

Introduction

‘these quarrelsome folk by the Severn were the stuff of English history’

William B. Willcox¹

On 25 June 1626, a cousin of John Smyth of Nibley called Samuel Trotman paid a visit to the house of William Burford, a brewer’s clerk who lived near the Black Griffin tavern in St Giles in the Fields, on the very fringes of early modern London. Struck by what he encountered, Trotman reported to Smyth that ‘there was fixed’ – ‘like a ballad on the wall’ – a printed sheet in folio. This might not seem extraordinary; historians now recognise that cheap print was ubiquitous in the seventeenth century, and that it was accessible to, and popular with, people from all walks of life. They also recognise that in homes and alehouses alike printed sheets with ballads and merry tales were displayed in precisely this fashion. On this occasion, however, all is not what it seems. This is intimated by Trotman’s comment that, upon entering the house, Burford’s wife Susan ‘pulled down’ this particular item ‘in a rage’, suggesting that it was no ordinary text, and that it was risky to possess a copy.² Indeed, the text in question, a single sheet work by Benjamin Crokey, does not fit with scholarly appreciation of the *kinds* of text were popular with humble readers. Its title was *A Briefe of a Bill in the most high and honourable House of Parliament*, and it was one of those texts that were used to lobby MPs and peers at Westminster, in support of petitions and reforming notions. Such works have begun to receive scholarly attention in recent years, within analyses of Parliament’s role as a participatory forum, and this particular work had actually been around since 1621, when print first became a common method for drawing attention to grievances, demands and new ideas, and when Crokey had launched an unsuccessful bid to

¹ William B. Willcox, ‘Lawyers and litigants in Stuart England’, *Cornell Law Quarterly* (1938-9), 556.

² GA, D9125/1/12014.

influence the legislative agenda.³ Here, in other words, is curious evidence of humble readers treating a parliamentary breviary with the veneration usually afforded to popular verse.

It also became clear to Smyth that another of Crokey's texts, a substantial sixty-four page pamphlet from 1625, addressed *To his sacred maiestie, the lords spiritual, and temporal, and the House of Commons*, had become the talk of the town in London.

Christopher Stokes saw a copy lying on a table at the chamber of Mr Chester, near St Clement Danes, read it 'in part', and discussed it with his host. Gyles Bird was offered a copy by a soldier called John Leigh, 'who asked of him whether he would read a piece of *news*'. Other copies were doing the rounds at the Three Cups tavern in Bread Street, as well as at Blackwell Hall, the centre of the wool and cloth trade, where Richard Poole heard it being read aloud by a 'factor' called Edward Tanner, before borrowing it and reading it himself. More alarming still was news that the tract also reached Gloucestershire, where it was not only talked about at the Bell tavern in Gloucester, but also seen and read in more rural areas, by men like the tailor Thomas Brinkworth of Coombe, a hamlet near Wotton-under-Edge. Philip Langley of Mangotsfield received a copy from his maidservant, and another man, Albane Saunders, obtained one from his son, a pupil at Wotton's grammar school. Also in Wotton, another tailor called Edward Brinkworth saw Edward Olyver's maid 'reading one of them', and promptly borrowed a copy, and in that part of the world there was said to be 'a notable bruit and wonderment... at the first coming of the books'.

Such evidence is odd, not just in terms of why Smyth was so interested in Crokey's use of print, but also because Crokey's texts were being treated like the trashiest kinds of popular literature. There has always been a temptation to suggest that 'ordinary' people – the 'lower orders', especially outside London – did not read such things, either because of illiteracy or lack of engagement with parliamentary and political affairs, or because printed

³ Kyle; CD 1621, i. 84-6.

pamphlets were simply not available in the provinces. Such assumptions have obviously been challenged in recent years, in terms of the *reach* of print, both geographically and socially, but there remains something intriguing about the attention that Crokey's texts received from a diverse group of people, many of whom were far removed from Parliament.⁴ These texts were primarily aimed at MPs and peers, and were somewhat dry and legalistic, and, in the case of the 1625 pamphlet, rather long. In sum, we appear to be confronted by a mystery, and it is precisely this mystery that this book seeks to solve.

At the same time, this book also has a much broader remit. It is a study of civil litigation, and it is based upon the idea that existing studies of legal disputation, which have rightly alerted us to the explosion in legal suits that occurred during the early modern period, have not done enough to understand the significance of the phenomenon. This reflects the difficulties involved in getting to grips with the *stories* that lay behind legal action, which means that we only have a limited understanding of what went on during litigation, what it meant for those involved, and what effects it had. The book is based, in other words, on the idea that it is only by means of a deeply contextualised case study that the nature and importance of early modern litigation can be recovered.

As such, the approach taken here – as with other episodes that *disorient* or bewilder historians – will be microhistorical, at least in certain ways.⁵ The term 'microhistory' might now be regarded as debased, for reasons that will become clear, but it relates to an approach that has ongoing appeal in terms of the possibility of grappling with apparently inexplicable things by reducing the scale of observation and undertaking microscopic analysis of very particular phenomena. Very often this involves unusual incidents and strange characters; listening to 'faint voices' from neglected sections of society, recognising the 'agency' of

⁴ Peacey.

⁵ Peltonon, 'Clues', 349; Farge and Revel, *Vanishing*, 3-4; Ruggiero, *Binding Passion*, 13; Geertz, *Interpretation*, p. 27.

ordinary people, and recovering alien ‘mentalities’. The aim is normally to reveal things – ways of doing, being and thinking – that are incapable of being observed using other approaches, and to shed new light upon the wider world of a particular age.⁶ Legal proceedings, indeed, have been central to understanding the characters in any number of important microhistories – from Menocchio the miller to Cunegonde and Anne Gunther – and getting to grips with Benjamin Crokey will certainly involve analysing legal records. Indeed, his printed texts referred to, and reflected the fortunes of, a legal dispute that had been ongoing for a very long time.⁷ The litigation to which they related – the contested fate of a 100-acre estate called Warren’s Court in North Nibley, Gloucestershire – began in the 1560s and did not grind to a halt until the early 1660s. Its central issues were then revisited in renewed contestation over fifty years later, in the early eighteenth century.

It is this litigation that explains John Smyth’s interest in Crokey’s printed texts, since he was the man with whom Crokey was in dispute, and since it was against him that both the bill and the book were targeted. Such legal manoeuvring, however, merely throws up *another* mystery, in terms of a legal contest that might be thought to have defied *good sense*. It is – and was – hard to know both the extent and value of the land in question, but while Crokey generally claimed that it was worth £300-500 per annum, others valued it at as little as £30-70.⁸ As such, the amount of money that litigants spent on the dispute seems fundamentally

⁶ See M&S; Muir, ‘Observing trifles’; Ginzburg, ‘2 or 3 things’; Levi, ‘On microhistory’; Iggers, *Historiography*, 104-13; Brooks, DeCorse and Walton, eds, *Small Worlds*; Lamoreaux, ‘Rethinking microhistory’; Lepore, ‘Historians who love too much’; Magnusson, ‘Contours’; Magnusson, ‘Singularization’; Magnusson, ‘Social history’; Peltonen, ‘What is micro in microhistory’; Putnam, ‘To study the whole’; Renders, ‘The limits of representativeness’; Robisheaux, ‘Microhistory today’; Robisheaux, ‘Microhistory and the historical imagination’; Szijarto, ‘Four arguments’; Malcolm, xix-xx; Andrade, ‘Chinese farmer’; Barth, ‘Microhistory of a global event’; Gebhardt, ‘Microhistory’; Ghobrial, ‘Secret life’; Trivellato, ‘Is there a future’; Ginzburg and Poni, ‘The name and the game’, 3; Levi, ‘On microhistory’, 95; Davis, *Women on the Margins*; Ozment, *Magdalena and Mathasar*, 13; Ozment, *Three Behaim Boys*, xi; Cohen and Cohen, *Words and Deeds*; Levi, ‘On microhistory’, 97; Ozment, *Magdalena and Balthasar*, 162; Trivellato, ‘Is there a future’

⁷ Cohen and Cohen, *Words and Deeds*; Sharpe, *Bewitching*; Kaplan, *Cunegonde*.

⁸ In the 1540s the estate was said to be worth £16-17 per annum: VCH, 400. Crokey’s estimates ranged from £80 to £500: 1625, H3v; LJ, iii. 171; 10/1/37; 10/1/24; 10/1/37; C 3/338/8; STAC 8/107/7; Briefe; 11996; Contents, A; 8887/6/87. Another litigant in the 1580s suggested a figure of £30: D9125/1/11989. John Smyth claimed that it was worth no more than £30, although his son reckoned on £70 by 1642: STAC 8/274/8; SP 23/196, p. 513. An official – if contested – investigation in 1621 valued the land at £42 per annum: C 21/625/4.

disproportionate: Smyth regularly spent far more than this per year – or even per term – on pursuing the matter through the courts, and by the mid-1640s Crokey claimed to have spent over £3,000 on the affair.⁹ This book grapples with why this particular affair was contested for so long, and why it was a dispute that Smyth and Crokey both inherited, pursued with great vigour and then passed on to their children. Doing so involves, and sheds more general light upon, the *logic* of litigation, and paying attention to the *everyday* aspects of such disputes as much as to apparently *extraordinary* episodes and characters.¹⁰ The dispute over Warrens Court provides a useful example of how waging law could spin out of control, and elucidating why Smyth and Crokey pursued it so doggedly will involve arguing that the kinds of analysis that are required for a microhistorical approach – establishing how both men thought about and conducted litigation, and reflected on the legal system – ultimately reveals the affair’s deeper meaning, not just for the disputants, but also for contemporary onlookers, and thus for the understanding of legal wrangling more generally.

To put things another way, this book demonstrates why and how to interrogate a legal dispute that has received very little attention, and that seems to be both extraordinary *and* insignificant at the same time. The Warrens Court dispute has been noted only very briefly by historians of Gloucestershire and Wotton-under-Edge, in terms of how it involved ‘much trouble and expense’, and attention has occasionally been paid to the fact that Crokey was one of the first people to capitalise upon the decision to reconstitute the House of Lords as a court of judicature in the early 1620s, and an early adopter of print as both petitioner and lobbyist.¹¹ More obviously the dispute has played a minor part in debates over early modern censorship, because Crokey was prosecuted in 1631 as the author of a pamphlet that was

⁹ For Smyth’s expenditure, see Chapter 3. For Crokey’s claims about his own spending, see: C 3/338/8; 10/1/24; 10/1/37; 10/1/274; 10/1/296; Briefe.

¹⁰ See: Levi, *Inheriting Power*; Salem *Possessed*; Sabean, *Power in the Blood*; Farr, *Hands of Honor*; Steege et al, ‘The history of everyday life’; Highmore, *Everyday Life*, ch. 8; Iggers, *Social History of Politics*, 36-41.

¹¹ Willcox, ‘Lawyers and litigants’, 545-6; Cooke, 214; Broadway, ‘John Smyth’, 89; Smyth biog in HoP; E. S. Lindley, *Wotton under Edge* (London, 1962), pp. 224-30; Willcox, 64; *CD 1621*, i. 82; Hart, 39; Kyle, 160-1.

deemed libellous and scandalous. In 1886, S. R. Gardiner included Crokey's trial in an edition of cases that were heard before Star Chamber, the implication being that it provided an example of the repressive behaviour that marked the 'personal rule' of Charles I, and that eventually brought about constitutional crisis, civil wars and revolution. For Gardiner, Crokey's treatment formed part of a grand narrative in which tyranny and absolutism gave way to constitutional monarchy, parliamentary democracy and religious and political liberty.¹² Of course, this 'Whig' interpretation of history has been subjected to vigorous challenge since Gardiner's time, and Crokey's 1631 case has *also* been used to support 'revisionist' claims that early modern governments sought to take action against authors who breached 'civility rules', rather than to silence all forms of criticism and debate.¹³

Whether or not Crokey's case provides a useful means of analysing early modern censorship, it will certainly provide a vivid sense of the way in which legal disputes could be contested, and it will be necessary not just to explore dealings with the courts, but also dramatic tales of forgery, bribery and corruption, and of riots, assaults and kidnapping. We have eye-witness accounts of hot words in London taverns, of houses being besieged, and of witnesses being intimidated, and an extraordinary scene in which a messenger was taken captive and put on 'trial' by inmates in King's Bench prison. The dispute also witnessed wild claims by litigants on both sides. One was called a 'churchrobber' (and a 'jesuitical fellow', and was likened to a 'toothdrawer'), while another was called a 'madman' (and 'that idiot'); both were accused of bad behaviour and sharp practice. Such languages explains the book's title, which is intended to give a flavour of the contemporary rhetoric, but also to indicate the animosity involved, and the seriousness of the issues at stake. As such, this book argues that placing litigation at the heart of the contestation over Warrens Court, and then exploring the

¹² S. R. Gardiner, ed, *Reports of Cases in the Courts of Star Chamber and High Commission* (Cam. Soc., ns 39, 1886), pp. 37-40.

¹³ Shuger.

broader disputation by which legal proceedings were enveloped, provides the key to this most perplexing of disputes.

More broadly, however, it suggests that close analysis of a rich and vibrant dispute such as this also provides a means of teasing out aspects of early modern litigation that are otherwise hidden from view. A central aim of this book is to suggest that a contest like this one offers a rare example of how to delve beneath the surface of litigation that might easily be regarded as trivial, formulaic and mundane, and that it opens up new ways of scrutinising other cases and the wider phenomenon of litigation, and provides more general insights about the ‘lawmindedness’ of contemporary society, as well as about its fractures and fissures. Ultimately, the aim is to suggest that studying litigation is a powerful tool for recovering and reassessing the prevalence, severity and *visibility* of social and ideological conflict from the Reformation to the Restoration, and indeed beyond. Indeed, one particular value of the Warrens Court dispute is that its longevity makes it possible to engage with long-term trends, with contemporary awareness of those changes, and with people’s memories and sense of connection with the past. The Warrens Court dispute, in other words, provides a fresh perspective upon wider debates about whether the early seventeenth century was blessed by ‘consensus’ or riven by ‘conflict’, and about the problems that provided the backdrop to the English revolution, and also survived its passing. It suggests that this requires reflecting on how historians can *recover* evidence of conflict and division, and the book will argue that solving the mysteries surrounding Crokey – why the dispute proved to be so long-lasting and so fascinating for contemporaries – will have implications for how historians think about political, religious and even socio-economic tensions in early modern England. My argument will be that ideological conflict in early modern Britain can sometimes only be brought into focus with a microhistorical approach, by subjecting legal cases and the legal system to particularly close scrutiny, being sensitive to the thinking of those involved, and identifying

the local issues with which they were embroiled, and how these developed over time. As such, this book involves what might be called a *longue durée* microhistory.

Of course, a study like this can only be undertaken when it is possible to follow – on this occasion, as with so many microhistories – an extraordinarily rich and varied paper trail. Delving into neglected caches of papers is not simply *indulgent*, however, and does not merely provide fascinating ‘colour’. Rather, it provides an opportunity to subject early modern litigation to deep contextualisation, and the granular analysis that it makes possible is intended to shed light upon the wider world of law and politics in the early modern period. As such, the density of the archival material makes it possible to fulfil the central aim of all true microhistories: connecting specific and apparently peculiar phenomena to a much bigger picture. What appears below, therefore, is an introduction to this archive, to the dispute’s main protagonists, and to the methodological and conceptual issues with which it will be necessary to grapple in the chapters that follow.

I

The logical place to start involves the kind of autobiographical reflections that are so often integral to microhistories, in terms of the serendipitous way in which a rich-but-scrappy body of material – ‘deep sources’ – came to light, and in terms of the value of *reading*, rather than merely *searching* catalogues.¹⁴ This study was generated by calling up manuscripts more or less speculatively, from collections that are voluminous but fragmentary, and by tapping into the knowledge and enthusiasm of professional archivists, and it demonstrates the value of letting new research projects emerge more or less organically out of earlier work.

¹⁴ Ozment, *Three Behaim Boys*, xii; Garcia-Arenal and Wieggers, *Man of Three Worlds*, xiii; Tucker, *Blood Work*, 227; Brown, *Immodest Acts*, 3; Sonenscher, *Work and Wages*, viii, xx.

The fortuitous discovery of the clues that prompted this book occurred while working on the ‘print revolution’ of the seventeenth century. That project analysed how print culture transformed political life for ordinary citizens, by providing access to new kinds of information, as well as new opportunities to express opinions and exert influence over political processes, and it involved – in part – examining how even fairly humble people began to use print to express grievances and set out demands, so that these could be presented to MPs in the hope of getting cases heard. This was a story of how familiar practices – petitioning and lobbying – underwent significant change as a result of technical innovations, and it was tracing such tactics that first revealed an obscure Bristol merchant called Benjamin Crokey, who attracted attention because he was one of the first people to do this – in the early 1620s – and because he did it a *lot*. By their very nature, however, such texts pose significant challenges for historians. For a long time they eluded scholarly and bibliographical attention, not least because they tend to survive within archival collections rather than in libraries, and although this rapidly became a popular genre in the seventeenth century individual items are not necessarily easy to find. Indeed, while the process of *reading* the Short Title Catalogue revealed hundreds of items that were worthy of attention, many of these turned out to be very rare.

It was the chance of tracking down one particular item that prompted a visit to the Gloucestershire Archives. According to various catalogues the record office possessed a copy of Crokey’s *Humble Petition* from 1640, the only other known copy of which was somewhat further away in Trinity College Dublin, whose archive did not have the appeal of being housed in a county where every generation of my own family has lived and worked since the time that this tract was produced. Unfortunately, the Gloucestershire Archives copy of Crokey’s pamphlet turned out to be missing, although it was certainly possible to locate copies of other texts that he printed, in 1621 and 1625. It was at this point that, in the hope

that the tract might simply have been mis-shelved, it seemed worthwhile to scour the catalogues for boxes where it might be lurking, and to draw upon the cheerful assistance of the archivists, who offered expert guidance regarding collections that have had more than one home over the centuries, and that have been recatalogued and re-arranged over time. It was this process which revealed that, although this particular pamphlet remains lost, there does exist a mountain of paperwork relating to the dispute to which it related, not least within the papers of Crokey's nemesis, John Smyth of Nibley.

This book contains the story revealed by such papers, and what can be wrought from them – imperfectly but dramatically – through a tortuous process of reconstruction. Before commencing such analysis, however, it is worth reflecting briefly on the nature of the surviving evidence, which likewise involves a story of good fortune. This is partly a matter of Crokey's texts themselves, which are rich and tendentious, and partly a matter of the official records, including legal proceedings, parliamentary papers and state papers, which are as voluminous and valuable as they can be frustrating. What really underpins this project, however, is John Smyth's incredible archive, which can now be pieced together even though it is dispersed throughout numerous repositories worldwide. When Smyth reflected very briefly on his dispute with Crokey in his well-known history of the Berkeleys, he claimed that he chose to 'write the less, referring him that desireth more to the records themselves', and the possibility of using these papers to resolve the mysteries surrounding the affair reflects not just the extraordinary story that they reveal, but also the fortunate way in which they have come down to us.¹⁵ The latter is a tale worth telling – briefly – because it reinforces the sense that the papers provide an extremely rare opportunity to subject a dispute like this to intense scrutiny.

¹⁵ Smyth, iii. 402.

In part, the story of Smyth's papers involves the ways in which private papers sometimes migrated around the country through the fluctuating fortunes of gentry families. In this case we know that Smyth bequeathed the 'evidences and writings in my study at Nibley' to his son in 1641, and that the papers remained with Smyth's descendants in Gloucestershire until the second half of the eighteenth century. The death of Nicholas Smyth in 1790 saw the papers pass to his widow, Anna Maria, with whom they moved to the estate that she inherited at Condober Hall in Shropshire, where they were eventually integrated with the papers of the Cholmondeley family, following the death of Nicholas Smythe-Owen without heir in 1804.¹⁶ It was at Condober that the papers were examined by the Historical Manuscripts Commission (HMC), which published an invaluable calendar of the collection in 1876, doubtless as part of the process by which the archive – and later the house – was put up for sale.¹⁷ That sale – by Puttick and Simpson in 1887 – could easily have been fatal for any historian of Smyth, Crokey and the dispute over Warrens Court, because the bulk of the papers – some 3,000 documents that formed lot 976 – were purchased by a specialist dealer, Bernard Quaritch, for £43, and immediately broken into smaller lots, which were then dispersed in an 1888 sale.¹⁸

In such circumstances it is amazing that almost *all* of Smyth's papers have made it into public libraries. Papers relating to Virginia were acquired by Alexander Maitland, and given to the New York Public Library, before being published by S. M. Kingsbury.¹⁹ The volumes that comprised 'Men and Armour' – Smyth's record of Gloucestershire men who could bear arms in 1608 – were acquired by Lord Sherborne, whose family enabled them to be published in 1902.²⁰ Papers relating to Kingswood Abbey made their way to Bristol

¹⁶ Smyth, i. <>; Herefordshire Archive and Records Centre, BB2/223.

¹⁷ *HMC 5th Report*, 339-60.

¹⁸ Chicago UL, MS 1465, folder 1.

¹⁹ NYPL, *ZL-214; S. M. Kingsbury, ed., *The Records of the Virginia Company of London* (4 vols, Washington, 1906-35), i. 55.

²⁰ *The Names and Surnames of all the able and sufficient men* (London, 1902); *Men and Armour for Gloucestershire in 1608* (Stroud, 1980).

University Library, while another portion was bequeathed to Birmingham Central Library as the Fletcher Collection. Other choice items – including historical and literary works by Smyth, as well as his parliamentary diary – were acquired by the British Library, the Bodleian Library, the Folger Shakespeare Library, Yale University Library and Chicago University Library.²¹ Most aptly, but most impressively, the vast bulk of the collection made its way into what is now Gloucestershire Archives, via Gloucester City Library. Many of these were acquired from the Quaritch sale by F. A. Crisp FSA (d.1922), a JP and prolific genealogist, from whose Grove Park Press they were acquired in 1921 by the Gloucester city librarian, Roland Austin, with the help of Alderman Edwin Lea (1848-1931).²² Crisp's assistant seemed glad that the papers were 'together... where the public can consult them'.²³ The transfer of these materials to what was then Gloucestershire Record Office took place gradually between 1952 and 2005, since when they have continued to receive the curatorial care that they deserve. Yet another portion of the Condoover Hall papers turned up at Sotheby's in 1956. This included a letter from Richard Burton, the author of *Anatomy of Melancholy*, which was acquired by the British Library after being refused an export licence, as well as a volume relating to the civil wars that was acquired for Berkeley Castle, and also the so-called 'Crewe albums' of correspondence and official papers, which were added to the 'Gloucestershire Collection'. The remarkable upshot of all such sales and acquisitions is that, while some of the papers identified by the HMC were thought to be missing as recently as 1961, they *all* now seem to be accessible.²⁴

²¹ Bristol University Library, DM104; V. R. Perkins, <>, *TBGAS*, 22 (1899), 179-256; BL, Add. MSS 33588-9, Add MS 34121; Bodl. MS <>; FSL, Z.e.1; V.b.298; <>; Beinecke Library, Yale University, Osborn a22 (Commentary on John Selden's *Dialectica*, c. 1589-91); Chicago University Library, MS 1465.

²² R. Austin, *Catalogue of the Gloucestershire Collection* (Gloucester, 1928). For letters and papers regarding these acquisitions, see: GA, D9125/2/7644. Some of Smyth's papers survive within the archives of families into which his children married: GA, D225/F1-6, Z1-2. At least one other was donated in 1922: D9125/1/12024.

²³ GA, D9125/2/7644/15. Austin, in must be said, was 'a little disappointed with them', adding that 'there is nothing that can be said to be of real historical value': D9125/2/7644/9.

²⁴ < Burton?> <Berkeley>; <Crewe albums>; E. S. Lindley, 'A John Smyth bibliography', *TBGAS*, 80 (1961), 121-31; Howes, 214; Willcox, 308-9.

The moral of this story involves the fragility of the historical record as well as the service done to scholarship by unheralded donors and archivists, and while it would obviously be naïve to think that this constitutes a *full* record of the dispute between Crokey and Smyth, even when supplemented by material from other sources, what survives nevertheless constitutes a phenomenally rich and diverse archival seam. Indeed, the importance of Smyth's papers has been widely recognised; they have been subjected to bibliographical enquiry, used to reconstruct Smyth's biography and mined for choice documents that could be edited for specialist journals, and they have also been crucial to no fewer than *four* book-length studies of early modern Gloucestershire.²⁵ Hitherto, however, they have not been used to undertake a detailed analysis of the Warrens Court dispute, even though they make it possible to resolve the mysteries with which we began, to shed light on a large cast of obscure characters, and to subject both Smyth and Crokey to detailed reappraisal.²⁶

II

The most famous of these protagonists is John Smyth of Nibley (1567-1641), who has been familiar to historians since the late eighteenth century, and the antiquary Thomas Fosbroke described his 'well known' papers as being 'of the first archaeological quality'.²⁷ Smyth's fame, however, rests mainly upon his *literary* significance, partly for his friendship with

²⁵ Willcox; Warmington; D. Rollison, *The Local Origins of Modern Society. Gloucestershire, 1500-1800* (London, 1992); Horn, *Adapting to a New World*. Willcox acknowledged 'the collecting zeal' of Rowland Austin (p. vii).

²⁶ Russell Howes, 'John Smyth the younger of North Nibley and his papers', *TBGAS*, 121 (2003), 213-31; E. S. Lindley, 'William Archard: an unrecognized Gloucestershire worthy', *TBGAS*, 68 (1949), 190-8.

²⁷ R. Atkyns, *The Ancient and Present State of Gloucestershire* (London, 1678), 302-4; S. Rudder, *A New History of Gloucestershire* (Cirencester, 1779), 574-5; T. H. Fosbroke, *Berkeley Manuscripts* (London, 1821), v; T. Fosbrooke, *Abstracts of Records*, i. a2; James Herbert Cooke, 'The Berkeley manuscripts and their author', *TBGAS*, 212-21; I. Gray, 'Smyth of Nibley's will', *TBGAS*, 77 (1959), 129-36; Joyce Popplewell, 'Mary Smyth's will: a North Nibley record of 1666', *TBGAS*, 110 (1992), 151-8.

Robert Burton, but more obviously for his scholarly ‘recreations’, including the history of the Berkeley family and its estates in Gloucestershire.²⁸ This monumental work was lauded in its own time and has been well-used ever since, given that Smyth had historical and indeed sociological sense ‘far in advance of his age’, and given also that his papers reveal both working practices and working notes. Smyth’s *History* was described in commendatory verses as the work of ‘a dextrous mind’ and of ‘unwearied industry’.²⁹ His pioneering census of Gloucestershire’s adult males, meanwhile, proved invaluable to social historians, and prompted R. H. Tawney to opine about ‘the learned, lovable, pedantic John Smyth of Nibley’.³⁰ Somewhat less well-understood, however, is Smyth’s career, his religious and political views and his mental outlook.

Crucial here is Smyth loyal service – as steward and ‘man of business’ for over fifty years – to the Berkeleys of Berkeley Castle, one of England’s oldest noble families.³¹ Having begun his life as the scion of an obscure Leicestershire family – albeit one whose home at Hoby fell within the Berkeleys’ orbit – Smyth became a household servant to Henry, 7th Lord Berkeley in the early 1580s, accompanied his heir to Oxford, and became steward to the family’s estates in the 1590s, a position that he retained for the rest of his life.³² Such service – during much of which Berkeley was lord lieutenant of Gloucestershire – is amply documented in Smyth’s papers and the records at Berkeley Castle, in myriad accounts,

²⁸ T. C. Skeat, ‘A letter of Robert Burton’, *British Museum Quarterly*, 22.1-2 (1960), 12-16. See: Karl Josef Holtgen, ‘Robert Burton and the rectory of Seagrave’, *Review of English Studies*, 27.106 (1976), 129-36. Burton owed his clerical fortunes to the Berkeley family. Check for ‘recreations’: Smyth, iii. 350, 410-12

²⁹ Sir J. Maclean, ‘The manor of Bosham in the county of Sussex’, *TBGAS*, 10 (1885-6), 250-77; LPL, MS 3512, fos. 21-38; Skeat, 13; Add. 33588, fos. 58, 69, 71. For the history, see Maclean ed. For a seventeenth century manuscript copy, see: Beinecke Library, Osborn fb151; GA, D9125/1/6942, 12268; D8887/1, pp. 53-69; D8887/1, pp. 70-7; BL, Add. 33588, fo. 57, 69, 71; 12261/70-7. For Smyth’s notes, see: Chicago UL, MS 1465, folder 2, items 3-4; Add. 33588, fos. 1-43, 65-8. See: R. Austin, ‘Letters and verses written to John Smyth of Nibley on the completion of his Berkeley history’, *TBGAS*, 48, 1926, 181-91.

³⁰ *HMC 5th report*, 339; R. H. Tawney, ‘An occupational census of the seventeenth century’, *Economic History Review*, 5 (1934), pp. < >.

³¹ Smyth, iii. 350, 410-12.

³² *Vis. Glos; Al. Oxon, MT Adm*, i. 66; J. Smyth, *The Lives of the Berkeleys* (3 vols, Gloucester, 1883), i. pedigree, iii-iv, ii. 378, 386, 394-5; Fletcher collection grant 1612; Berkeley Castle, Bound Book 107, fo. 13v, 54, 94, 98v, 99v; Add. 33588, fos. 44-9v, 50v-1. For Lord Berkeley, see: Complete Peerage. For Thomas Berkeley, see: House of Commons, 1604-29, ed. Thrush.

receipts, acquittances and bonds, as well as occasional letters, all of which were maintained in his inimitable and meticulous fashion. Smyth evidently became a trusted ally at a difficult time in the family's history, amid claims of recusancy, as well as indebtedness, intestacy and exile, not to mention contested wardships and sexual scandal, and his loyalty was evident not just in the gifts that he presented to his employers but also in his service as the family's 'fixer', not least during the widowhood of Lady Elizabeth Berkeley (1613-22). Smyth railed against other servants who proved unreliable – one was described as 'a drunken rogue... a thief, a liar and a perjured fellow', while another was 'fitter for fairs and markets of cattle... than to grapple with a watchful adversary' – and the debts that the family incurred to him were financial as well as figurative.³³

More importantly, after being called to the bar at the Middle Temple, Smyth also undertook a phenomenal amount of the work – as what Lord Berkeley called 'solicitor of my law causes' – that had 'beaten smooth the pavements between Temple Bar and Westminster Hall'.³⁴ In 1609 he negotiated an end to the family's 'great cause', a ferocious and sometimes violent dispute with the Lisle family that had lasted for almost 200 years, the settlement of which enabled the family to regain huge swathes of Gloucestershire land, including the manors of Nibley and Wotton-under-Edge, which would be central to both Smyth's life and the dispute with Crokey.³⁵ Smyth described such work as 'the most toilsome of all my labours', and it clearly had huge personal significance. This is not just because his services – what Lady Berkeley called his 'love and zeal' and his 'continual and effectual endeavours' –

³³ GA, D9125/1/6945, 6948-50, 6954, 6958, 13609; D8887/1, pp. 29-32, 78-119; D8887/2, pp. 1-88; D8887/3, pp. 1-15, 51-5, 79-80; D8887/4, pp. 44, 56, 108-16; D8887/5, pp. 30, 44-5; GA, D9125/1/13608, fos. 30, 41, 46, 52v, 13609-10, 13612/8-10, 13611/3-4, 13615, 13617; D8887/9, pp. 31, 40; Berkeley Castle, Bound Book 109, fo. 94v; Bound Book 10, fo. 82; <Bodl>; Smyth, ii. 310-11; GA, D8887/10, pp. 46, 51-2, 63; Chicago UL, MS 1465, folders 3-4; Add. 33588, fo. 60.

³⁴ GA, D8887/1, p. 83; Smyth, ii. 37. See also D8887/2, p. 42.

³⁵ Smyth, ii. 288-356, 372; GA, D8887/2, p. 77; D9125/1/13617. For the reference to the 'great cause', see: D8887/2, p.12; Berkeley Castle, Bound Book 10, fo. 206. See: James Herbert Cooke, 'The Great Berkeley law-suit of the 15th and 16th centuries: a chapter of Gloucestershire history', *TBGAS*, 3 (1878-9), 305-24; Alexandra Sinclair, 'The great Berkeley law-suit revisited, 1417-39', *Southern History*, 9 (1987), 34-50.

were handsomely rewarded, as his salary of between £10 and £17 was supplemented with traditional feudal gifts – a doe from the Berkeley estates once a year – as well as with financial bonuses, and with timber for ‘re-edifying’ his Nibley residence.³⁶ It is also because, as his papers document in breathtaking detail, Smyth became a hugely experienced litigant, whose knowledge of the legal system, its possibilities and its pitfalls was probably unrivalled outside the profession. This would be vital to his own legal disputes and to our appreciation of his litigation.

What also seems clear is that Smyth gradually emerged from a position of ‘dependency’ within an aristocratic household to become an established member of the Gloucestershire gentry, worth perhaps £500 per annum by 1622.³⁷ This complex relationship with the Berkeleys was certainly recognised by the family’s fool, who responded to news that Smyth was building a grand new house – Smalcombe Court – with a quip that it would be advisable to anchor Berkeley Castle very firmly to the local church, lest Smyth should try and take it away to Nibley.³⁸ More concretely, it is evident from the zeal with which Smyth developed his estate, in ways that were highly controversial and that would be complained about by Crokey, as well as from his assumption of official duties beyond Berkeley Castle. Smyth served as Gloucestershire’s escheator (1601-3), as steward of the local vice-admiralty court (1603-13), as commissioner of sewers (by 1615), and as subsidy commissioner (1629), and he also became a ‘projector’, as a member of the Virginia company who promoted what became the Berkeley plantation on the James River (from 1612), as an investor in the Somers Island Company (1615), and as a member of the Fisheries Society (1632).³⁹ In 1616 he even

³⁶ GA, D8887/1, p. 108; Berkeley Castle, Bound Book 10, fo. 260; Smyth, ii. 321-2, 333, iii. 42; GA, D8887/2, pp. 17, 20, 35, 39, 55, 64, 75; D9125/1/13615, 13617; Berkeley Castle, Bound Book 107, fos. 15v, 50, 64v, 65, 92; Bound book 10, fo. 118, 145v, 154. For Lady Berkeley’s comments, see: Add. 33588, fos. 52, 54.

³⁷ STAC 8/107/7. In 1603, Smyth paid 18s. as a subsidyman: Bodl., fos. 15, 19v

³⁸ Jan Broadway, ‘John Smyth of Nibley: a Jacobean man of business and his service to the Berkeley family’, *Midland History*, 79-97, at 81, 90; Cooke, 214-15, 216-17; T. D. Fosbroke, Berkeley MSS, vi. See Atkyns, Gloucestershire. Doorway on site of house erected by John Jortin in 1807.

³⁹ *List of Escheators*, comp. A. C. Wood (List and Index 72), p. 59; Smyth, ii. 372, iii. 9; TNA, C 181/2, fo. 240v; C 181/3, fo. 172v; Fletcher collection; GA, D8887/1, p. 34; D8887/3, p. 68; D9125/1/1103; D8887/4, pp.

contemplated purchasing the office of Keeper of the Records in the Tower of London, at a cost of £1,000, and by 1621 he was sufficiently well-established to secure a seat in Parliament, where he kept the diary of proceedings that has helped to cement his fame.⁴⁰

Smyth's election to Parliament demonstrated that he had come a long way since 1608, when he described himself as 'an utter barrister' who could furnish 'three swords and one halberd' for the king's service, as well as 'one corslet furnished, one birding piece, one crossbow and gauntlet'. Indeed, there are many ways of highlighting Smyth's hard-won status, and the pride that he took in being a local powerbroker, albeit one who never rose high enough to merit appointment to the county bench.⁴¹ These include sources as diverse as tailors' bills and the documents that he prepared when fitting out a new house in 1640, including 'rules for keeping my clock' and plans for decorating his wainscot chamber with moral sayings.⁴² They involve meticulous records relating to gifts – from silver bowls to fish and fowl, worth perhaps £50 per year – that were presented to friends, clients, servants and tenants, as well as to the seating plan that he devised for Nibley Church, both of which revealed how he projected his dominant position within the local community.⁴³ They also involve the fine monument that Smyth erected to his first wife, Grace Drew (at a cost of £6 13s.4d.), the portraits that he commissioned of his second wife, and the coat of arms that he engraved onto the rings that were passed down through the family.⁴⁴ Ultimately, Smyth's position also ensured that he was able to send at least three of his five sons to Oxford (the expenses for which were naturally recorded in great detail), to educate John Smyth junior at

55, 79, 80, 105-6; D8887/5, p. 20-1, 29, 31, 49; D8887/7, p. 52; Kingsbury, *Virginia*, i. 469, 472-3, 490, 496, 556; Rabb, *Enterprise and Empire*, 378; J. E. Gethyn-Jones, 'Berkeley plantation Virginia', *TBGAS*, 94 (1977), 5-17; TNA, SP 16/221, fos. 1-8; GA, D8887/2, p.76; 13608/72; Bodl., fo. 97v.

⁴⁰ GA, D8887/5, p. 22; HoP; CD 1621.

⁴¹ Men and Armour,

⁴² GA, D8887/5, 47, 50; D8887/10, 107; < moral sayings >. For the remains of Smyth's house, see: *CD 1621*, i. 78.

⁴³ GA, D9125/1/13618; D9125/2/5821; Joyce Popplewell, 'A seating plan for North Nibley church in 1629', *TBGAS*, 103 (1985), 179-84.

⁴⁴ GA, Wills 1692/240: Will of John Smyth of Nibley, 4 May 1692. For the monument, erected in 1610, see: Bodl., fo. 48v.

the Middle Temple, and to secure for his heir an impressive match to the daughter of Sir Edward Bromfield, lord mayor of London. More obviously than his father, Smyth junior not only served as steward to the Berkeley family for life – referring to his ‘duty’ and their ‘many favours’ – but also did so as a leading member of the county elite.⁴⁵

However, while Smyth’s rise to prominence is easily documented, it is much harder to illuminate his mental outlook and his political and religious views. Writing in 1821, Fosbroke described him as a ‘violent Puritan’, and this interpretation has proved remarkably resilient.⁴⁶ Smyth’s parliamentary diary and reading habits have been used to align him with ‘leaders of opposition’, and with ‘the political opposition to Stuart autocracy’ during the 1620s.⁴⁷ David Rollison described Smyth as someone who stood somewhat uneasily ‘between the two worlds of feudalism and capitalism’, but who betrayed evidence of a ‘bourgeois soul’, and who was ‘sternly practical, intensely personal and individualistic’. Although this did not involve labelling him as a puritan, Rollison certainly characterised Smyth as someone who held moderate and proto-secular views of the church, and whose outlook and financial interests – in colonial adventures, coal-mining and clothworking – reflected those of an emerging ‘middle class’.⁴⁸ What unites these different accounts of Smyth’s outlook is the laudible realisation that, in the absence of *overt* statements about his ideas and beliefs, it is necessary to analyse his outlook and ideological position by focusing upon his *behaviour*. However, doing this more systematically in the chapters that follow, and focusing much more closely

⁴⁵ Smyth, i. pedigree; GA, D8887/5, pp. 32, 34, 80. See: Roland Austin, ‘Thomas Smyth of Lincoln College, Oxford’, *Notes and Queries*, 12th series, 9 (1921), pp. 221-2; GA, D8887/9, pp. 122, 134; D8887/10, 79-80; GA, D8887/2, p.91, 93, 94, 96, 98, 103, 110; D8887/3, p. 64; D8887/4, pp. 56-8, 62-3; D8887/11, pp. 3-4, 42, 53, 116, 118; D2957/216/5-7; D8887/11, p. 36.

⁴⁶ Fosbroke, *Gloucestershire*, i. 468; Fosbroke, *Berkeley Manuscripts*, vi; Cooke, 217.

⁴⁷ Notestein; Jan Broadway, ‘Political appropriation. Reading Sir Walter Raleigh’s ‘Dialogue between a counsellor of state and a justice of peace’, 3-5.

⁴⁸ D. Rollison, ‘The bourgeois soul of John Smyth of Nibley’, *Social History*, 12.3 <>, 309-10, 318, 321-2, 325-6, 327, 330; Broadway, ‘John Smyth’, 89. For Smyth and the clothiers, see: Benedict Webb, see: E. Moir, ‘Benedict Webb, clothier’, *Economic History Review*, 2nd series, 10 (1957), 256-64; D8887/9, pp. 2, 4, 11, 15-17, 27, 29, 33, 44, 46-9, 51, 58, 59, 62; 13612/3. For his interest in coal mines, see: Smyth, iii. 42.

on Smyth's responses to the political and religious developments of the age, will generate a rather different picture of his mental world, and reveal that he was anything but a puritan.

III

The challenge with Smyth's adversary, Benjamin Crokey, is both similar and different at the same time. He too requires careful scrutiny, given that evidence about him is not just *allusive* but also somewhat *elusive*, and it is hard to deny that surviving documentation about the Warrens Court dispute is asymmetrical, and very heavily weighted towards Smyth. Nevertheless, if data about Crokey is uneven then it is not exactly negligible, and this book will challenge how he has been characterised hitherto, and what amounts to the 'enormous condescension' with which characters from outside the elite are still apt to be treated. From the brief accounts that we have of his battle with Smyth, Crokey emerges merely as a failed merchant, who became 'obsessed' with the dispute and who 'let himself go'. In one account Crokey was little more than 'wayward', and even 'unbalanced'.⁴⁹ The aim in what follows will be to rescue Crokey from obscurity, reveal his motivations and attitudes, and revise such claims about his character.

The place to start is the idea that Crokey was a failed merchant, since this is both true *and* false. At his most successful Crokey was far from being a humble tradesman. He certainly claimed to be armigerous, and may have been descended from William Crokey of Yorkshire, who was granted arms in 1496.⁵⁰ This man, or more likely his son, served as a customs officer in Hull in the 1540s, and although the family's precise genealogy remains obscure, they subsequently moved to London, where Robert Crokey lived as an ironmonger

⁴⁹ E. S. Lindley, *Wotton under Edge* (London, 1962), pp. 224-30 at 229; Hornsby and Griffin, p. 44.

⁵⁰ *A Catalogue of the Harleian Manuscripts*, p.573; *Grantees of Arms*, ed. W. Rylands (London, 1915), 66.

in the parish of St Katherine's by the Tower, and held property in St Katherine's Dock from at least the late 1550s.⁵¹ Unfortunately, as a royal 'peculiar' St Katherine's is much less well documented than other London parishes, but it seems likely that this man was Crokey's father, who was made a freeman of the Ironmongers' Company in 1560 or 1561, became a liveryman in 1562-3, and died in 1597. In the years between 1560 and 1597, Robert Crokey left only occasional marks on the papers of the Ironmongers' company. He took on an apprentice in 1561-2, occasionally attended meetings of the company's court from 1565, and served as steward of a lord mayor's dinner in 1569, but he was only sometimes listed as providing funds for charitable collections and assessments. Nevertheless, he was clearly an established figure within the company, who stood for election as its warden no fewer than five times between 1584 and 1596, even if he was never chosen.⁵²

Benjamin Crokey was thus the scion of a successful mercantile family, and although this status was newly won its impact was significant. As will become clear, Robert Crokey's marriage to Katherine Powell – at some point before 1574 – explains the family's involvement in the dispute over Warrens Court, but it also enabled Benjamin Crokey to launch his own mercantile career in 1593, by becoming apprentice to a Bristol draper called Thomas Watkins.⁵³ This was not an uncomplicated development, because Watkins soon found himself imprisoned in relation to a violent dispute with John Dowle of Bristol's custom house, which meant that Crokey was only able to complete part of his training.⁵⁴ Nevertheless, he acquired his freedom by redemption in June 1599, settled in the parish of St

⁵¹ *Letters and Papers Henry VIII*, vol. 19 part 2, 1544, p.69; TNA, C 3/34/29; C 3/38/24; C 3/46/122; E 133/7/955.

⁵² GL, MS 16988/2, fo. 117v, 122, 126, 136v, 145, 160v, 206v, 231v; GL, MS 16967/1, fo. 44, 47, 52v, 55, 61v, 63, 75, 75v, 78, 83v, 86, 92v, 95v, 98-v, 102, 107v, 118v, 157, 172, 200, 201v, 203. Robert Crokey died in February 1597: *The Register of St Katherine by the Tower, London, 1584-1625*, ed. A. W. Hughes Clarke (Volume 1, 1945), p.125.

⁵³ TNA, STAC 8/274/8; GA, D8887/6, pp. 2-3; D9125/1/11989; Bristol Archives, FC/AB/1(b)15. Benjamin Crokey was 44 in 1618, and was presumably born c.1574: D8887/6, p. 66.

⁵⁴ TNA, SP 12/267, fos. 53-65v; SP 12/274, fos. 85-99. Watkins was also in trouble for suing another Bristol merchant: Bristol Archives, M/BCC/CCP/1/1, pp. 30-1.

Mary Porte, and quickly became involved in overseas trade.⁵⁵ Crucially, in October 1600 Crokey married Elizabeth, the sister of Robert Aldworth (*d.*1634), thereby forging an alliance with one of Bristol's most powerful mercantile families. The effective heir of Alderman Thomas Aldworth, the city's MP in 1586 and 1589, Robert Aldworth became immensely wealthy, partly on the back of the emerging slave trade, and also became a dominant figure within the civic community, as sheriff, alderman and mayor.⁵⁶

Aldworth's network would be hugely important to Crokey's fortunes, even if not always in positive ways, and it was almost certainly with his help that Crokey joined a fast track to mercantile success.⁵⁷ Crokey's later claim, that he traded in cloth and 'and other merchandizes... to divers foreign countries', can certainly be substantiated by Bristol's port books, which reveal frequent shipments of bays, irish rugs, friezes, kerseys and 'Polonia cloth', as well as iron and sugar, from 1600 to around 1612, sometimes in partnership with Aldworth and Humphrey Fitzherbert.⁵⁸ Like Fitzherbert, indeed, Crokey became a member of Bristol's Society of Merchant Venturers, where Aldworth served as master on three occasions between 1609 and 1626, thereby joining a small and highly elite group of citizens, which comprised only seventy-two men by 1618.⁵⁹

Crokey, in other words, quickly became a successful and well-established merchant, who might easily have gone on to join Bristol's civic elite, had it not been for the difficulties

⁵⁵ Bristol Archives, F/Au/1/15, p. 17. It was at St Mary Porte that Crokey's daughter Sarah was born around 1608.

⁵⁶ *The Marriage Registers of St Dunstan's Stepney*, ed. T. Colyer-Fergusson. Vol. 1, 1568-1639 (Canterbury, 1898), p. 45; *History of Parliament*; A. B. Beaven, *Bristol Lists* (Bristol, 1899), 184, 196, 275. Two of Crokey's children – Anne (1602) and Sarah (1604) were baptised at St Mary Le Port: GA, D3439/1/442, unfol.

⁵⁷ The strength of these ties was enhanced by the marriage of Crokey's daughter, Elizabeth, to one of Aldworth's kinsmen, George Payne: PROB 11/167, fo. 21.

⁵⁸ TNA, C 3/338/8; TNA, E 190/1133/1, fos. 11, 13, 19v; E 190/1133/3, fo. 23, 29; E 190/1133/5, fo. 13; E 190/1133/9, unfol.; E 190/1133/11, fos. 14, 17v, 19v, 36v, 38v; E190/1133/12, fos. 17v, 22, 24, 24v, 43v, 45; E 190/1134/2, unfol.; E 190/1134/3, fos. 1v, 9v; *Bristol's Trade with Ireland and the Continent, 1503-1601*, ed. S. Flavin and E. T. Jones (Bristol Rec. Soc., 61, 2009), p. 939.

⁵⁹ P. McGrath, ed. *Records relating to the society of Merchant Venturers of the City of Bristol* (Bristol Record Society, 17, 1952), 27. The records of the Merchant Venturers do not provide details about, and payments for, admission to the society between 1583 and 1617: Bristol Archives, SMV/3/1/1.

that drove him out of trade sometime between 1612 and 1615. Although there are gaps in the city's port books, it appears that Crokey was much less active after 1612, something that is confirmed by Bristol's Staple Court and Tolzey Court papers. These two bodies were empowered to resolve disputes between local merchants without recourse to common law, and they thus provide an indication of an individual's economic activity, rather than their litigiousness. Like most local merchants, Crokey's name appears in these records with some regularity – usually in relation to debts of between 20s. and £200 – but only until 1615, something that fits with his later claim that, having 'lived in good credit and reputation' he became a victim of pirates 'upon the seas', and that £2,000 worth of goods were 'violently taken... to his utter undoing'.⁶⁰ This is certainly credible: the Merchant Venturers recorded that forty-five ships were 'taken by the Turks' in 1610, and by 1613 the city's prisons housed many captured pirates, who evidently operated as close to home as the Severn estuary. In 1619 and 1620 local merchants contributed significant sums towards expeditions 'against the pirates of Algier', although Crokey's name is not listed amongst the subscribers. By that stage he had almost certainly ceased trading, lacked funds and was preoccupied with other matters.⁶¹

With Crokey as with Smyth, therefore, there is scope to reflect upon his background, status and circumstances, upon the circles in which he moved, and upon the motivations and attitudes that underpinned his involvement in litigation over such a protracted period. From his upbringing on the fringes of London, in a parish somewhat notorious for heterodoxy, to his encounters with merchants whose business interests have been linked with a certain kind

⁶⁰ Bristol Archives, JStap/1/3, fos. 15v, 49v, 90; Jtol/J/1/10, fos. 63v, 85, 89v, 114v, 116, 226; TNA, C 3/338/8.

⁶¹ SMV/2/1/1/34, pp. 74, 78; M/BCC/CCP/1/2, fos. 32, 79v, 80v, 87; SMV/3/1/1, fos. 10v, 131v, 132; P. McGrath, ed. Records relating to the society of Merchant Venturers of the City of Bristol (Bristol Record Society, 17, 1952), 185-6.

of ‘Laudianism’, hints will emerge that litigation and disputation were connected to Crokey’s ideological outlook, and one that involved both puritanism and parliamentarianism.⁶²

IV

Introducing the key protagonists in a dispute that seems to be so mysterious indicates that Smyth’s papers will be invaluable, but also that they require careful handling, not least if they are to be used to shed light upon motivations and attitudes, ideas and beliefs. The same can also be said about the most important challenge of all: analysis of the *litigation* that lay at the heart of the Warrens Court dispute. The final task in setting up this book involves addressing the methodological issues and conceptual tools that are relevant for a study of this kind. This is because the aim is not simply to reconstruct the dispute – its events and episodes, and the people and places involved – in great *detail*, let alone to assess which side had the *best claim*.⁶³ Instead, a proper appreciation of why Crokey’s printed works proved to be so fascinating, and why the dispute went on for so long, requires a sophisticated understanding of what was *at stake*, in terms of the different social, mental and ideological worlds that Smyth, Crokey and their respective networks inhabited. This is something that can be achieved – and that can be used more generally in relation to early modern litigation – by embracing the insights of certain kinds of microhistorian, and of the political and legal anthropologists with whom they have so much in common. This involves addressing what Victor Turner termed ‘micro-events’, ‘micro-sociology’ and ‘micro-politics’, and the everyday practices, processes and behaviour associated with localised disputes, as well as larger issues relating to social conflict, and it also means exploring the relationship between

⁶² Sacks

⁶³ In this sense, the role of the historian is not, as Ginzburg has suggested, analogous to that of the inquisitor, or the judge: C. Ginzburg, ‘The inquisitor as anthropologist’, in *Clues, Myths and the Historical Method* (Baltimore, 1986), pp. 156-64; Ginzburg, *Historian and the Judge*. See also: Stretton, ‘Social historians’, 26-7.

‘structure’ and ‘agency’, not least by distinguishing between the *ostensible* issues involved in litigation and what was *really going on*.⁶⁴ Ultimately, it will be argued that an exploration of a precise and fairly localised affair, albeit one that was fairly protracted, makes it possible not just to solve the mysteries surrounding the affair, but also to reveal insights into contemporary legal and political culture that would otherwise not be possible.

That this book involves only a certain *kind* of microhistory reflects the fact that the genre encapsulates very different kinds of scholarship. First, microhistories often involve approaches that are sometimes too closely associated with the ‘revival of narrative’, and that involve the determination to make history accessible by telling ‘captivating’ stories, bringing neglected episodes ‘alive’, focusing on their ‘colour’, ‘immediacy, intimacy and concreteness’, and offering ‘entertainment’. Some authors are even accused of *imposing* narrative coherence upon historical evidence, and of succumbing to the temptation to use speculation to ‘fill the gaps’.⁶⁵ Alan Macfarlane certainly recognised that, while legal records provide a wealth of dramatic *stories*, they might also result in a ‘literary mode of pure description’, ‘almost like the plays of Webster’ as Penry Williams noted. Robert Darnton, meanwhile, discerned the emergence of ‘incident analysis’, in which discrete moments are explored in terms of how *observers* at the time construed them, and how they were remembered over time.⁶⁶ This is not quite the same as exploring how *protagonists* constructed narratives to comprehend the more or less unscripted events with which they were involved, or as subjecting events to thorough historical contextualisation and analysis.⁶⁷

⁶⁴ Turner, *Schism*, xxiv; Turner, *Dramas, Fields and Metaphors*, 63; Roberts in Bossy, p. 22; Sewell, *Logics*, chs. 1-2.

⁶⁵ Tucker, *Blood Work*, xix-xxii; Cohen and Cohen, *Words and Deeds*, ix-x; Ruggiero, *Binding Passions*, 18; Ozment, *Burgermeister*; Farge and Revel, 18; Ozment, *Three Behaim Boys*, xi. See: Kuehn, ‘Reading microhistory’. For the issue of narrative, see: Stone, ‘Revival of narrative’; Carr, ‘Narrative explanation’; Maza, ‘Stories in History’. Check quotes.

⁶⁶ Macfarlane, ‘History, anthropology and the study of communities’, 636-7; P. Williams, ‘The Star Chamber and the Council of the Marches of Wales, 1558-1603’, *Bulletin of the Board of Welsh Studies*, 16.4 (1956), 288; Darnton, ‘It happened one night’; Ozment, *Three Behaim Boys*; Marshall, *Mother Leaky*. For emphasis on the wonderful ‘stories’ in legal documents, see: Elton, *Star Chamber Stories*, 10-11.

⁶⁷ Farge and Revel, 57; Berhinger, *Shaman*, 146; Boyer and Nissenbaum, 30.

Secondly, microhistories are sometimes thought to be methodologically unreflective, and have been criticised for their ‘theoretical poverty’. This means doing too little to address the ‘research process’ or ‘craft’, in terms of how to deal with ‘clues, signs and symptoms’, and while exemplary microhistories like *The Voices of Morebath* demonstrate that dealing with such issues overtly is not essential, explicit methodological reflection is probably more or less important with certain kinds of material, not least legal sources. Here, particular challenges exist in terms of how sources were generated, which perspectives they record, and how to avoid taking documents at face value. Indeed, if legal sources are to be used to do more than merely analyse *legal* issues, in terms of exploring the assumptions and motivations of those involved, and the conflicts with which they were involved, then it will certainly be important to confront such methodological challenges head-on.⁶⁸

Thirdly, not all microhistories demonstrate a determination to ‘scale up’ by connecting micro- and macro-level analysis. This requires ensuring that ‘gripping’ stories are properly contextualised, that narrative is complemented by exploration of the complexities of contemporary lives and worlds, and that unique individuals and episodes are used to tease out ‘deeper historical resonances’.⁶⁹ How this ‘change of scale’ can be achieved has obviously been a matter of debate, given the problem of demonstrating that a specific incident or individual is ‘representative’ of a wider phenomenon, but it commonly involves ideas about what constitutes a ‘normal exception’. This is the idea that seemingly obscure, mysterious and extraordinary characters and episodes are worthy of study because what appears to be ‘exceptional’ may actually have been ‘normal’, especially for those on the periphery of society. As such, they help to illuminate the ‘boundaries of the ordinary’, and thus the wider

⁶⁸ Molho review, 99; Levi, ‘On microhistory’, 106; Robisheaux, ‘Microhistory today’; Kuehn, ‘Reading microhistory’; Muir and Ruggiero, ‘Introduction’, vii-ix, xiv, 226-8, 230.

⁶⁹ Cohen, Love, 40; Cipolla, Faith, Reason and the Plague, ix; Ruggiero, *Binding Passions*, 233; Kadane, *Watchful Clothier*; M&S, 7; Chin, ‘Margins and monsters’; Peltonen, ‘Clues, margins and monads’; Egmond and Mason, *Mammoth*, 2-3; Boyer and Nissenbaum, xii, 179.

historical landscape.⁷⁰ The claim being advanced here, therefore, is that the Warrens Court dispute represents the ‘normal exception’ in the world of early modern litigation; an extreme case that, by virtue of being susceptible to close scrutiny, illuminates the wider landscape of litigation, not least in revealing things that were more or less common to other disputes, and tendencies that might easily have led other disputes to spin out of control.

Precisely how to overcome such problems – how to blend narrative and analysis, grapple with legal sources, and use unusual cases to address bigger issues – remains a matter of debate, not least between ‘cultural’ and ‘social’ microhistorians, and it is the latter whose work seems most relevant on this occasion. Here, the key point is that social microhistorians have followed a path identified by Giovanni Levi, rather than the one chosen by Carlo Ginzburg, which means moving beyond the insights that can be gleaned from symbolic anthropology, recognising that contemporary contexts reveal *multiple* experiences of, and perspectives on, specific phenomena, and emphasising human ‘agency’, and also producing accounts that are diachronic rather than merely synchronic in nature.⁷¹ ‘Social’ microhistorians obviously recognise that ‘agency’ is a problematic term, but they understand the need to focus upon lived experience, and to examine the kinds of ‘evaluation’ that individuals undertook in their daily lives, as well as the kinds of constraints under which they operated.⁷² They also recognise the need to explore not just curious individuals and incidents – from the *Great Cat Massacre* to the *Village of Cannibals* – but also specific communities and phenomena over fairly protracted periods, using a variety of ‘regular’ records relating to society, the economy and indeed the law. Unlike many famous microhistories, in other

⁷⁰ Muir, ‘Observing’, xiv; Ginzburg and Poni, 7; Cohen, Love, 74-5; Pollman, Reformation of Arnold Buchelius; Renders, ‘The limits of representativeness’.

⁷¹ Levi, ‘On microhistory’, 98, 103; M&S, 39-40; Muir, ‘Observing’; Cerutti, ‘Microhistory’; Iggers, *Historiography*, 104-8, 110; Reay, *Microhistories*; Trivellato. See: Sewell, *Logics*, ch. 6.

⁷² Cohen, ‘Macrohistory’, 59-60; Ruggiero, *Binding Passions*, 13; Magnusson and Szijarto, 5; Revel, ‘Microanalysis and the construction of the social’; Johnson, ‘On agency’, p. 113; Dayton, ‘Rethinking agency’; Taylor, ‘Agency’.

words, this book only superficially involves grappling with *extraordinary* episodes and *peculiar* people, and a key aim of the book is actually to stress that this particular dispute involves an exaggerated instance of *commonplace* activities. It offers an example of how a normal activity – civil litigation – could become protracted and problematic, and it involves law suits that might easily be regarded as routine and unimportant, were it not for the extraordinary archival evidence which reveals their real significance. The goal, in other words, is to demonstrate how the meaning and significance of particular disputes can be recovered. As such it makes sense to reflect upon the methods and approaches that will be employed in this book, each of which will be mentioned briefly here, in setting out the book's structure, before setting them out more thoroughly at the start of each of its three main sections.

The first part of the analysis involves establishing the narrative arc of the dispute, which in this case focuses on the apparently interminable and self-destructive law suits that were contested between 1545 and 1661. The first two chapters use Smyth's papers, court records, and the petitions and pamphlets that emerged from litigation, to reconstruct a complex series of events and initiatives and trace the twists and turns of the dispute. The approach here is different from most other studies of early modern litigation, which tend to focus on particular courts or particular localities, and on official records and synoptic analysis. This section, by contrast, explores one protracted dispute across time and across multiple jurisdictions, and focuses on the *legal basis* on which successive cases were brought and fought, and the *legal decisions* that were reached by the courts, not to mention the ways in which litigants responded to success and failure in *procedural* terms. It will argue that even an apparently incomprehensible battle like the Warrens Court dispute can begin to be understood by recognising that both sides had reasons to believe that they were making progress, and that the nature of the dispute changed dramatically over time, in ways that

involved issues larger than merely the financial interests of the contending parties. As a legal dispute, in other words, the battle for Warrens Court demonstrates how litigation could involve mutation, frustration and escalation.

The second part of the book will turn from lawsuits to the strategies and tactics of disputants, and the ideas and practices associated with dispute resolution. It will approach some of the episodes outlined in Part I from rather different angles, in order to develop a multi-perspectival account of the contest. It is this possibility of recovering different perspectives on specific disputes, and the thinking of all sides, that is so often lacking from studies of litigation, and yet the claim being advanced here is that grappling with how litigants planned, perceived and portrayed disputation is crucial to our appreciation of what was involved – and invested – in early modern litigation. This means observing how protagonists thought about how best to proceed, not least in terms of how they understood – and were perhaps willing to bend – the ‘rules of the game’. It will also involve analysing how each litigant’s approaches were viewed and discussed by contemporaries, in terms of a discourse of ‘practices’ and ‘power’, naivety and ineptitude, not least to demonstrate that claims about vexatious litigation, sharp practice and even violence sometimes involved more than merely exaggerated *rhetoric*. Here, it will be argued that contemporary practices, thoughts about ‘practice’, and reflections on success and failure reveal litigants’ motivations, and help to explain why they were determined to press on with the dispute. It will also be argued that litigants’ reflections on the case indicate what they *made* of, and *expected* from, the legal system.

Finally, the third section will pick up this idea – that disputation was rooted in, revealed, and generated fundamentally different *ideas* – by addressing the ‘structural’ issues

at stake, and the values, beliefs and ideologies of those involved.⁷³ Here it will be argued that the Warrens Court dispute went on for so long because it was underpinned by religious and political tensions, and that even though the ideas of Smyth and Crokey were not expressed *overtly* they are nevertheless *recoverable*, not least by scrutinising their respective networks. Key here will be the need to situate the affair within at least three distinct communities, in London, in Bristol and in the vale of Berkeley.⁷⁴ The latter will be particularly important, given that the dispute revolved around people and property in North Nibley and Wotton-under-Edge; small, intriguing and *divided* communities nestling under the Cotswold hills only a few miles from Berkeley Castle. Smyth's beloved Nibley was a village of a few hundred people, which he cherished for its 'sweet salutary air', its 'pretty river' and its mixture of 'arable, meadow, pasture, wood'. It was also intimately linked to its larger neighbour, Wotton, which Leland described as 'an attractive market town' that 'clings to the hillside near its foot'. Nibley's chapel, therefore, belonged to the church of St Mary in Wotton, and with its clutch of tuck mills and grist mills the village also shared with Wotton a significant involvement in cloth working.⁷⁵ What also makes these places interesting, however, is their convoluted manorial history, as well as the social, economic and religious changes that they witnessed, from the development of the cloth trade to the Reformation and the civil wars, and like the nearby city of Bristol they were both at the heart of the dispute between Crokey and Smyth, in terms of both personnel and contested property. Moreover, while the dispute between these two men resembled a feud or vendatta, something that was well-known to lots of contemporaries, it also involved broader groupings that linked and divided particular

⁷³ Harrington, Faithful executioner; Berhinger, Shaman; Cipolla, Faith, Reason and the Plague, ix; Brown, Immodest; Kadane, Watchful Clothier; M&S, 7; Martin Guerre; Duby, Bouvines, 6.

⁷⁴ based upon the idea that it is not just extraordinary communities – like Ladurie's Montaignou – that can be subjected to scrutiny in order to reveal profound issues and developments: Sabean, Property, 37.

⁷⁵ GA, D3439/1/299; Smyth, iii. 85, 260, 269; Elrington, 95; *John Leland's Itinerary. Travels in Tudor England*, ed. John Chandler (Stroud, 1993), 184; *Men and Armour for Gloucestershire in 1608* (Stroud, 1980), pp. 163-5, 173-5.

families and communities. Indeed, while the worlds of John Smyth and Benjamin Crokey were different, they also overlapped and intersected in fascinating ways, through work, marriage and kinship, and as their dispute developed and escalated the localities and networks to which they were both connected were mobilised and weaponised, as the tussle over Warrens Court became an expression and manifestation of wider and deeper divisions.⁷⁶

V

Teasing out the religious and political ideas that underpinned the dispute between Smyth and Crokey will finally make it possible to resolve one of the mysteries that inspired this book – contemporary fascination with Crokey’s texts – by insisting that the dispute involved significant ideological tensions, and tensions that affected everyday life and coloured people’s reflections on current affairs. Contemporary fascination with this dispute, in other words, is indicative of deeper ideological issues, and for participants and onlookers alike it mattered not so much because of its *ostensible* issues, in terms of the matters that came before the courts, and how they were described in legal bills, petitions and pamphlets, but rather because it was emblematic of profound faultlines within contemporary society.⁷⁷ These faultlines were familiar, important and long-lasting, and time and again it will shown that the dispute was informed by people’s *memories* of ideological division, within the region and their own families. Ultimately, it will be argued that the case attracted attention and interest because an apparently innocuous, if protracted and acrimonious dispute was actually fraught with political and religious issues.⁷⁸

⁷⁶ See Smail, ‘Telling tales in Angevin courts’.

⁷⁷ Darnton, *George Washington*, 154; Kuehn, ‘Reading microhistory’, 534.

⁷⁸ See: W. Bowsky, *Piety and Property in Medieval Florence. A House in San Lorenzo* (Milan, 1990).

Of course, this is not the first study to employ microhistorical methods, or even litigation, to explore political and religious conflict.⁷⁹ Bernard Capp has shown how local legal disputes could dominate the affairs of specific communities, and how they can be used to shed light upon bigger issues.⁸⁰ John Walter has demonstrated the value of ‘thick description’ for exploring tensions within local communities, and for demonstrating that they were intimately connected to ‘deeper structures and longer term processes’, and informed by political and religious divisions at the ‘national’ level. In studying the response to Laudian innovations within the parish of Radwinter, for example, Walter argued that local disputes represented the ‘visible tip of a denser pattern of... everyday conflict’, and revealed the ‘depth of politicisation that made the English revolution possible’. He also argued that the introduction of Laudianism served to *reveal* and *exacerbate* existing tensions.⁸¹ This book also shares some of the instincts and approaches of David Underdown’s *Fire from Heaven*, a diachronic microhistory of a particular place, Dorchester, which explores political culture, religious tensions and the relationship between local and national issues, not least by examining local disputation and litigation, looking for ‘deeper’ issues beneath ‘surface ones’, and reading ‘between the lines’ in order to recover contemporary mentalities.⁸² In other words, this book is consciously positioned alongside a body of recent scholarship that takes seriously the possibility of detecting tension and conflict in the decades preceding the civil wars, not least within local communities.

With this dispute, however, something rather different is also involved. Rather than simply demonstrating that ideological tensions affected all levels of society and all parts of the country, this book will emphasise the need to rethink activity that is *not ostensibly*

⁷⁹ Walter, *Colchester Plunderers*; Underdown, *Fire from Heaven*.

⁸⁰ Capp, Sibley, P&P, 182 (2004).

⁸¹ J. Walter, ‘Affronts and insolencies: the voices of Radwinter and popular opposition to Laudianism’, *E.H.R.*, 122.495 (2007), 36, 55, 60.

⁸² Underdown, *Fire from Heaven*, esp. pp. 30, 32, 33, 46, 153.

ideological. In part this is a matter of litigation, a thoroughly commonplace activity, and one that is sometimes used to demonstrate the opportunities that ordinary people had to resolve their problems. Here, by contrast, it will be suggested that while the dispute between Smyth and Crokey was unusually long and unusually well-documented, it was not fundamentally out of the ordinary, and that as a result it highlights how litigation could actually reveal, reflect and generate disharmony and division, even along ideological lines. However, reflecting on the ideological dimensions of the Warrens Court dispute is also a matter of how historians interpret the relationship between local and national affairs, not least as reflected in parliamentary business. Central here will be the idea that a local dispute involving deep political and religious divisions was not *expressed* in ideological terms. Ideological division, indeed, will be shown to have been something that *contemporaries* could see even though it was *not made clear* from texts that reached Parliament, the Privy Council and the Court, a finding that is at odds with much recent scholarship on the nature of ideological conflict in early modern Britain, and on the role of the Westminster system. Ultimately, it will be this conclusion – that ideological conflict may have been more prevalent in the localities than it appears to have been at the centre – that justifies the use of ‘thick description’ and a microhistorical approach, in terms of the possibility for seeing something *new* about something *big* through the lens of something *small* and mysterious.

