century<sup>43</sup> there was a growing realisation that a new institution was needed to cope with the demands of budget and space. The *National Library of Scotland Act 1925* provided that any new law books which were received by the Copyright Act (by then renewed in the *Copyright Act 1911*) were to be given to the Faculty of Advocates for their library.<sup>44</sup> This continued the long tradition of legal book collecting by the Faculty.

In July 1941 the Dollar Academy gifted a copy of Craig’s *Jus feudale* and ‘manuscript copy of the catalogue of the books of Charles Erskine of Barjarg (afterwards Lord Justice Clerk Tinwald) dated 1731’ to the Advocates Library. The Curators determined in January 1942 that these ‘formed part of a collection belonging to the late Charles Erskine of Barjarg which had been presented to the National Library by

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<sup>37</sup> Peter Wellburn, ‘The living library’, in *For the encouragement of learning: Scotland’s National Library, 1689-1989*, ed. by Patrick Cadell and Ann Matheson (Edinburgh: HMSO, 1989), pp. 186-214 (p. 201).

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*, p. 205.

<sup>40</sup> Walter Scott, *The journal of Walter Scott*, ed. by W. E. K. Anderson (Edinburgh: Canongate Classics, 1998), p. 584.

<sup>41</sup> Wellburn, pp. 210-11.

<sup>42</sup> *Ibid.*, pp. 212-13.

<sup>43</sup> Iain F. Maciver, ‘The making of a national library’, in *For the encouragement of learning: Scotland’s National Library, 1689-1989*, ed. by Patrick Cadell and Ann Matheson (Edinburgh: HMSO, 1989), pp. 215-65 (p. 215).

<sup>44</sup> *Ibid.*, p. 257; *National Library of Scotland Act 1925*, ch. 5.

the Trustees of Dollar Academy in 1927' and they 'agreed that the two volumes...should meantime be handed over to the National Library with a view to keeping the whole collection together'.<sup>45</sup>

In many cases, and especially where an Areskine bookplate is present, previous ownership details have been defaced in the Alva Collection books housed in the Advocates Library. The presence of his bookplate suggests this may have done by Areskine himself or by someone who was looking after his books. There are also examples of this in the NLS Alva Collection. Areskine, however, did not excise all of the provenance information in his books and several of the Alva books do contain some information about their previous owners. In some cases where names have been removed, places and dates sometimes remain.

Of the Alva Collection books in the Advocate's Library, 188 as well as two of the Session Papers volumes have the internal shelf marks in the form 'letter.number.number' (e.g. a.1.42). This makes a total of 438 books in both Alva Collections which have 'Lord Alva' shelfmarks which are linked to James Erskine's catalogue of 1774. Twenty-six of the books in the Advocates Library Alva Collection retain spine labels or ink inscriptions on their spines which match their listings in the 1731 manuscript and a further sixteen have indications that a label once existed such as a partial label or a surviving imprint. As described above, these indications provide some clues as to the appearance of the collection when possessed by Charles Areskine.

As with the Alva books in the NLS, Areskine seems to have retained the bindings of books as he found them. One of the more spectacular examples of this is at AL, A.76.3 (not shelved in the Alva Collection) which is a copy of Claudius Cantuuncula's *Topica legalia* (F 29) which was published in Basel in 1545. This book has leather bound boards which are blind stamped with an allegorical female figure and verses of Psalms 70 and 90. Areskine does not seem to have taken an interest in ornamental bindings as a collector but it seems he was happy to retain them when they arrived on his shelves.

The Advocates Library Alva Collection also includes Areskine's collected and bound sets of Session Papers and Justiciary Papers. The sets range in date from 1711 to 1757. They therefore span Areskine's legal career from his start as an advocate to his time as a judge and as Lord Justice Clerk. As Angus Stewart has noted, the papers with

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<sup>45</sup> NLS, F.R. 126d, 'Faculty Curators' Minutes' (15 July 1941), (14 January 1942).



earlier dates are for cases in which Areskine was involved as an advocate and many of them are inscribed with his signature.<sup>46</sup> The Alva Session Papers were also used by James Erskine during his career. A reference to them in his 1774 library catalogue mentions: 'Session Papers for 1755 & 1756 2 vol....These Session Papers with the Odd Nos. In...14 Vols. Carried into Georges [sic] Street by Mr Erskine March-28-1787'.<sup>47</sup>

Twenty nine folio volumes of these papers survive in the Advocates Library Alva Collection. At the time of my survey they were in desperate need of conservation. Many of the cases preserved in the collection are those in which Areskine was involved as an advocate or as a judge and some contain his manuscript notes about the cases. Given Areskine's important place at the heart of the Scottish legal establishment in the early eighteenth century it is hoped that this resource will survive at least until a detailed study of the papers can be made. These papers, and especially Areskine's notes about them, may also be seen as an invaluable resource for the social history of the first half of the eighteenth century in Scotland.<sup>48</sup>

### **Provenance: previous owners of books in the Alva Collections**

Despite what seems to have been a deliberate policy for removing them, the provenance details for some previous owners are intact in books from both Alva Collections. Some of these provide a few clues to the identities of the books' previous owners. Others give more comprehensive details but are incomplete. There may be, for example, a surname to investigate but with initials rather than full names. In a few cases, however, there is adequate information for identifying the previous owners of Areskine's books and even for finding out more of their history. This is the case for Areskine's copy of Benedict Carpzov's *Practicae novae imperialis Saxonicae rerum criminalium* (F 187) which was published in Frankfurt in 1652: it has his bookplate and a note that 'Ch: Areskine Empt. [bought this at] Edinburgi 24 Decr 1743' for 7 shillings and 6 pence'. A previous owner, the advocate Charles Cockburn, left an inscription that he had bought the book in

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<sup>46</sup> Angus Stewart, 'The Session Papers in the Advocates Library', *Miscellany four by various authors*, ed. by Hector L. MacQueen (Edinburgh: Stair Society, 2003), pp. 199-223 (p. 209).

<sup>47</sup> EUL, MS La.III.755, f. 46.

<sup>48</sup> See, for example, Case 74 in Vol. 2 of the Alva Justiciary Papers. In this case, one David Oliphant was accused of improper conduct with a black mare. Manuscript witness statements in Areskine's hand have been attached to the printed case report. In these, one witness saw the accused '...making motions at the tail of a black mare such as are from nature...the motions were such as are used in Carnal Copulation'. Another witness observed that the mare in question was particularly attractive. The case was 'not proven'. The same case appears again at No. 97 in the same volume but this time without Areskine's notes. Bestiality was a capital offense so this was not a case to be considered lightly.

Leyden in 1705 for four guilders and 13 florins. Cockburn died in 1742 so Areskine probably acquired his Carpzov at a posthumous sale of his books. A third inscription has been defaced. The book is now in the Advocates Library but is no longer shelved with the Alva Collection there.<sup>49</sup> Areskine owned two books formerly in the library of William Forbes (Q 153a, Q 180) which Areskine may have purchased at the sale of his books in 1736.<sup>50</sup> Areskine's copy of Georg Obrecht's *Disputatio de regalibus ex commentariis* (Q 177; now AL, Alva Coll., 129) is inscribed 'Bibliothecæ Colbertinæ' and therefore once belonged to Louis XIV's finance minister, Jean Baptiste Colbert (1619-1683). Colbert's library was sold along with books from other members of his family in Paris in 1728.<sup>51</sup>

Three more previous owners of Areskine's books in the Alva Collections who can be identified with confidence are Isaac Vossius (1618-1689), Robert Norvell (1658-1706), and William Godolphin (*bap.* 1635-1696).

NLS, Alva.372 (Q 125), which has Areskine's bookplate, contains a printed note pasted in on its title page which reads 'Ex Bibliotheca Viri Illust. Isaaci Vossii'. The history of Isaac Vossius's library is somewhat complicated because he sold some of his books during his lifetime and because his heirs sold the rest of his collection to the University of Leyden.<sup>52</sup> However, when they arrived in Leyden in 1690, Vossius's books were given pasted in provenance notes. This identifies them as parts of the shipment and not as parts of previous sales. At the same time, duplicates in the collection were

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<sup>49</sup> AL, B.1.1. Inscriptions on title page: 'Cha: Cockburne Empt: Lugd: Bat: g:4 fl: 13 d: 0 anno 1705'; 'Ch: Areskine Empt. Edinburgi 24 Decr 1743 7sh. 6d.'

<sup>50</sup> Kincaid, Alexander, *A catalogue of curious and valuable books, being the library of the deceast Mr. William Forbes younger of Schivas Advocate. Which will be begin to be sold at auction, on Tuesday the 21st of December 1736* (Edinburgh: Alexander Kincaid, 1736).

<sup>51</sup> The catalogue for the Colbert sale was published in three volumes. See *Bibliotheca Colbertina: seu Catalogus librorum bibliothecæ, quæ fuit primum ill. v. D. J. B. Colbert ... deinde ill. D. J. B. Colbert, march. de Seignelay; postea rev. et ill. D. J. Nic. Colbert, Rothomagensis Archiepiscopi; ac demum ill. D. Caroli-Leonorii Colbert, comitis de Seignelay* (Paris: Apud Gabrielem Martin [et] Franciscum Montalant, 1728). Lot 6260 lists, 'C. Jorger de Regalibus Thesis. *Argent.* 1604. Georg. Obrechtus de concipiendis & formandis Libellis. *Arg.* 1604. Idem de litis contestatione. *Arg.* 1604. Idem de juramento calumnae. *Arg.* 1604', vol. 2, p. 449.

<sup>52</sup> Astrid C. Balsem, 'Books from the library of Andreas Dudith (1533-89) in the library of Isaac Vossius (1618-89), in *Books on the move: tracking copies through collections and the book trade*, ed. by Robin Myers, Michael Harris, and Giles Mandelbrote (New Castle, DE; London: Oak Knoll, 2007), pp 69-86. The title page of Agostino Steuco, *De perenni philosophia ll. X* (Basil, 1542) is reproduced on p. 71 which shows the printed Vossius label. This matches the example found in Alva.372. For books sold by Vossius during his lifetime, including books annotated by Hugo Grotius and books from the library of Queen Christina of Sweden, see F. F. Blok, *Contributions to the history of Isaac Vossius's library* (Amsterdam; London: North-Holland, 1974). For Vossius's life and scholarship see Thomas Seccombe, 'Vossius, Isaac (1618-1689)', rev. F. F. Blok, *ODNB* (Oxford: OUP, 2004; online edn 2006) <<http://www.oxforddnb.com/view/article/28356>> [accessed 10 December 2009].

separated. The library had had to remove the ‘doublettes’ because it lacked the space to house the entire Vossius collection.<sup>53</sup>

The duplicate copies were sold in 1706 and 1707.<sup>54</sup> Alva.372 is a copy of Barnabé Brisson, *De formulis et sollempnibus populi Romani verbis, libri VIII* (Frankfurt: Apud Ioannem Wechelium & Petrum Fischerum, 1592). The University of Leyden also holds a copy.<sup>55</sup> Areskine’s copy, therefore, must have been one of the duplicate copies sold by the University of Leyden in the early eighteenth century. Vossius’s collection was well-known to scholars and it became an attraction for grand tourists. The Leyden bookseller Pieter van der Aa recommended the university library as one of the sights of the town and particularly mentioned that ‘les Curateurs de l’Academie ont acquis des Heritiers du célèbre *Isaac Vossius* sa nombreuse Bibliotheque’ in his travel guide *Les delices de Leide* of 1712.<sup>56</sup>

Although Vossius is connected with only one book, another collector has left several traces in the Alva Collections. Robert Norvell (or Norvall) was a graduate of the University of Edinburgh<sup>57</sup> and an advocate who was admitted to the Faculty in 1683.<sup>58</sup> Surviving books from Areskine’s list at F 59 (now AL, Alva Coll., 79), F 94 (now AL, Alva Coll., 39), F 95 (now AL, Alva Coll., 51), and F 103 (now AL, Alva Coll., 36) all retain Norvell’s signature in various forms. They all also include variant spellings of the well-known motto, *Quod tibi fieri non vis alteri ne feceris*.<sup>59</sup> All of the titles with the Norvell provenance in the Alva Collection are books which deal with Roman or canon law. A sale or auction catalogue for his library has not been located, but it seems Norvell was interested in books and collecting. Although the records are incomplete, he is known to

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<sup>53</sup> Christiane Berkvens-Stevelinck, *Magna commoditas: a history of Leiden University Library, 1575-2005*, rev. edn, tr. Jan Franz van Dijkhuizen (Leiden: Primavera, 2004), p. 41.

<sup>54</sup> Balsem, p. 82. One of those responsible for unpacking the consignment was a person well-known to Scottish students at Leyden, the renowned professor of medicine, Herman Boerhaave. Balsem, p. 79.

<sup>55</sup> The Leyden shelf mark is Special Coll. reading Room GM, call no. 269 B 10. The library catalogue record is available at <<http://catalogus.leidenuniv.nl>>.

<sup>56</sup> *Les delices de Leide: une des célèbres villes de l’Europe, qui contiennent une description exacte de son antiquité, de ses divers aggrandissemens, de son academie, de ses manufactures, de ses curiosités, & généralement de tout ce qu’il y a de plus digne à voir* (A Leide: Chez Pierre Vander Aa, 1712), pp. 149-50.

<sup>57</sup> *A catalogue of the graduates in the faculties of arts, divinity, and law, of the University of Edinburgh since its foundation* (Edinburgh: Neill and Company, 1858), pp. 106-07.

<sup>58</sup> *Faculty of Advocates*, p. 166. See also *The minute book of the Faculty of Advocates, 1: 1661-1712*, ed. by John Macpherson Pinkerton (Edinburgh: Stair Society, 1976), p. 61.

<sup>59</sup> ‘What you would not wish done to yourself, do not to another.’ I am grateful to Brian Hillyard for drawing my attention to this motto and its translation.

have donated at least four books to the Advocates Library.<sup>60</sup> These are still in the library and, as with the Alva books they contain Norvell's signature and motto.

William Godolphin is another collector whose books appear in the Alva Collections. Godolphin was a lawyer who became Charles II's Ambassador to Spain and who spent the rest of his life in that country. Areskine listed two books which were formerly owned by Godolphin. Unsurprisingly both of them have Spanish connections. At F 178 (now AL, Alva Coll., 69a-69b) the manuscript lists ...*Labyrinthus creditorum concurrentium*, a work on the law of bankruptcy, by the Spanish jurist Francisco Salgado de Somoza (Leyden, 1654). At F 185 (now AL, A.86.4) meanwhile there is *Instructorium negotiantium duobus contentum libris*, a work on the law of business contracts, by the Spanish Dominican theologian Luis López (Salamanca, 1667). The former includes an Areskine bookplate in each of its two volumes while the latter has only Godolphin's provenance.

Godolphin's will was bitterly contested after his death in 1696 because he had converted to Roman Catholicism and nominated members of the Roman Catholic clergy as his executors. His heirs contested the will and its conditions and eventually succeeded in having it overturned. His assets were spread throughout Europe and sorting out his affairs involved the legal systems of several jurisdictions. His property and assets ranged from England to Spain and from Venice to the Low Countries. It is interesting to note that Godolphin's heirs were in Holland in 1708 to claim money he had banked in Amsterdam. The banker who held the funds appealed to the Supreme Court of Holland where the case was heard in July 1714. The details of the case were recorded in a diary kept by the judge Cornelius van Bijckershoek.<sup>61</sup> This high profile case might have caught Areskine's attention. The elements of comparative national law and the use of Roman law would surely have been subjects of interest. Bijckershoek was known to Areskine: his 1731 library list included four books by the Dutch judge.<sup>62</sup>

Godolphin left his books, and this part of his will at least was not controversial, to his nephew Charles Godolphin (c. 1651-1720) who bequeathed their combined

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<sup>60</sup> NLS MS F. R. 139, 'Register of donations, 1705-26, 1760-73'. I have seen three of the four donations. These are: *Cl. v. Henrici Zoesii Amersfortii in Academia Louaniensi j.u.d....Commentarius in Codicem Justinianum* (1660), AL, A.76.5; *Ioachimi Mysingeri a Frundeck Apotelesma, hoc est, corpus perfectum scholiorum, ad Institutiones Iustinianae pertinentium: Post adiectum ex postrema recognitione Arnoldi de Reyger* (1659), AL, h.7.33; and *Le code du très-chrestien et très-victorieux roy de France et de Navarre, Henry IIII, du droit civil iadis décrit, & à nous delaisé confusement par l'Empereur Iustinian: & maintenant reduit & composé en bon & certain ordre, avec le droit civil de la France, contenant trente & vn liures* (1615), AL, [k].2.4.

<sup>61</sup> A. J. B. Sirks, 'William Godolphin's last will and the civil law', *Law Quarterly Review*, 123 (2007), 213-24. Bijckershoek's observations on the case are in his diary. Sirks, p. 216, n. 13.

<sup>62</sup> At Q 54, Q 172, O 115, and O 116.

collections to Wadham College, Oxford.<sup>63</sup> Many of the books from the older Godolphin's library are early printed books from Spain.<sup>64</sup> The books left to Charles, however, were not the complete collection assembled by Godolphin and books once owned by him are available in various modern libraries. It is not known how some of Godolphin's books were dispersed. Sir Hans Sloane was one of the collectors who acquired some of Godolphin's collection which means that some of Godolphin's books are now in the British Library.<sup>65</sup>

### **Provenance: Owners after Areskine**

Areskine left his library to his son James who followed him into the legal profession and continued to use the books in practice. James's son, John Erskine of Cambus (1758-1792), also became an advocate.<sup>66</sup> He was a keen bibliophile who from a young age recorded the books he read, kept lists of his growing collection, and ran his own circulating library for his friends and family.<sup>67</sup> John predeceased his father and upon his death the books he had borrowed, which numbered about seventy and included Session Papers and law titles, were returned to 'Lord Alva's Library' at Drumsheugh.<sup>68</sup> John's son, James Erskine of Aberdona (or Cambus) (1787-1851), inherited the library at his grandfather's death.<sup>69</sup>

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<sup>63</sup> Bodleian Library online exhibition, 'Beyond the work of one: Oxford college libraries and their benefactors', available at <<http://www.ouls.ox.ac.uk/bodley/about/exhibitions/online/workofone>> [accessed 10 December 2009].

<sup>64</sup> Bodleian Library, 'Beyond the work of one'.

<sup>65</sup> Geoffrey West, 'When, why, and from whom? The British Library's collection of early printed books containing Andean languages', *45th Annual Meeting of the Seminar on the Acquisition of Latin American Library Materials (SALALM)*, 27-31 May 2000, (Los Angeles, CA, 2000), available at <[http://sherpa.bl.uk/115/01/andesLanges\\_\(2\).pdf](http://sherpa.bl.uk/115/01/andesLanges_(2).pdf)> [accessed 10 December 2009]. West provides an example of a book with a Godolphin provenance with his signature on the title page, as Luis Géronimo de Ore, *Symbolo Catholico Indiano* (Lima, 1598) now shelved at BL, C.58.e.9. See also the Sloane Printed Books Catalogue at <<http://www.bl.uk/catalogues/sloane>>.

<sup>66</sup> *Faculty of Advocates in Scotland*, p. 67.

<sup>67</sup> John Erskine, 'Memorandum book of John Erskine, Argyles Square, Edinburgh, 1774', NLS MS 5117 includes a book list containing forty-two titles. Erskine frequently lent or gave his books away. See NLS MSS 5118-5120 for his book lists and records of lending and giving.

<sup>68</sup> 'Catalogue of books belonging to Lord Alva's library, in Mr Erskine's house, and since this date returned to Drumsheugh, 17<sup>th</sup> Feb<sup>ry</sup> 1792', in NLS MS 5114, 'Erskine-Murray Inventories', f. 60. The same list is repeated at f. 64.

<sup>69</sup> A very detailed inventory of the contents of Drumsheugh House including the library was made in 1797 following the death of James Erskine's widow, Jean Stirling. From this it is clear that the house contained a room designated as a library but also that books were stored in various locations throughout the house including Lady Alva's dressing room which had 'Two Mahogany book shelves' and the 'Blue room' which had a 'Mahogany book press with drawers' in its closet. NLS MS 5114, 'Erskine-Murray Inventories', ff. 28, 32<sup>v</sup>. A detailed study of the Drumsheugh House inventory would offer many insights about the furnishing and decoration of a late eighteenth century Edinburgh suburban villa.

James Erskine of Aberdona followed the family legal tradition but it seems he had less interest in the historical law collection than his ancestors. When he selected books from his grandfather's collection in 1797, he chose mostly religious titles.<sup>70</sup> Erskine was, however, interested in libraries and education. He was a trustee of the Dollar Institution from 1826.<sup>71</sup> Although evidence does not survive, Erskine may have donated books to the Dollar Institution library throughout his tenure. The 'Library Book List' of 1827 includes titles which match entries in his great-grandfather's 1731 list including octavo copies of 'Fable of the Bees 2 Vol' (OM 7) and 'Kames on Morality 1 Vol' (OM 282). Unfortunately the descriptions of the books in the Dollar library catalogue do not give publication or date information so it is impossible to know, although it is likely, that these books were passed on from the family collection by Erskine. The Dollar Institution library had been completed by William Playfair in 1821 and the Trustees regularly granted funds for book and furnishing purposes. Erskine played an active role in the Institution's affairs and frequently chaired Trustees' meetings.<sup>72</sup> He would have been aware of the developing library and may have decided to aid the process by donating some of his family's books. He does not seem to have received notice for this but there are intriguing references in the Dollar Library accounts throughout the 1830s to an Erskine being paid 'for Carriage' and on 4 August 1837, the library paid thirteen shillings for 'Carriage of Books from Erskine'.<sup>73</sup>

In addition to providing the explanation for how the Alva Collections books in Edinburgh came to be in the possession of the Trustees of the Dollar Academy by 1927, James Erskine of Aberdona also provides the link for five books in the NLS Alva Collection which have provenances that relate to the Tytler family. The books with Tytler provenances are Alva.18, Alva.20, Alva.23, Alva.270, and Alva.318. They have no relationship with Areskine's 1731 manuscript or to Lord Alva. The younger James Erskine married his cousin Jane Tytler in 1810. The families and their books had been close for years: John Erskine had given a copy of 'Cornel. Nepos. Foulis' to 'Mr Tytler'

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<sup>70</sup> 'Inventory of books taken out of the closet in L<sup>d</sup> Alva's room for Mr. Erskine, 1797 Oct<sup>r</sup> 21<sup>st</sup> in NLS MS 5114, 'Erskine-Murray Inventories', f. 70.

<sup>71</sup> *A catalogue of books & documents appertaining to the history of Dollar Academy since its founding and at present in the Muniments Room* (Dollar, 1971). The Dollar Institution changed its name to the Dollar Academy in 1918. I am grateful to Janet Carolan for allowing access to the documents in her care.

<sup>72</sup> See e.g. NAS CS96/212, 'Dollar Institution minute book, 1818-1831' for his chairing of meetings and participation in running the school.

<sup>73</sup> 'Dollar Library Accounts, 1828-1860', Dollar Academy Archive. Given Erskine's connection with the Dollar Institution, I think these entries must refer to the person Erskine rather than the place.

before 1780.<sup>74</sup> In the Alva Collections there are two books, NLS Alva.20 and NLS Alva.270, previously owned by the advocate, historian, and judge Alexander Fraser Tytler, Lord Woodhouselee (1747-1813).<sup>75</sup>

Charles Areskine's library was out of date for legal practice by the time it reached his grandson. It is not surprising that he began to break up the collection by donating portions of it to the Dollar Institution. This ensured that a large proportion of the collection survived intact until the early twentieth century but the remainder of Areskine's library was dispersed beyond the collection preserved at the Dollar Academy.

### **Areskine's books: beyond Edinburgh**

Although the NLS and the Advocates Library Alva Collections contain many books once owned by Areskine and his family, books once owned by them have also been dispersed globally. The dispersal process seems to have begun in the 1830s with James Erskine's donations to the Dollar Institution. The breaking up of the collection continued in the 1850s when the Edinburgh bookseller Thomas George Stevenson offered parts of the family collections for sale. A sale of general books from the Areskine and Erskine libraries occurred in 1850.<sup>76</sup> In 1851, a catalogue for a 'Collection of Law Books' appeared which offered books 'chiefly from the libraries of the Hon. Charles Areskine of Tinwald, Lord Justice-Clerk; James Erskine, Baron of Exchequer, afterwards Lord Barjarg & Alva; and the Hon. David Hume, Baron of Exchequer'.<sup>77</sup> This was followed by another sale in 1852 which included 'another portion of the libraries of the Hon. Charles Erskine of Tinwald, Lord Justice-Clerk; James Erskine, Baron of Exchequer, afterwards Lord Barjarg and Alva; and James Erskine, esq. of Aberdona' along with books from other collections.<sup>78</sup>

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<sup>74</sup> John Erskine, 'Book catalogue & account, 1780', NLS MS 5120, f. 4v.

<sup>75</sup> Alexander Du Toit, 'Tytler, Alexander Fraser, Lord Woodhouselee (1747–1813)', ODNB (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/27965>> [accessed 01 September 2011].

<sup>76</sup> Thomas George Stevenson, *Bibliotheca selecta, curiosa et rarissima. Part first of a general catalogue of miscellaneous English and foreign books, including a portion of the libraries of the Hon. Charles Erskine of Tinwald, Lord Justice-Clerk; James Erskine, Baron of the Exchequer, afterwards Lord Barjarg and Alva; and James Erskine, Esq. of Aberdona* (Edinburgh: Thomas George Stevenson, 1850).

<sup>77</sup> Thomas George Stevenson, *Catalogue of a select collection of law books (in various languages), Acts of Parliament and Assembly, appeal and peerage cases, statutes at large, debates in the Houses of Lords and Commons, works on diplomacy, privilege, and treaties of peace; including an extensive assortment of civil and criminal trials, &c. chiefly from the libraries of the Hon. Charles Areskine of Tinwald, Lord Justice-Clerk; James Erskine, Baron of Exchequer, afterwards Lord Barjarg & Alva; and the Hon. David Hume, Baron of Exchequer. Now on sale* (Edinburgh: Thomas George Stevenson, 1851).

<sup>78</sup> Thomas George Stevenson, *Bibliotheca selecta, curiosa et rarissima; part second of a general catalogue of miscellaneous English and foreign books, including another portion of the libraries of the Hon. Charles Erskine of Tinwald,*

In the first of Stevenson's Areskine catalogues, only members of Areskine's family are mentioned as the previous owners of the 'miscellaneous English and foreign books' on offer.<sup>79</sup> It is possible, however, that the 1850 sale included books from other sources.<sup>80</sup> A second catalogue combined law books from the libraries of Areskine and James Erskine with more from the library of Baron David Hume.<sup>81</sup> A third catalogue produced by Stevenson in 1852 offered 'Part Second' of the Areskine and Erskine libraries and added 'selections from the remarkably fine libraries of W. B. D. D. Turnbull...and Thomas Maitland, Lord Dundrennan'.<sup>82</sup> The Turnbull and Maitland books appear after page 87 of the catalogue: they are clearly set out as separate from the Areskine and Erskine books. As the variety of previous owners in these sales shows, sale catalogues cannot be used as firm evidence for the provenance of books. All of the previous owners mentioned on Stevenson's catalogue title pages had careers in law and would have been interested in the same types of texts. The dates of the books are also unreliable for determining ownership since both Turnbull and Maitland were antiquarians, were interested in law, and might have acquired older books to indulge these interests. Sources like the 1731 manuscript and the physical evidence provided by bookplates, signatures, and inscriptions are far more reliable ways of determining ownership.

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*Lord Justice-Clerk; James Erskine, Baron of Exchequer, afterwards Lord Barjarg and Alva; and James Erskine, esq. of Aberdona; also selections from the...libraries of W. B. D. D. Turnbull, esq., and Thomas Maitland, Lord Dundrennan; now on sale* (Edinburgh: Printed by MacPherson & Syme, 1852).

<sup>79</sup> Stevenson, *Bibliotheca selecta, curiosa et rarissima. Part first*, title page.

<sup>80</sup> David Fate Norton and Mary J. Norton, *The David Hume library* (Edinburgh: Edinburgh Bibliographical Society; National Library of Scotland, 1996), p. 51.

<sup>81</sup> *Ibid.*, pp. 47-8; Stevenson, *Catalogue of a select collection of law books*. The title page of this catalogue is reproduced in Norton and Norton, at p. 48. Baron Hume was a jurist and judge and nephew of the philosopher David Hume. He inherited the philosopher's books and these remained in the family until the death of Hume's daughter in 1851 when Stevenson, who had created a manuscript catalogue of them in 1840, offered them for sale. Norton and Norton, p. 44, appx 2. For Hume's importance as an institutional writer see John W. Cairns, 'Hume, David (*bap.* 1757, *d.* 1838)', *ODNB* (Oxford: OUP, September 2004; online edn, May 2007) <<http://www.oxforddnb.com/view/article/14142>> [accessed 21 June 2010].

<sup>82</sup> Stevenson, *Bibliotheca selecta, curiosa et rarissima. Part second*, title page. Turnbull was a lawyer, archivist and antiquarian. He sold his library in Edinburgh in 1851 before moving to London where he assembled another collection. Presumably the books Stevenson offered in 1852 were those left unsold after a two week auction which occurred in November 1851. See Francis Edwards, 'Turnbull, William Barclay David Donald (1811-1863)', *ODNB* (Oxford: OUP, 2004; online edn, January 2008) <<http://www.oxforddnb.com/view/article/27840>> [accessed 20 January 2010]. Maitland was a judge and antiquarian. His library was sold after his death at a nine day auction in November 1851. As with the Turnbull books, the books offered in the sale catalogue may have been remainders from the auction of the previous year. See G. C. Boase, 'Maitland, Thomas, Lord Dundrennan (1792-1851)', rev. Robert Shiels, *ODNB* (Oxford: OUP, 2004) <<http://www.oxforddnb.com/view/article/17836>> [accessed 20 January 2010].



The bookplates of Charles Areskine and James Erskine can now be found in books in institutional collections worldwide. The details about known copies of books with Areskine and Erskine provenances have been included at Appendix C of this thesis. Areskine's copy of Adam Smith's *The theory of moral sentiments* (Edinburgh, 1759), for example, is in the Thomas Fisher Rare Book Library of the University of Toronto.<sup>83</sup> This book is not listed in the 1731 manuscript but, within the context of Areskine's participation in the Scottish Enlightenment, knowledge of it is an important addition to the overall theme of this thesis. Areskine and Erskine books are also occasionally offered for auction or sale. Details about these are given in Appendix C below.<sup>84</sup>

Among Areskine's books which have become available in the modern marketplace is Christopher Irvine's *Historiae Scoticae nomenclatura Latino-vernacula* (Edinburgh, 1682). This title does not appear in the 1731 manuscript catalogue but it does contain Areskine's bookplate and a Lord Alva shelf mark. (See Fig. 2) The spine has been replaced and other small repairs have been made over time.<sup>85</sup> Why this book was not included in the 1731 list is yet to be determined.

As of September 2011, fifteen books beyond those found in the Alva Collections have been identified as having once belonged to Charles Areskine or James Erskine in worldwide collections.

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<sup>83</sup> The library catalogue record is available at <[http://search.library.utoronto.ca/UTL/index?N=0&Nr=p\\_catalog\\_code:3646342&showDetail=first](http://search.library.utoronto.ca/UTL/index?N=0&Nr=p_catalog_code:3646342&showDetail=first)> (accessed 02 December 2009).

<sup>84</sup> See Appendix C below for a list of these books and their provenance details.

<sup>85</sup> This book is now in my personal collection. Its purchase was in part funded by my prize from winning the '2nd Year PhD Poster' competition at the University of Edinburgh School of Law in 2009. The poster is available at <<http://www.law.ed.ac.uk/elhblog/blogentry.aspx?blogentryref=7934>> [accessed 23 November 2009].

## **Conclusion**

Charles Areskine's library is a valuable resource for exploring the origins of the Scottish Enlightenment. Although it is primarily a collection he could use in his legal career, Areskine's selection of legal texts also demonstrates a concern for the learning of the classical tradition as well as an interest in natural law theories. It shows a connection with the traditions of learning encouraged by legal humanist scholars and jurists of previous generations. His 'miscellaneous' books demonstrate an engagement with the modern ideas of contemporary thinkers and with the concerns of his time.

The role of advocates in the intellectual history of Scotland is an important question. As professional men with active careers to pursue, most advocates have not left written evidence for their participation in published Enlightenment debates in the traditional forms of books, treatises, or other written works. However, they participated in other significant ways by offering patronage, sponsoring and buying books, improving estates, and encouraging and joining new institutions. With their support of education and the financial and political backing they gave to scholars, philosophers, and poets, Scottish lawyers provided the framework which allowed the Scottish Enlightenment to take shape and to flourish. Their legacy is complex. Their study of modern ideas of natural law and its ethical importance and moral implications shaped the sceptical rational thinking which was a hallmark of the Scottish Enlightenment. Meanwhile, their continued exploration of Roman law and its classical, medieval, and modern contexts influenced modern Scots law and this still has resonance today. Scottish lawyers took the seventeenth century ideas and texts of Grotius, Pufendorf, Stair, and Mackenzie and developed them in the contexts of their time as they refined Scots law and shaped their society. Scottish lawyers were masters of combining ancient and modern ideas to create coherent and workable systems of thinking based on reason. With such thinking in place it makes sense that Edinburgh's New Town was a modern suburb built in a classical style.

### ***Advocates in the Scottish Enlightenment***

Nicholas Phillipson placed lawyers, specifically members of the Faculty of Advocates, at the political centre of Scottish society in the eighteenth century. Advocates thought of

themselves as ‘a corporation lineally descended from the last Scots Parliament with a mission to lead the polite commonwealth of Scotland into the paths of virtue’.<sup>1</sup>

Richard B. Sher has challenged this idea about the importance of lawyers as key players in the later stages of the Scottish Enlightenment, saying

Important as it was, the role of lawyers in the intellectual life of the mature Scottish Enlightenment has sometimes been exaggerated, particularly by those who would extend the boundaries of the Scottish Enlightenment into the nineteenth century and would confuse the undisputed *social* pre-eminence of the legal profession...In fact, the elite status of eighteenth-century Scottish lawyers and judges may have actually have discouraged intellectual activity, first by providing political and administrative opportunities that left many legal men of taste and intelligence...with little time for literary pursuits (though they often kept their hand in by adopting the aristocratic role of literary patron), and second by depriving the legal profession of the financial and social pressures that so frequently stimulated clergymen to better their situations by seeking distinction in the republic of letters.<sup>2</sup>

But this image of lawyers ignores the written pleadings of lawyers which were read by their colleagues and debated in the courts. These, now often held in dusty uncatalogued volumes, worked out lively debates about important issues in a public forum. Lawyers brought centuries of learning to their understanding of and attempts to resolve contemporary problems and challenged each others’ conclusions in written responses.

It also fails to recognise the impact advocates had as book collectors. Lawyers shared their books with scholars who used them for research and to create their own texts, discussed the ideas contained in them as members of intellectual societies, and, as Sher points out, sponsored new works. While it is the case that in the second half of the eighteenth century, clergymen, medical practitioners, and those involved in education dominated the literary output of the Scottish Enlightenment,<sup>3</sup> they could not have done this without the help of the lawyers of the previous generation who promoted philosophical, scientific, and sceptical thinking and fostered the intellectual environment the later enlightened environment its authors needed to succeed.

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<sup>1</sup> N. T. Phillipson, ‘Lawyers, landowners, and the civic leadership of post-Union Scotland: an essay on the social role of the Faculty of Advocates, 1661-1830 in 18<sup>th</sup> century Scottish society’, *Juridical Review*, new ser. 21 (1976), 97-120 (p. 119).

<sup>2</sup> Richard B. Sher, *Church and university in the Scottish Enlightenment: the moderate literati of Edinburgh* (Edinburgh: EUP, 1985), p. 315.

<sup>3</sup> Richard B. Sher, *The enlightenment and the book: Scottish authors and their publishers in eighteenth-century Britain, Ireland and America* (Chicago; London: University of Chicago, 2006), p. 104.

Lawyers were not an isolated group. They were part of the early modern republic of letters and they communicated with their friends and relatives who were physicians, clergymen, and scholars. Books were entrenched as an important part of the social life of the Scottish elite by the early eighteenth century. As John Cairns has pointed out, Phillipson's view may give too much credit to the Faculty of Advocates but there is no dispute that the Faculty gave its attention to law reform, that some of its members were concerned about modernisation, and that its members saw themselves as having a 'public role'.<sup>4</sup> It is not an exaggeration to credit Areskine and his legal colleagues with aiding the development of the Scottish Enlightenment both socially and intellectually.

### ***Areskine as a book collector***

Areskine's use of books in his professional life caused him to have different priorities from those of other collectors when he made his selections. His library differed therefore from the collections assembled by the wealthy aristocrats of his time and it was also different from the libraries bought by bibliomaniacs later in the century: it had more in common with the new generation of professional collectors like the physicians Richard Mead, Hans Sloane, and Areskine's brother Robert, that came forward in the late seventeenth and early eighteenth centuries. Areskine's collection also pre-dates the desiderata of a later generation of collectors which would bring forward an emphasis on the importance of first editions, the consideration of a book's rarity over its content as a determinant of its value, and a shift in interest from classical to modern texts.<sup>5</sup> Sir George Mackenzie also preferred first editions but he had a scholar's reason for his bias. While later collectors saw first editions as desirable in their own right, Mackenzie saw them as more likely to demonstrate the author's true intentions about their contents since 'in later editions errors...must necessarily creep in'.<sup>6</sup>

Areskine's eighteenth century world offered many opportunities for book collecting and specialists emerged who could help collectors. Books could be bought

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<sup>4</sup> John W. Cairns, 'Alfenus Varus and the Faculty of Advocates: Roman visions and the manners that were fit for admission to the Bar in the eighteenth century', in *Ius commune: Zeitschrift für Europäische Rechtsgeschichte*, 28 (2001), 203-32 (p. 205).

<sup>5</sup> Arnold Hunt, 'Private libraries in the age of bibliomania', in *The history of libraries in Britain and Ireland, 2: 1640-1850*, ed. by Giles Mandelbrote and K. A. Manley (Cambridge: CUP, 2006), pp. 438-58 (pp. 438-9).

<sup>6</sup> George Mackenzie, 'Sir George Mackenzie's Speech at the formal opening of the Advocates' Library, Edinburgh, 15 March 1689', trans. by James H. Loudon, *Edinburgh Bibliographical Society Transactions*, 2 (1946), 275-84 (p. 283).

abroad during grand tours and libraries could be further developed domestically at frequent sales and auctions. Buyers, agents, producers, librarians, and sellers stimulated a growing market for books. Networks of scholars who shared interests crossed national boundaries and transcended political rivalries. In a world where patron and client relationships controlled political and social networks, books strengthened relationships, were offered as gifts, and dedications demonstrated alliances both hoped for and real.

Areskine's educational and social background makes sense of some of the contents of his book collection. Although the 1731 manuscript seems to lack titles from Areskine's younger years including those relating to his time as an undergraduate, it does contain much which relates to his later studies. This is especially the case for the legal texts listed in the manuscript which include many books associated with the Dutch 'elegant' school. These include the very first entry on Areskine's list, the three volume *Pandectae Florentinae* of 1553 (F 1). Books by Gerard Noodt and his fellow promoters of 'elegant' jurisprudence take their place alongside texts of Roman law in both Latin and Greek. This suggests that Areskine's interest went beyond collecting the texts he needed to practice his profession. It is one thing to cite Roman law in legal cases and quite another to wish to translate the texts from scratch. Books relating to the French humanist traditions of modern legal usage are also very well represented in Areskine's collection. Areskine's approach was practical as well as intellectual. A close look at one of the pleadings he wrote has shown which books he used in the practice of his profession. Studies of more of Areskine's printed session papers and their relationships with Areskine's books could prove to be rewarding.

The combined study of Charles Areskine's manuscript catalogue of 1731 and of his books which survive in the Alva Collections of the National Library of Scotland and the Advocates Library have meanwhile provided some interesting information about private libraries in Scotland in the early to mid eighteenth century. Books frequently moved between collections. Sales and auctions provided the means for collectors to acquire books related to their interests. Books travelled across boundaries and carried their ideas with them.

Legal practitioners formed a network of collectors. Books were important for their profession and the Faculty of Advocates started to collect them for its library in the late seventeenth century. Sir George Mackenzie encouraged advocates to donate their collections to the Advocates Library but many families preferred to keep, develop,

and use their private collections rather than giving them to the nation. Book auctions and sales also ensured that books circulated throughout Edinburgh's community of advocates. Private buyers like Areskine competed with the Advocates Library in a lively book marketplace.

The collectors of law books now found in the Alva Collections in the National Library of Scotland and the Advocates Library and beyond developed their libraries as tools for professional practice. Charles Areskine and James Erskine acquired books from lawyers of previous generations and preserved them for the next. Their surviving books made their way to the twenty-first century via inheritance and donation and it is fitting that so many of them have made it to institutional collections worldwide.

There is no doubt that Areskine was an active participant in the book collecting culture of early modern Britain and especially Edinburgh. He bought books from sales and auctions and he made a catalogue to record his library. He left his books to his son James with the assurance that his library would survive him and would continue to be useful to the next generation. His foresight allows an exploration of his library and its meaning. The provenance details found in Areskine's books confirm his possession of them and they validate the accuracy of the 1731 manuscript while establishing Areskine as an important eighteenth century book collector.

### ***Law books in Scotland***

The way of looking at the law considered by Montesquieu in his *The spirit of the laws* offers a key for understanding the contents and context Charles Areskine's library. For early modern legal theorists, natural law underpinned law in general. Legal systems developed differently over time and place because people needed different things from their laws. Roman law, although based on reason, had to be interpreted as the customary law of the Roman Empire and not as a universal system. Scots law was different from other laws but it had the flexibility to import good laws from other systems as needed. Collections of customary law from different regions were therefore useful in practice. Scholarship would determine which laws were good and reasonable and humanist scholarship on the *Corpus iuris civilis* would decide what the Roman law had actually been so that it could be used in its finest form. All of these elements were important parts of Areskine's legal heritage and his library shows the multidisciplinary approach early modern lawyers took to their studies and practice. Finally, a working

Scottish lawyer did well to have all of these sources of law available for easy reference when he was composing his pleadings.

Areskine's library manuscript offers challenges to traditional narratives of European legal history by its inclusion of a wide variety of legal material which goes beyond any traditional designation of 'schools' or of practice. Areskine's books, both legal and miscellaneous, show his engagement with the concerns of his age.

The ideas of philosophers, professors, and practitioners were closely related to each other in eighteenth century Scotland. The sociable culture of early Enlightenment Scotland allowed lawyers to share their learning in wider contexts than the courts. This meant that comparative law, natural law, and theories of law were discussed in clubs, drawing rooms, and other social spaces.

Scottish authors of legal texts recognised that interest in legal works went beyond the legal profession. Stair thought his *Institutions* 'might not only be profitable for Judges and Lawers, but might be pleasant and useful to all persons of Honour and Discretion'.<sup>7</sup> Bankton also hoped his work would have appeal beyond the legal profession and he stated that he had 'as much as possible, avoided law-terms, or sufficiently explained them; and...endeavoured to render the stile agreeable to readers accustomed to the purity of the English language; so that the work may be entertaining as well to others, as those conversant in the law'.<sup>8</sup>

Advocates and judges, as elite members of Edinburgh's educated society, set intellectual trends and offered their patronage to those who shared their ideas. They were noted for their book collecting and their willingness to share books and to discuss them in bespoke library spaces in their homes.

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<sup>7</sup> Stair, James Dalrymple, Viscount of, *The institutions of the law of Scotland, deduced from its originals, and collated with the civil, canon, and feudal-laws; and with the customs of neighbouring nations*, 1 (Edinburgh: Printed by the heir of Andrew Anderson, printer to His most Sacred Majesty, 1681), p. 1.

<sup>8</sup> Bankton, Andrew MacDowall, Lord, *An institute of the laws of Scotland in civil rights: with observations upon the agreement or diversity between them and the laws of England. In four books. After the general method of the Viscount of Stair's Institutions*, 2 (Edinburgh: Printed by R. Fleming, for A. Kincaid and A. Donaldson, and sold by them and other booksellers, 1753), p. xi. He was also particularly keen to attract an English readership. See Andrew R. C. Simpson, 'Learning, honour and patronage: the career of Andrew McDouall, Lord Bankton, 1746-60', in *Miscellany six by various authors*, ed. by Hector L. MacQueen (Edinburgh: Stair Society, 2009), pp. 121-219 (p. 133).

## Charles Areskine's books

Lo! all in silence, all in order stand,  
And mighty Folio's, first, a lordly band;  
Then Quarto's their well-order'd ranks maintain,  
And light Octavo's fill a spacious plain;  
See yonder, rang'd in more frequented rows,  
An humbler band of Duodecimos;  
While undistinguish'd trifles swell the scene,  
The last new Play, and fritter'd Magazine.<sup>9</sup>

Areskine left his library to his son, James Erskine, Lord Alva (1722-1796), who used the collection throughout his own legal career. James created his own library catalogue in 1774<sup>10</sup> which included his father's 1731 manuscript. Erskine used at least some of his father's books, notably his collection of Session Papers, in his own work. However, times were changing and the usefulness of Areskine's scholarly collection waned. Lawyers came to depend less on the civilian tradition and humanistic interest in the Latin and Greek texts of law faded in favour of case law as the Scottish legal system developed throughout the eighteenth century. By the mid-nineteenth century the style of law that had been practiced by Areskine was no longer viable and the books he had used took on an antiquarian aspect. Lawyers of Areskine's generation of Scottish lawyers were seen as

honest, able worms that burrowed away their lives amid the parchment, the print, and the moths of Voet and Heineccius, of Stair and [John] Erskine, of the *Ius Feudale* and the *Pandects* ... From 1850 Vinnius and the *Corpus Juris* vanished into obscurity. When dragged by the erudite from their hiding places they are now greeted with a sneer!<sup>11</sup>

It is not surprising, therefore, that in the early 1850s the Edinburgh bookseller Thomas George Stevenson advertised three sales of the libraries which had belonged Areskine and his descendants.<sup>12</sup> Stevenson took care to note the presence of rare and valuable editions and, especially of Elzevier and Aldine publications. It is a tribute to Areskine

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<sup>9</sup> George Crabbe, *The library. A poem* (London: Printed for J. Dodsley, 1801), p. 10.

<sup>10</sup> Now found in University of Edinburgh, Centre for Research Collections, MS Laing La.III.755.

<sup>11</sup> J. Crabb Watt, quoted in Angus Stewart, 'The Session Papers in the Advocates Library', in *Miscellany four by various authors*, ed. by Hector L. MacQueen (Edinburgh: Stair Society, 2002), pp. 199-223 (p. 216).

<sup>12</sup> Thomas George Stevenson, *Bibliotheca selecta, curiosa et rarissima. Part first of a general catalogue of miscellaneous English and foreign books, including a portion of the libraries of the Hon. Charles Erskine of Tinwald, Lord Justice-Clerk: James Erskine, Baron of the Exchequer, afterwards Lord Barjarg and Alva; and James Erskine, Esq. of Aberdona* (Edinburgh: Thomas George Stevenson, 1850). As discussed in Chapter VIII above, Stevenson published a catalogue of law books in 1851 followed by the 'Second Part' of the miscellaneous books in 1852.



that his library clad in what Stevenson described as its ‘old vellum’ and ‘old calf’ bindings continued to have value for the lawyers in his family for nearly a century after his death and that they were desired by book collectors well into the nineteenth century.

Looking at eighteenth century Scottish advocates in their own place and time and thinking about the books they used as parts of a living legal system means that we can explore their intellectual world in appropriate contexts. Scottish advocates like Areskine played many roles in society. Areskine was a student, teacher, and the professor of a specialised subject before he became a lawyer. As a lawyer, Areskine was not just an advocate but also a politician and, eventually, a judge. As a moderate member of the presbyterian kirk he acted to support clergymen like John Simson who allowed a place for Newtonian science in his world view. Leaders in society and the law like Areskine were instrumental in ensuring that the free expression of ideas that cost the Edinburgh student Thomas Aikenhead his life in 1697 was an accepted part of intellectual discourse by the end of the next century.

Areskine’s library provides evidence for his activity in various areas of intellectual and social endeavour. This thesis has necessarily been selective and has focussed on specific themes which demonstrate Areskine’s role as a moderate moderniser in the first half of the eighteenth century including his experience of education, his educational grand tour, his legal practice, and the social aspects of his books and book buying. It has also looked at the book collectors of his era to put his library into the contexts of his space and time. There is much scope for further study since many other aspects of Areskine’s books could, and should, be considered. It is hoped that the transcription of ‘*Catalogus Librorum D. D<sup>ni</sup>. Caroli Areskine de Barjarg, Regiarum Causarum Procuratoris. 1731*’ and its modern index as found in Appendix A of this thesis will inspire comparisons with other historic collections of books.

This thesis has examined a selection of the books in Areskine’s library as a moment in Scottish legal history when a system that encouraged foreign travel for legal training was still in place, when Scots law was being refined in the courts and in opposition to the influence of English law, and when the intellectual achievements of the Scottish Enlightenment were beginning to take shape. It has placed Areskine and his books at the heart of the legal and intellectual developments of the first half of the eighteenth century.

The survey of a selection of his miscellaneous books offered in Chapter VI showed that Areskine owned many of the interesting, entertaining, and, most importantly, influential texts that characterised the early Scottish Enlightenment. Areskine's collection contained books which addressed historiography, religious controversies, and the ideas that inspired the improving impulse in their enlightened readers. Areskine's polite reading, including his selections of poetry, demonstrates his concerns about public life and his interest in current events. His miscellaneous books and the activities they represent provide evidence about Areskine's engagement with enlightened thinking beyond the legal concerns. They are a valuable resource for studying the place of lawyers in the Scottish Enlightenment.

Buying books and discussing them were important activities for learned gentlemen throughout the eighteenth century. Building libraries and sharing books promoted social relationships, enhanced alliances, and ensured status. Visiting libraries and socialising in them both abroad and at home demonstrated learning and culture. A private library provided more than the tools for professional practice or the sources of polite learning: it was, both in its books and in its physical space, at the very the centre of an enlightened gentleman's life.

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