

INTRODUCTION

The *De Republica Anglorum* was written by Sir Thomas Smith,¹ in the years 1562 to 1565, when Smith was Queen Elizabeth's ambassador in France.² He described his purpose in writing the book in a letter to his friend, Walter Haddon, in April, 1565:³

And because in my absence I feel a yearning for our commonwealth I have put together three books here at Toulouse describing it, taking as the title *De Republica Anglorum*; and in these I have set forth almost the whole of its form, especially those points in which it differs from the others. But it differs in almost all; with the consequence that the work has grown larger than I expected. I have written it moreover in the language of our own country, in a style midway between the historical and the philosophical, giving it the shape in which I imagined that Aristotle wrote of the many Greek commonwealths, books which are no longer extant. I have furnished fruitful arguments for those who would debate after the fashion of philosophers on single topics and raise nice points as to justice and injustice, and whether what is held yonder in England as law be the better, or what is held here and in those regions which are administered in accordance with the Roman Law. For all things, almost, are different, and I have set them forth on both sides in rough general outline. 'Why not send the books to me?' (you say). 'I desire eagerly to see what you have done.' They still lie among the rough scrawls of my notebooks; when they have been fully written out and given to the world in book form, I shall send them to you. For you were accustomed to think (as the well-known writer puts it) that our trifles had some value. You will certainly say, if I mistake not, when you read them through, that I am not ill-versed in our country's institutions. But it needs must be that in this brief essay there should be gaps, and a few points not filled in, because I brought with me not a single book and had no men of law to consult. Accordingly I have written only as much as was supplied by my memory, for the time being, of matters I had seen or read. Those parts that are imperfect I shall be able to complete at my leisure when I have returned home.

¹ Mary Dewar, *Sir Thomas Smith: A Tudor Intellectual in Office* (London, 1964).

² See p. 144 below, where Smith writes that he has described 'the forme and manner of the government of Englande . . . as Englande standeth and is governed at this day the xxvij of March Anno 1565, in the vij yeare of the raigne and administration thereof by the most vertuous and noble Queene *Elizabeth*, daughter to King *Henrie* the eight, and in the one and li yeere of mine age, when I was ambassador for her majestie in the court of Fraunce'.

³ The letter, written in Latin, is printed in Haddon's *Lucubrations*. The translation given here is from L. Alston's introduction to his edition of the *De Republica Anglorum* (Cambridge, 1906), pp. xiii-xiv.

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The book emerged in its final form as a far more authoritative and impressive account of England than the letter implies. Smith gives us a complete survey of the workings of Elizabethan government throughout society. The social classes, their rights, duties, composition, and role in society are delineated. The legal framework is described and the detailed working of the machinery of the judicial system is discussed at length. The nature of the constitution, the role of monarch and Parliament, and the entire legislative process are analysed. Those legal procedures, customs, and habits of mind peculiar to England which foreigners would inevitably find baffling are explained. As an insight into sixteenth-century England the *De Republica* occupies a unique place and indeed has always been regarded as the main book on which Smith's claim to fame as an author rested. Professor Maitland in 1906, describing its unique importance, said 'No one would think of writing about the England of Elizabeth's day without paying heed to what was written about that matter by her learned and accomplished Secretary of State.'⁴

The character of the book reflects the personality and career of the author. Smith had been a famous classical scholar at Cambridge and was that university's first Regius Professor of Civil Law. His learning was the admiration of his generation: 'Sir Thomas Smith was in my time', said Richard Eden, 'the flower of the University of Cambridge.'⁵ The *De Republica* is accordingly the work of a scholar, well aware of the historical origins of institutions and familiar with the writings of classical authors on the nature of society and the problems of political philosophy. The writer is clearly well versed in the law. Yet it is by no means simply an academic treatise. It is clear on every page that we are having matters described by someone with working experience of his country's government; one who had been a Member of Parliament, had served on commissions, had worked as a Justice of the Peace in his own county, had served as ambassador to foreign courts, had long experience at court and had indeed for a short time been close to the seat of power as Principal Secretary to Edward VI and ministerial confidante to Protector Somerset. It is this detailed familiarity with the workings of the system, this confident description of detailed procedures, which gives the book much of its value.

It is, however, basically descriptive rather than analytical or critical. Smith does not probe into the realities of power, or the existence of class conflict. He seems unaware of any fundamental problems posed by the system which he is so smoothly describing. Indeed his tone throughout

⁴ Alston, *op. cit.*, p. vii.

⁵ Preface by Richard Eden to Martin Cortez, *The Art of Navigation* (1561), p. i.

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is not only detached but thoroughly complacent. If the need arises to point out specific instances where English methods, customs, or institutions are very different from those in other countries, the comparison always emphasises the unquestioned superiority of his own country, so 'different from the fashion used either in Fraunce, or in Italie, or in any other place'.⁶ Whatever the topic, his verdict is usually similar to that found when he is discussing pleas, where he writes, 'Having scene both in Fraunce and other places manie devises, edictes and ordinaunces howe to abridge proces and to finde howe that long suites in law might be made shorter: I have not perceived nor reade as yet so wise, so just, and so well devised a meane found out by any man among us in Europe.'⁷

In particular he is not in the least concerned with the question which in the next reign would dominate the political life of England and lead to much questioning of her institutions, that of the precise delineation of the respective powers and spheres of influence of Crown and Parliament. It would indeed have come as a distinct surprise to the author to know that later generations of politicians and political theorists would claim that his description of the role of Parliament heralded in no uncertain terms the coming Stuart struggle of King and Parliament. He would have been still more surprised that some would read into his words in this book a dazzling step forward towards formulating the theory of the sovereignty of Parliament.⁸ Far from probing the extent and limits of Parliament's power, Smith simply describes its role in cool terms of explaining its functions and procedures. Indeed it is to Smith's description of Parliament that G. R. Elton turns for confirmation that the well defined and clearly understood main business of the Elizabethan Parliament lay in its share of the workaday burden of government and law-making, not in the heady pursuit of enlarging its own power and independence against the Crown:

Parliament was not called for political reasons. Nor was it thought of as a political assembly: it was a court and the best contemporary opinion of its functions brings in politics only very obliquely. The long list of its competencies put together by Sir Thomas Smith (choosing his order of priorities carefully, strange though it may sound to our ears) speaks of making and repealing laws, of altering rights and possessions, legitimating bastards, establishing forms of religion, altering weights and measures, settling the succession of the Crown, defining rights where the law had not settled them, granting taxes, issuing pardons, restoring in blood and condemning by attainder. We should never forget that Smith knew very well what he was talking about, or that when he

⁶ P. 89, ll. 21–2, below.

⁷ P. 96, ll. 18–22, below.

⁸ Sir Frederick Pollock, *History of the Science of Politics* (Oxford, 1911), pp. 54 and 74.

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spoke of 'the parliament' he did not mean the House of Commons alone. And he had nothing to say about providing a stage upon which those apprehensive of the rule of their monarch may express their opinions or push their solutions . . .⁹

It is in this context that Smith's much quoted statement that 'The most high and absolute power of the realme of Englande, is in the Parliament'¹⁰ should be understood. In this sentence, so beloved of historians, Smith was not referring, however obliquely, to any conflict between Crown and Parliament but to the relationship between government and the governed. An act of Parliament, because of the nature of Parliament, which he defines, and because of its procedures, which he is about to describe, is 'the Princes and whole realmes deede'. No individual has the right to question this 'absolute' power, 'no man can complaine'. He must 'accommodate himselfe to finde it good and obey it', precisely because all 'the force and power of Englande' has here in Parliament decreed it to be the law. This, in context, is the simple meaning Smith intended to convey by his statement that 'The most high and absolute power of the realme of Englande, is in the Parliament.' Parliament is 'both the head and the bodie' and because of this 'the consent of the Parliament is taken to be everie mans consent'. He is mainly concerned that the reader should understand that the English Parliament is an institution quite unlike the 'parliaments' of other countries – that the reader should grasp its unique place in English society. For this reason he comments later, when discussing the Councils for the North and for Wales, 'These two are as be Parliaments in Fraunce.' It has been argued that a much more limited interpretation of the sentence is appropriate, that all Smith meant to convey was that Parliament, as the highest court in the land, was 'absolute' in the strictly limited legal sense that there was no appeal from it.¹¹ Smith, however, was not discussing appeals at this point, he was discussing 'the authoritie' of Parliament; the context is wider, and the sentence carries in it the deeper implication of Parliament as the repository of the nation's will and the ultimate sanction of its acts. It does not, however, carry the slightest implication of pitting Parliament against the Crown. As Professor Holdsworth stated, 'Smith

⁹ G. R. Elton, 'Parliament in the sixteenth century: functions and fortunes', *Historical Journal*, vol. 22 (1979), pp. 255–79.

¹⁰ See p. 78 below. The Rawlinson MS. and the Trinity MS. read this important sentence as follows: 'The most high and absolute power of Englande is the Parliament', omitting 'of the realme' and 'consisteth in'. All other manuscripts read 'is in the Parliament' for 'consisteth in'. The Yelverton and P.R.O. MSS. alone omit 'the' before 'Parliament'.

¹¹ Alston, *op. cit.*, pp. xxxi–xxxii.

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does not contemplate the existence of a controversy between them'.¹² There is indeed nothing in Smith's account of Parliament which would have offended even Elizabeth's sharp sense of the Crown's authority.

This conservative approach characterises the book. In the 1560s Smith, like all ministers, Crown servants, and Members of Parliament, was well aware of clashes of will and purpose between the Crown and its advisers, clashes which sometimes emerged in Parliamentary debates, more often as struggles between different personalities in the Council. There had indeed been many such incidents with which he had been personally connected. But, as his later letters show, written when he was Principal Secretary to the Queen in the 1570s, he always regarded such clashes as unfortunate episodes, caused by mistaken zeal or ignorant pursuit of ill-advised policies, either by the Queen herself or her ministers, or other advisers, and the fault simply of the personalities concerned. They were an occasional piece of grit in the machinery, not an indication of any flaws or stresses in the very nature of the system.

This is not to say that one should take Smith's smooth description totally for granted. One should remember that Smith's description of Parliament is like the rest of the book, an exercise in demonstrating to his chosen audience – the benighted foreigners suffering under their, alas! far inferior foreign institutions – the superiority of all things English. It would not have suited Smith's purpose to acknowledge any stresses, strains, or weaknesses in the English system, which is not quite the same thing as saying that they did not exist or that he was unaware of any. Indeed, in other parts of the book he shows a reluctance to let painful reality intrude on his ideal picture. He has, for example, no hesitation in saying: 'Likewise, torment or question which is used by the order of the civill lawe and custome of other countreis to put a malefactor to excessive paine, to make him confesse of him selfe, or of his felowes or complices, is not used in England, it is taken for servile.'¹³ That torture was rarely used is true, that it was unknown is not. These words could well have come back to haunt him later, in 1571, when Elizabeth, bent on uncovering the Norfolk conspiracy against the throne, wrote adamantly to Smith, then high in her service, 'We warrant you to cause them both or either of them to be brought to the rack.'¹⁴

Despite the book's lack of polemics, later readers quarried in it happily for ammunition in the later debates between King and Parliament. It

¹² W. S. Holdsworth, *History of English Law* (London, 1903–9), vol. IV, pp. 208–9.

¹³ P. 117, ll. 24–8, below.

¹⁴ It should be noted to Smith's credit that at this point he incurred the Queen's displeasure for his deliberate dilatoriness in obeying her commands. Dewar, *Smith*, p. 127.

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is probably no coincidence that one of the few known early manuscript copies of the work was owned by Sir John Eliot. Indeed, the book's instant popularity and quick flow of new editions no doubt owed much to its analytical, descriptive tone: people were able to find in it material to support whatever argument they favoured. We have two examples of later readers doing just this. One writer quotes Smith with approval as he in his turn approves of an increase in royal power, whereas the other writer clearly feels that a few quotations from the *De Republica* are quite enough in themselves to check any untoward pretensions of the Crown. Thus Edward Hake in his *EPIEKEIA: A Dialogue on Equity in Three Parts*¹⁵ discusses Smith's definition of 'absolute power' at great length and concludes:

and nowe to tell you what I thincke of the aforesaide sayengs of Sir Thomas Smyth. In a worde I thincke the absolute power by him there spoken of to be altogether different from the absolute power of that that hath byn in question betweene us, for whereas our dispute hath byn of particular acts that are sayd to be done by the absolute power of the Prince, the absolute power which Sir Thomas Smith meaneth and playnely uttereth in those aforesaide wordes is of the nature and quality of our English government in generall, that is to saie, whether the same be legall or regulate, or absolute or whether it be partly regulate and partly absolute. Wherein he most playnely describeth in what things the kingdome of Englande is absolute and in what things legall or regulate, which selfsame matter is also at large discoursed of by the aforesaid worthy knight Sir John Fortescue in his Commentary of the polyticall admynistration and lawes of England.

Hake then proceeds to describe the English as 'ruled and governed by the lawes of their country, or rather by their kings and rulers whose rule and government is according to their lawe and not otherwise' in contrast to 'peoples of all other nations and kingdomes [who] for the moste part are ruled and governed by the absolute beck, will, and power, of their Prince'. Hake then states that he now sees an increase in the royal prerogative, of which he approves; for otherwise 'wee should ever and anon in this presuming age not only heare of flagitious and envenimious offences which the ponishments of the lawe were to little and not sufficient for, but also of the force and power of many great ones which would growe so bigge and dissolute as that the ordinary course of lawe would hardly get passage or proceedings against it'.

Here was at least one reader who clearly thought he could quote Smith with approval in such a context. On the other hand, a little book of a

¹⁵ Edward Hake, *EPIEKEIA: A Dialogue on Equity in Three Parts*, ed. D. E. C. Yale, with a preface by S. E. Thorne (New Haven, Conn., 1953). There are references to the *De Republica Anglorum* on pp. 50, 76, 77, 78, 80 and 133.

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slightly later date found ammunition for Parliament's cause in the *De Republica*. The anonymous author of *An old Mould to cast New Lawes by; reprinted out of the Commonwealth of England, by a friend to old Bookes and an Enimy to new Opinions*,¹⁶ in 1607, had no hesitation in rushing to the *De Republica Anglorum* to prove his point that a speech of James I concerning the extent of his regal powers in Scotland had no relevance in England. The two first Chapters of Smith's Book II on Parliament are reprinted in full, as being a sufficient answer in themselves to the King's claim that 'I can assure you that the forme of Parliament there [i.e. in Scotland] is nothing inclined to popularity', 'if there be anything that I dislike they race it out', and that so far as a 'negative voice' is in question 'then I have one I am sure in that Parliament'. The author clearly feels no need for further argument apart from drawing attention to Sir Thomas's authoritative words; he merely follows them with the biblical quotation: 'Remember the dayes of old, Consider the years of many Generations, ask thy Father and he will show thee; thy Elders and they will tell thee.' No doubt Smith would have been faintly surprised at both authors.

For most readers, however, the book played a less exalted but more important role. It was an invaluable handbook, a working guide through the complexities of administration and the labyrinth of the law. Robert Beale in his 'Instructions for a Principall Secretarie observed by R.B. for S*<i>*r Edwarde Wotton: A*<nn>*o Do*<mi>*ni, 1592'¹⁷ gives a list of the various matters on which a Secretary should be well-informed and states, 'It is convenient for a Secretarie to seek to understande the State of the whole Realme, to have S*<i>*r Thomas Smithe's booke, althoughe ther be manie defects w*<hi>*ch by progresse of time and experience he shalbe able to spie and amende.' Beale himself clearly followed his own advice: one of the manuscript copies of the *De Republica* is to be found in his own collection of working papers.¹⁸

Occasionally we do indeed find the book attacked for errors. In 1629 Edmund Bolton¹⁹ wrote a very angry if somewhat vague little book entitled *The Cities Advocate: 'In this case or question of Honor or Armes; Whether Apprenticeship extinguisheth Gentry? Containing a cleare Refutation of the pernicious common error affirming it, swallowed by Erasmus of*

¹⁶ University of Harvard, Treasure Room of the Law School.

¹⁷ Printed in Conyers Read, *Mr Secretary Walsingham* (Oxford, 1925), vol. 1, p. 428.

¹⁸ This is the Yelverton MS. (B.L. Add. MS. 48047, ff. 1-51).

¹⁹ Edmund Bolton (1575?-1633) was a well-known historian, a friend of Camden, who wrote several books and achieved notice also by his proposed design for a royal college of distinguished men of science and literature. A copy of the book is owned by the Folger Library, Washington, D.C.

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Rotterdam, Sir Thomas Smith in his Common-weale etc.' and attacks 'th incircumspection of Sir Thomas Smith, Knight, in his booke *de Republica Anglorum*', wherein 'not remembring to distinguish between servitude and discipline, bondage and regular breeding, injuriously defined them [i.e. apprentices] to be a kinde of bondemen, meaning mere slaves . . . an oversight which I could have wished far off from so grave and learned a Gentleman'. But such criticism is rare. On the whole the book was approved and in great demand.

Given this ready show of interest in the book when it was first published and its continued hold on people's interest, to which the steady flow of new editions attests, it is puzzling that the book was not published until 1583, six years after Smith's death and eighteen years after it had been written. There were other early books of his which he had rescued and had published in his middle years, such as his treatises on English orthography and Greek pronunciation, both topics of strong contemporary concern, but hardly, one feels, of as widespread interest as the *De Republica*. In the last few years of his life he gathered his failing energies to revise his economic and social treatise, the *Discourse of the Commonweal*,²⁰ and even contemplated reviving an obscure treatise of his youth on the subject of the wages of a Roman footsoldier.²¹ This general intention, which he signalled in a letter to Burghley in 1576 just before his death in 1577, to work on 'books made in my youth' and 'since lost', does not seem to have extended at all to the book which is now deemed to be by far his most important one. There is no mention whatsoever of revising the *De Republica* and indeed, after the letter to Haddon in 1565, his entire voluminous correspondence has no further mention of the book. Moreover, as will be seen later, there is overwhelming internal textual evidence that Smith never made the slightest attempt to rewrite, correct, or in any way add to or improve on the original manuscript after his return from France in 1565. This is the more surprising in that the years 1565–72 were on the whole years of some enforced reluctant leisure when he was not in Elizabeth's favour and was only fitfully used by her in government service. Perhaps he thought any commentary on government unwise at that time and put it away with other memories of those dismal and dismaying years as ambassador to France which had proved so trying to him personally and so disastrous for his career.²² Later, in the early 1570s, he aroused Elizabeth's intense fury

²⁰ M. Dewar (ed.), *A Discourse of the Commonweal of This Realm of England* (Charlottesville, Virginia, 1968). For the argument that Smith was the author of this famous work see M. Dewar, 'The authorship of the "Discourse of the Commonweal"', *Economic History Review*, 2nd ser., vol. XIX (1966), pp. 388–400.

²¹ Dewar, *Smith*, p. 188.

²² *Ibid.*, chapter VIII.

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and got into trouble with the Privy Council over the publication of a book on his Irish colonisation project, a book which the Queen considered harmful to the royal prerogative.²³ This also could well have discouraged him from any desire to publish the *De Republica*. Whatever the reason, the *De Republica*, though circulating in manuscript and clearly frequently copied, remained disregarded, unrevised, and unpublished by Smith himself.

One problem which has exercised readers of the *De Republica Anglorum*, almost from the time the book was published, has been the unquestioned similarity of Chapters 17–24 of Book 1 with Chapter v of William Harrison's *Description of England*, which was published in Holinshed's *Chronicles* in 1577. In Harrison's second edition in 1587 he did indeed refer to Smith's *De Republica* and borrowed from it certain sections on Parliament, commenting that he was 'requiting him with the like borrowage as he hath used toward me in his discourse of the sundry degrees of estates in the commonwealth of England'. This 'borrowage' raises many problems and points of interest. It is discussed in detail in Appendix 3 (see below, pp. 157–62).

²³ *Ibid.*, pp. 157–9.

THE FIRST PUBLISHED EDITION OF 1583

The long period of time which elapsed from the book first being written in 1565 to its first publication in 1583, six years after Sir Thomas Smith's death, raises serious questions as to the fidelity of the printed text to the original manuscript. Even in the foreword to the first edition it was admitted that the text had suffered from the 'errors and rashness of Scribes, appearing in the contrariety and corruption of copies, happening both by the length of time since the first making, as also by the often transcribing'. This was of course a common problem at a time when an individual copying a manuscript could not only be careless and make errors, but when it was also considered natural and even commendable for him to 'improve' on the text before him. Hence each copy made could be a very individual rendering of the text and one could quickly travel far from the original manuscript as copy succeeded copy. This raises serious questions for the *De Republica*. Are we reading in the 1583 version Smith's description of his country's institutions – for example, his account of Parliamentary procedures – as he knew them in the early 1560s, or are we reading a text corrected for the changed circumstances of the 1580s? How faithful to Smith's 1565 manuscript is this 1583 edition?

We are now in a better position to answer this question from an examination of several manuscripts which have come to light in the course of this study. Previously the *De Republica Anglorum* was mainly known to modern readers from the edition by Leonard Alston of the printed 1583 text which he published in 1906. At this time, only two manuscript editions of the work were known: the British Library Harleian MS. 1130 (H.) and the Trinity College MS. 1504 (Tr.). These manuscripts were collated by Leonard Alston as Appendix C of his edition.²⁴ Several other manuscripts are now known. They are:

- (1) B.L. Additional MS. 44047, ff. 1–51, formerly part of the Yelverton MSS., referred to as the Yelverton MS. (Y.)

²⁴ Not too reliably, particularly for the Harleian MS. There are many instances where the reading particularly of the Harleian MS. differs from the readings given in the Alston Appendix.