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THE TEXTUAL TRADITION OF STAIR'S *INSTITUTIONS*, WITH REFERENCE TO THE TITLE “OF LIBERTY AND SERVITUDE”

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This article examines the textual tradition of Stair's Institutions of the Law of Scotland with particular reference to his title “Of Liberty and Servitude”. It first catalogues the manuscript copies of Stair's Institutions known to be held in Scottish libraries. The article thereafter examines the nature of the manuscript tradition, taking account of scribal practice and the circulation of manuscript texts in the seventeenth century. It then shows that variant readings of the text of “Of Liberty and Servitude” present in the extant manuscripts reveal, among other things, that those manuscripts' texts probably belong to five family groups. This has significance for reconstructing from the manuscript sources the wording of Stair's earliest text: variant readings of the text present in manuscripts from only one family were probably introduced in their most recent common ancestor, and so may not reflect the text as written by Stair. The article then examines the extent to which the six printed editions of the Institutions reliably reflect Stair's wording.

Appendix I tries to recover the wording of Stair's authorial holograph, sets out the variant readings of the text of “Of Liberty and Servitude” present in the manuscripts and printed editions, and comments on the evolution of the text and the implications of the changes made to it. Appendix II lists the manuscripts examined, with the library, shelfmark, and name and abbreviation used in this article.

INTRODUCTION

The *Institutions of the Law of Scotland* by Sir James Dalrymple, Viscount Stair has been one of the most important and influential books written on Scots law. Much importance has been placed on the particular words used by Stair and on the implications of this word choice for our understanding of his intended meaning.¹ However, as is the case with many important texts, the *Institutions* has been subject to several revisions. Stair completed four versions of this work during his lifetime: a first manuscript version in 1659–62, a series of revisions and updates completed

* The author would like to thank for allowing access to their manuscripts: the Keepers and staff of the Angus Archives, Advocates' Library, Mitchell Library, National Records of Scotland, National Library of Scotland and Signet Library as well as of the Special Collections Centres at the Universities of Aberdeen, Edinburgh and Glasgow. She would also like to thank for their suggestions and comments on previous drafts of this article Professor Gero Dolezalek, Professor David Dumville, Professor John Ford, Professor David Smith, Dr Andrew Gordon and Dr Andrew Simpson.

1 See, for example, J T Cameron, “*Jus Quaesitum Tertio*: The true meaning of Stair I.x.5” (1961) *Juridical Review* 103–18; A Rodger, “Molina, Stair and the *jus quaesitum tertio*” (1969) *Juridical Review* 34–44 (parts 1 and 2) and 128–51 (parts 3 and 4); G MacCormack, “A note on Stair's use of the term *pollicitatio*” (1976) *Juridical Review* 121–6; T Mersinis, “Stair, *Institutions*, 1.10.5: a linguistic note” (1996–7) 1:3 *Edinburgh Law Review* 368–70.

in 1666–7, and two printed editions in 1681 and 1693.² A further four editions of Stair's work have been printed posthumously, in 1759, 1826, 1832 and 1981.

Each new version of the *Institutions* had changes made to the text, and many passages were significantly altered between versions. This raises a methodological question about how one should read the *Institutions*: it is not clear which version should be regarded as authoritative where the text changes between the different versions. Each of the printed editions has been cited in case reports,³ although it is not clear that the reports always accurately record the edition relied upon by the Bench.⁴ The court has not dealt with differences between versions of the text in a manner that would suggest a preference for any particular approach. In *Evennoon Ltd v Jackel & Co. Ltd*, Lord Cameron discussed and quoted from the text of the second printed edition, before quoting for further information a passage that had appeared in the text of the first printed edition but not in the second.⁵ A different approach was taken in the earlier case of *Scottish Widows' Fund v Buist*, in which counsel for the defenders observed that “the passage in Stair, on which [Erskine] relied, was not in the original editions”.⁶ The passage of Stair mentioned had appeared in the manuscript versions but had been removed before the treatise was printed. It was reintroduced by the editor of the 1759 edition;⁷ it is clear that Erskine relied upon this edition when writing his own treatise. The 1759 edition had also been used by the Bench in the leading case of *Redfearn*.⁸ The Lord President in *Buist* quoted Stair's text as it was recorded in the *Redfearn* judgment without comment.

It has been proposed that the reading of the *Institutions* that ought to be regarded as the most authoritative should be that which best represents Stair's intended wording: “it is the language of Stair which we want in the text”.⁹ Yet, current understanding of the nature and accuracy of the different editions is insufficient to identify whether these actually reflect his original wording. It is unclear whether even the manuscripts or the first or second printed editions preserve Stair's intended wording: errors, corruptions and other variants were introduced into the texts of

2 On the manuscript versions, see J D Ford, *Law and Opinion in Scotland during the Seventeenth Century* (2007), especially pp. 68–73.

3 For example, the 1693 edition is cited in *Burnett's Trustee v Grainger* (2004) SC (HL) 19; the 1759 edition is cited in *Regina (Prudential plc and another) v Special Commissioner of Income Tax and another (Institute of Chartered Accountants of England and Wales and others intervening)* [2013] UKSC 1; the 1826 edition is cited in *Cantiere San Rocco v Clyde Shipbuilding and Engineering Co.* (1923) SC (HL) 105; the 1832 edition is cited in *Armour and Another Respondents v Thyssen Edelstahlwerke AG Appellants* [1991] 2 AC 339; the 1981 edition is cited in *Smith v Lees* (1997) JC 73.

4 For example, reports differ of *Safeway Stores Plc v Tesco Stores Ltd*, which was heard by the extra division of the Lands Tribunal on 6 June 2003. The 1832 edition is cited in the report in the *Scots Law Times*, but it is the 1693 edition which is cited in the Session Cases. The judges must have relied upon either the 1759 or the 1832 edition, the amended wording of which is given in the quotation of Stair's *Institutions* 2.1.20 in both reports: “it is interrupted by contrary acts or attempts of possession”. The wording of the 1693 edition was rather “and attempts of possession” (emphasis added).

5 *Evennoon Ltd v Jackel & Co. Ltd* (1982) *Scots Law Times* 83, p. 88.

6 *Scottish Widows' Fund and Life Assurance Society v Robert Buist and Others* (1876) 3 R 1078.

7 The editor of the 1832 edition of the *Institutions*, John Shank More, followed the text of the 1759 edition, but added a footnote which stated that the passage did not appear in either of the first two printed editions. On this edition, see below, pp. 70–1.

8 *Redfearn, Esquire v Ferrier, Somervail, and Others* (1813) I Dow 50, 3 ER 618.

9 Stair, *Institutions of the Law of Scotland deduced from its originals and collated with the civil, and feudal-laws, and with the customs of neighbouring nations ... the fourth edition* (1826), advertisement.

the surviving manuscripts by their copyists and into the printed editions by the printer. Thus, a detailed examination of the texts of the manuscript tradition and the printed editions seems necessary. Such a survey must be restricted to only a part of the text, as Stair's *Institutions* comprises around 400,000 words in even the first printed edition. There are good reasons why Stair's second title, "Of Liberty and Servitude", might be selected for a first attempt at such an analysis. Ford's excellent article on this title provided significant insight into the reason why it was included in the *Institutions*, and how this reflects Stair's overall thinking about the law.¹⁰ The nature of this title means that it would have had limited practical application and so might be presumed to be less subject to *ad hoc* updating by the copyists and annotators; the manuscript texts of this title thus provide a good opportunity for a first comparison of this sort.

A textual study of this title can advance our understanding of Stair's wording. Stair's original manuscript text of his work, his "authorial holograph", does not survive. However, the text can be desumed from the extant manuscript copies: an analysis of their wording can recover what is likely to be at least close to the text that Stair produced in 1659–62. Further, this recovered text can then be compared to the text of the printed editions of 1681 and 1693 to identify any changes to the wording. Analysis of those changes can identify whether they are probably the result of a deliberate change to the text made by Stair or whether they might be an error of the printer. This allows some insight into the accuracy of the different editions and the extent to which these can be considered to be an authoritative reflection of Stair's intended wording.

However, before the recovery of the text of the authorial holograph is possible, it is necessary first to identify the nature of the text of this title as contained in the manuscript tradition and printed editions. This must, in turn, begin with an understanding of the character of each extant manuscript, as well as of the method by which manuscript texts were circulated and copied in seventeenth-century Scotland.

THE EXTANT MANUSCRIPTS OF STAIR'S *INSTITUTIONS*

Around forty manuscript copies of the *Institutions* are known to be extant; this study will be confined to those thirty-seven copies held in Scottish libraries.¹¹ Only a few of these manuscripts have notes or impressions which identify them as copies of that treatise;¹² some of the other manuscripts have been previously misidentified as

10 J D Ford, "Stair's title 'Of Liberty and Servitude'" in A D E Lewis and D J Ibbetson (eds), *The Roman Law Tradition* (1994) 135–58.

11 There are also copies held by the libraries of Harvard University and the University of California, Berkeley as well as others held by private persons. My thanks to Gero Dolezalek for informing me of the Berkeley manuscript, and for sending me his recent notes thereon.

12 For example, the William Hay manuscript (Adv MS 25.1.13), the Carnegie manuscript (Edinburgh University Library, Dc.4.24), the Laing manuscript (Edinburgh University Library, La.III.418), the Gray manuscript (National Library of Scotland, MS 5058) and the Jedburgh manuscript (National Library of Scotland, MS 5434) are identified by early modern hands as being copies of Stair's work. The spines of the Anderson and Burnside manuscripts (Signet Library, MSS 32 and 33) have imprints identifying them as such; the original binding of the Home Drummond manuscript (Edinburgh University Library, Dc.1.10) may also have had an impression to this effect.

a result of their lack of such a reference.¹³ It is therefore likely that other manuscript copies of Stair's *Institutions* are extant but are yet to be identified.

It is necessary to begin the examination of the nature of the manuscript tradition by considering the surviving manuscript copies. Certain features of a manuscript are particularly important in revealing its nature. One such feature is the date of copying or completion of the manuscript. Few of the copies of Stair record their date of completion, meaning that most cannot be dated with certainty. However, other internal evidence – such as the style of handwriting, the watermark evidence, or the recording of a date of sale – indicates that the copies can all be dated to the seventeenth century. Other important features include whether a manuscript was written by one or by multiple scribes,¹⁴ its provenance,¹⁵ its contents, and whether the text reflects the revisions that Stair made to his work in 1666–7.¹⁶ An indication of whether a manuscript text contains these updates can be had by checking a select sample of Stair's citations of cases which were heard between 1663 and 1667.¹⁷ If the citations are present, then the passage likely reflects the revised text. If they are absent, then the surrounding text more likely reflects only the first version produced by Stair. The list below examines the manuscripts of particular libraries or archives in turn, starting with the Advocates' Library and National Library of Scotland and then examining other repositories in alphabetical order.

(1) Advocates' Library, held by the National Library of Scotland

Innominate Advocates' MS (Adv MS 24.2.10) This manuscript does not record its date of completion. The watermark apparent on folio 31 features a cartouche, bearing the initials "PDC", between two columns topped with trefoil. This is very similar, or even identical, to those found by Heawood in English volumes that date from the 1650s,¹⁸ and to Dolezalek's description of the watermarks on several

13 Seventeenth-century hands identified the Pitcairn manuscript (Glasgow University Library, MS Gen 1495) as a copy of Craig's *Jus feudale*, and the Smyth manuscript (Signet Library, MS 16) as a copy of Stair's *Decisions*.

14 A forensic analysis of the handwriting within the manuscripts has been outwith the scope of this study (on which see, for example, T Davis, "The practice of handwriting identification" (2007) 8:3 *The Library* 151–276). Rather, this study will set out hypotheses about the handwriting and the number of scribes based on a brief comparison of sample idiographs and allographs.

15 For ease of reading, the manuscripts will be referred to by the name of one of their previous owners or scribes rather than their current shelfmark; the latter is included in the survey below in parentheses after the name attributed to the manuscript.

16 On which, see Ford, *Law and Opinion*, pp. 65–8.

17 Specifically, the sample citations were those of: *Shaw v Lewens* (1665) and *Scot, Henderson and Wilson* (1664) at *Institutions*, 1.15/1.1.17; *Barclay v Baptie* (1665) at *Institutions*, 4.2/-; *Lockie v Paton* (1663) at *Institutions*, 4.2/1.4.15; *Allan v Collier* (1664) at *Institutions*, 10.3/1.10.3; *Douglas and Longformacus v Wedderburn* (1664) and *Guthrie v Sornbeg* (1664) at *Institutions*, 12.24/1.2.24; the various cases heard in 1663 and 1664 at *Institutions*, 23.19/3.1.19; and *Cranston v Wilkison* (1666) at *Institutions*, 31.16/3.8.14.

18 Edward Heawood, *Monumenta Chartae Papyraceae Historiam Illustrantia, or Collection of Works and Documents Illustrating the History of Paper I: Watermarks, mainly of the 17th and 18th Centuries* (Paper Publications Society, 1950), figures 3491 (dated to 1652), 3495 (dated to 1653–4), 3534 (dated to the mid-seventeenth century), and 3535 (dated to 1657). The watermark apparent in the Innominate Advocates' manuscript appears to be identical to figure 3519, which has no date or provenance listed in Heawood's volume.

Scottish legal manuscripts dating from the second half of the seventeenth century;¹⁹ it is thus credible that this copy also dates from the mid- to late seventeenth century. A different watermark, bearing the initials “PM”, is apparent on folio 17. Most of the text of the *Institutions* lacks the updates and revisions made by Stair in 1666–7, although the sample updated reference in title 30 is present.²⁰ The copy was written by multiple hands. The scribe who wrote at least the opening five titles might have been the same as that who copied the collection of sixty-seven notes on cases heard between 1663 and 1668 found at the back of the manuscript;²¹ Ford has suggested that the addition of these case notes was an attempt to update Stair’s work.²² Two pages have been left blank after title 5,²³ three pages were left blank after the end of title 6,²⁴ another three after title 7,²⁵ and one after title 8.²⁶ The paper catalogue of the Advocates’ Library manuscripts has noted that “The chapter-headings appear to have been written in after the copying of the text”. However, the chapter headings for at least the first ten titles were written by the copyist. The paper catalogue has also suggested that “most of [the chapter headings] have been omitted” from title 7; this erroneous conclusion was likely based on the copyist having allocated more space than necessary for copying these into the manuscript. Any evidence of the provenance of this manuscript was lost when it was rebound in the early nineteenth century.²⁷

Swinton MS (Adv MS 25.1.5) Below the end of the text of the *Institutions* is a note that this copy was completed on 4 April 1678.²⁸ This date is consistent with the watermark evidence. The watermark found on several leaves towards the front of the manuscript (a cross above the initials “IHS”, which in turn are above a smaller letter “M”) is similar to those found in other manuscripts from the mid- to late seventeenth century.²⁹ A second watermark is found on the front and back flyleaves and on the paper on which an index is written: a fleur-de-lis in a crowned, ornamental shield with the letter “W” below. This appears to be similar to watermarks found in volumes from England and the Netherlands that can mostly be dated to the seventeenth century.³⁰ The text of the *Institutions* contains all the sample updated citations.³¹

19 G Dolezalek, *Scotland under Jus Commune: Census of manuscripts of legal literature in Scotland, mainly between 1500 and 1660* (Stair Society 55–7, 2010), vol. 1, p. 326.

20 Cf. Ford, *Law and Opinion*, p. 65 n. 282; A Watson, *The Making of the Civil Law* (1981), p. 31 n. 15. The paper catalogue of the Advocates’ Library manuscripts suggests that it is a copy of the first version.

21 Innominate Advocates’ MS, fos 195–204.

22 Ford, *Law and Opinion*, p. 66.

23 Innominate Advocates’ MS, fos 17r–v.

24 Innominate Advocates’ MS, fos 24v–25v.

25 Innominate Advocates’ MS, fos 30v–31r.

26 Innominate Advocates’ MS, fo. 33v.

27 Paper catalogue of Advocates’ Library manuscripts.

28 Swinton MS, p. 307.

29 Heawood, *Watermarks*, figures 2953 (dated to 1583), 2954 (dated to 1641), 2955 (dated to 1670), 2957 (dated to the late seventeenth century), 2959 (dated to c 1680), and 2963–6 (dated to 1680–1700). See also the *Gravell Watermark Archive*, INIT.284.1 (1673), INIT.285.1 (1685), INIT.289.1 (1641).

30 Heawood, *Watermarks*, figures 1721 (dated to 1609), 1721A (dated to 1614), 1730 (dated to 1646), 1761 (dated to 1592), 1762 (dated to 1611), 1768 (dated to c 1616), 1769 (dated to 1616) and 1772 (dated to 1646).

31 See also: the paper catalogue of Advocates’ Library manuscripts; Ford, *Law and Opinion*, p. 65 n. 283; Watson, *Making of the Civil Law*, p. 31 n. 15.

A page was left blank after title 12.³² Most of the text was written by one scribe, possibly the T. or J. Skene whose signature appears below the date of completion at the end of the text.³³ However, some of the text of the opening four titles was copied by other hands. An alphabetical index at the back of the manuscript appears to have been largely written by the principal copyist but subsequently added to by a different hand.³⁴ The manuscript contains the signature “Mr John Swinton, juris advocate” on the first original leaf;³⁵ the paper catalogue of Advocates’ Library manuscripts has suggested that this was the John Swinton later elevated to the Bench in 1782 as Lord Swinton.³⁶ Various jottings are present at the back of the manuscript. A note of the Advocates’ Library’s ownership and the original shelfmark recording the volume as “Manuscript S” is written on the first page of text.³⁷

Tait MS (Adv MS 25.1.7) This manuscript records at the end of the text of the *Institutions* that it was completed on 29 September 1677. Above this date is the signature “J. Broune”, whose signature also appears: on the front flyleaf below the date 5 October 1677; on the last original leaf with the date 1682; and at the end of title 22, without a date. That Brown’s signature is found beside the date of completion suggests that he was perhaps the copyist, but it seems clear that he was at least the first owner of the manuscript. The paper catalogue of Advocates’ Library manuscripts has suggested that “These may be signatures of James Brown, Dean of Faculties at Glasgow University”.³⁸ The manuscript records on the first two flyleaves that it was presented to the Advocates’ Library in 1718 by an Alexander Tait, “merchant and student”, whom the paper catalogue has speculated “may just possibly be the Alexander Tait, merchant, Edinburgh, who was father of Alexander Tait, Principal Clerk of Session”. The dating of the copy to 1677 is consistent with the only watermark found in the manuscript, a crowned shield bearing three fleurs-de-lis and a double helix. This is comparable to those found by Heawood in three French volumes from the later seventeenth century.³⁹ The manuscript text includes Stair’s revisions of 1666–7,⁴⁰ and indeed contains at least some later *ad hoc* updates

32 Swinton MS, p. 104.

33 Swinton MS, p. 307. The paper catalogue of Advocates’ Library manuscripts has called the scribe only “an unidentified hand”.

34 Swinton MS, fo. 309. The paper catalogue of Advocates’ Library manuscripts has identified this as the same hand.

35 Swinton MS, p. i (pencil pagination).

36 On whom, G Brunton and D Haig, *An Historical Account of the Senators of the College of Justice from its institution in MDXXXII* (1836), p. 536.

37 Swinton MS, p. 1.

38 The reverend James Brown is recorded as having been elected and admitted as Dean of Faculties in September 1704 and as having continued in post until his death in 1714 (*Munimenta Alme Universitatis Glasguensis: Records of the University of Glasgow from its Foundation till 1727* (1854), vol. 3, pp. 359–60). Although the preface to the *Munimenta* indicates that the records are not entirely correct “after the commencement of the troubles at the time of the Reformation”, the appendix which follows the preface seems to suggest that the records can be relied upon in this instance (*ibidem*, volume of indices etc., pp. xii, lxxviii). It might be possible to confirm or refute the catalogue’s suggestion by comparing the hand of this copyist with that used in Brown’s sermons and personal papers held in Glasgow University’s special collections (shelfmark MS Gen 1769/2).

39 Heawood, *Watermarks*, figures 643 (dated to post-1677, Paris), 647 (dated to 1696, Paris) and 648 (dated to 1696, Paris).

40 See also the paper catalogue of Advocates’ Library manuscripts; Ford, *Law and Opinion*, p. 65 n. 283; Watson, *Making of the Civil Law*, p. 31 n. 15.

by other lawyers.⁴¹ The text of the *Institutions* appears to have been written by one scribe. However, a different hand appears to have copied the full title of the work, as it was later printed, on the second front flyleaf and Stair's "Dedication" on the following two (formerly blank) leaves; the paper catalogue has concluded that this is "identical with that of the first printed edition, from which it may have been copied". Two leaves remain blank at the front of the volume, and almost twenty leaves were left blank at the end of the manuscript. This volume was named "Manuscript A" by the Keeper of the Library; this shelfmark and a note of the library's ownership are written on the first page of the dedication. Ford has correctly suggested that this copy was very close to that of the Swinton manuscript.⁴² The manuscript has been rebound in modern times.

Kames MS (Adv MS 25.1.8) The date of completion of this manuscript has not been recorded, and the watermark(s) cannot be identified with certainty through the ink. The handwriting would, however, suggest that it is a seventeenth-century copy. The opening titles of the text of the *Institutions* reflect the revised text, but from at least title 4 the text appears to lack these updates.⁴³ The copy was written by multiple hands. After title 7, there is a blank leaf, then the last chapter of title 7 has been copied again by what appears to be a different hand, which then copied title 8. The copyists omitted the chapter headings of titles 8–18 and 23 onwards. These were written in by a later hand, normally below the title heading, but the chapter headings of title 9 have been written in at the end of title 7 (the nearest blank space sufficient for the text), and those of title 30 have been written at the back of the manuscript. The title headings at the top of each page appear to have been written by that same later hand. The manuscript has been rebound in modern times. The paper catalogue of Advocates' Library manuscripts has correctly noted that "pasted inside the front cover is a bookplate which was presumably inside the original cover, of Henry Home of Kames, later Lord Kames".⁴⁴ The manuscript was named "Manuscript H" after it was presented to the Library in 1823 by Henry Home Drummond,⁴⁵ Kames's grandson.⁴⁶ It is possible that this donation was made because Henry Home Drummond had inherited two copies: the Kames manuscript which belonged to his grandfather, and the Home Drummond manuscript which belonged to his father.

Brousterland MS (Adv MS 25.1.9) This manuscript records at the end of the text of the *Institutions* that it was completed on 25 August 1673 for a "Mag. Jo:

41 After the citation of *Cranston v Wilkison* (1666) at the end of the text is an addition that refers to an unnamed case heard by Lord Gosford in 1672 (Tait MS, fo. 140v, p. 276). No other such updates have been found, but a comprehensive search has not been conducted.

42 Ford, *Law and Opinion*, p. 67 n. 293.

43 Cf. the paper catalogue of Advocates' Library manuscripts; Ford, *Law and Opinion*, p. 63 n. 282; Watson, *Making of the Civil Law*, p. 31 n. 15.

44 On whom, A J Durie and S Handley, "Home, Henry, Lord Kames (1696–1782)", *Oxford Dictionary of National Biography*, 2004 edition, available at <http://www.oxforddnb.com/view/article/13643>, accessed 14 October 2013.

45 See also the paper catalogue of Advocates' Library manuscripts.

46 On whom, Terry Jenkins, "HOME DRUMMOND, Henry (1783–1867), of Blair Drummond, Perth and 22 Fludyer Street, Mdx" in D R Fisher, ed, *The History of Parliament: the House of Commons, 1820–1832* (2009), available at http://www.historyofparliamentonline.org/volume/1820-1832/member/Home_Drummond-henry-1783-1867, accessed 19 June 2014.

Smyth De Brousterland".⁴⁷ The text lacks the updated references,⁴⁸ and was written by one scribe. At the back of the manuscript, one hand has written an index of subjects, and another hand has added an incomplete list of chapter headings.⁴⁹ Dolezalek was able to discern a watermark depicting a foolscap, but this is "difficult to see under the dark ink".⁵⁰ The manuscript was rebound in the eighteenth or nineteenth century.⁵¹

Primrose MS (Adv MS 25.1.10) The date 1 November 1667 is written on the verso of the front leaf; it is likely that this records the manuscript's date either of completion or of purchase. This date is in keeping with the watermark (an upright foolscap above a trefoil), which appears to be similar to watermarks found in many manuscripts of the seventeenth century from Scotland, England and the Netherlands;⁵² indeed, it appears to be identical or nearly identical to the watermark found in the James Hay manuscript.⁵³ Further, the signature of a William Primrose appears several times at the front of the manuscript, along with a note that "W Primerose aught this book 1667"; elsewhere on that same page is the signature "Sir William Primro[?] of Elphinstoun".⁵⁴

- 47 Brousterland MS, p. 408. The Brousterland referred to here is probably the great house on Creighton Grove in East Kilbride. Various records confirm the ownership of Brousterland by a Mr John Smith in the late seventeenth century. The local Commissariat records against the date 1 March 1681 the testaments of a Mr John Smith of Brousterland and his spouse, Anna Dundas, both of the parish of Kilbryde (F J Grant, ed, *The Commissariat Record of Hamilton and Campsie. Register of Testaments, 1564–1800* (British Record Society – Scottish Section, 1898), p. 23). Fountainhall records that "Mr John Smith of Brousterland disposes his land estate to William his eldest son"; the payment of the associated provisions for the other children resulted in a lengthy case heard in December 1710 (J Lauder of Fountainhall, *The Decisions of the Lords of Council and Session, from June 6th, 1678, to July 30th, 1712*, vol. 2 (1761), pp. 606–7). It is possible that Brousterland was owned of the university, as the munimenta record a tack from 1678 to 1715 to "Mr John Smith of Brousterland for the personage of his lands of Oversheills and Browsterland" (*Munimenta Alme Universitatis Glasguensis*, vol. 1, p. 454).
- 48 See also the paper catalogue of Advocates' Library manuscripts; Ford, *Law and Opinion*, p. 63 n. 282; Watson, *Making of the Civil Law*, p. 31 n. 15.
- 49 Brousterland MS, pp. 409, 413. See also the paper catalogue of Advocates' Library manuscripts. The chapter headings of title 31 are not now included in the manuscript, but appear to have once been present on a folio that has been lost (Dolezalek, *Scotland under Jus Commune*, vol. 2, p. 277); this loss may have occurred either when the manuscript was rebound or at some point before this.
- 50 Dolezalek, *Scotland under Jus Commune*, vol. 2, p. 277.
- 51 Cf. the paper catalogue of Advocates' Library manuscripts; Dolezalek, *Scotland under Jus Commune*, vol. 2, p. 277.
- 52 Heawood, *Watermarks*, figures 2009–54 (dated to the second half of the seventeenth century, with the exception of 2050, which was dated to 1745 and is described as a Scottish "Prince Charlie document" (*ibid*, p. 111)); Dolezalek, *Scotland under Jus Commune*, vol. 1, p. 302.
- 53 See below, pp. 12–13.
- 54 This was almost certainly Sir William Primrose, second baronet of Nova Scotia, the son of Sir Archibald Primrose, Lord Carrington. Sir Archibald Primrose acquired a disposition for the lands of Elphinstone in April 1666. These would have passed to Sir William on his father's death in 1679. They then passed to William's eldest son – Sir James Primrose, later first viscount Primrose – who made various additions to the castle (W Fraser, *The Elphinstone Family Book of the Lords Elphinstone, Balmerino and Coupar*, vol. 1 (1897), pp. xiv–xvi, xviii; Sir James Balfour Paul, ed, *The Scots Peerage founded on Wood's edition of Sir Robert Douglas's Peerage of Scotland*, vol. 7 (1910), 109; J B Burke, *A Genealogical and Heraldic Dictionary of the Peerage and Baronetage of the British Empire* (14th edn, 1852), pp. 848–9). Sir William's inheriting the lands of Elphinstone only in 1679 would explain why he did not style himself with this territorial name in 1667. It also explains why the hand in which the later signature is written appears to differ slightly from that in which the earlier signature is written: his hand simply changed over time.

The manuscript also bears the signature of a James Sinclair on the back flyleaf, and the paper catalogue of Advocates' Library manuscripts has noted that "On the outer cover is a signature in a contemporary hand which cannot be read with certainty". This might be the signature of the James Lamb whose signature also appears on the recto of the second flyleaf. The widely used Latin phrase "*Vivit post funera virtus*" appears on the second flyleaf with the initials "GP" and "NP", and again on the final flyleaf with the initials "NP" and "WP". The paper catalogue has further observed that at the front of the manuscript are various jottings: "a variety of Latin tags, pen-flourishes, arithmetical calculations, and (at fo. ii) a version of the Apostles' Creed in somewhat unmetrical Latin hexametres". A folio leaf has been cut out of the manuscript between titles 1 and 2; this was present in the manuscript (or was at least taken account of) when it was paginated by a contemporary hand.⁵⁵ The text of the *Institutions* lacks Stair's revisions of 1666–7.⁵⁶ It was written by multiple hands. The manuscript appears to be in its original binding.

Strachan MS (Adv MS 25.1.11) The date of completion of this manuscript is not recorded but must have been before 24 September 1685, by which date the manuscript was owned by David Strachan, minister of Carmyllie in Angus.⁵⁷ This date is in keeping with the watermark visible on the flyleaves at the front and back of the manuscript, which is very similar to that of the Innominate Advocates' manuscript but for there being fleur-de-lis atop the columns and the cartouche bearing the initials "CAB". This appears to be identical to that found in an English accounts book dating from 1662,⁵⁸ and very similar or identical to watermarks that Dolezalek has identified in several seventeenth-century Scottish manuscripts.⁵⁹ It is notable that the copyist gave Stair's citation of a 1592 Act of Parliament as being of 1692, a date that was still in the future at the time of completion of the manuscript.⁶⁰ The text of the *Institutions* generally lacks the revisions later made by Stair, but does include the updated reference in title 30.⁶¹ It was written by multiple hands. The contemporary pagination is inconsistent and has been supplemented with a more recent series of foliation in pencil. Folio 339 has a note, probably by the copyist, that "this leaff is blank only by mistake". The paper catalogue of Advocates' Library manuscripts has correctly noted that the chapter headings of title 25 onwards "have not been entered in the spaces left for them". No other material is bound in this manuscript.⁶² The manuscript appears to remain in its contemporary binding.⁶³

Colquhoun MS (Adv MS 25.1.12) The date of completion of this manuscript is not recorded. The handwriting suggests that it was copied in the seventeenth century.

55 The lost folio would have been pp. 13–14.

56 See also Watson, *Making of the Civil Law*, p. 31 n. 15.

57 Strachan MS, fos i, ii. David Strachan, the son of the minister of nearby St Vigeans parish, was ordained in 1683. He was minister of Carmyllie from 14 May 1684 to 1709. Strachan thus acquired the copy of the *Institutions* shortly after he was appointed to the parish. It is possible that he died in post: his death occurred before 24 June 1709 (on whom, D M Bertie, *Scottish Episcopal Clergy, 1689–2000* (2000), p. 136).

58 Heawood, *Watermarks*, figure 3496.

59 Dolezalek, *Scotland under Jus Commune*, vol. 1, p. 327.

60 Strachan MS, fo. 353v.

61 Cf. Ford, *Law and Opinion*, p. 63 n. 282; Watson, *Making of the Civil Law*, p. 31 n. 15.

62 Cf. Ford, *Law and Opinion*, p. 66, on which see below.

63 Paper catalogue of Advocates' Library manuscripts.

This is in keeping with the presence of a watermark bearing the arms of Amsterdam, which was found by Dolezalek in many Scottish manuscripts dating mainly from the late seventeenth century.⁶⁴ This particular watermark seems to have been of a design akin to those found by Heawood in several Dutch and English volumes dating mostly from that same period.⁶⁵ The text of the *Institutions* largely reflects the revisions made by Stair, although the text lacks these in at least titles 10 and 31, and Ford has identified other passages that were likely drawn from the first printed edition.⁶⁶ At the front of the manuscript is what the paper catalogue of Advocates' Library manuscripts has called "a list of Titles and their contents"; Stair's *Form of Process* has been copied at the back of the manuscript. The copy of the *Institutions*, the list of titles and the *Form of Process* appear to be by the same hand. The signature of an Archibald Colquhoun on the recto of the first flyleaf identifies him as the owner of the manuscript; the paper catalogue has suggested that this might be the signature of a seventeenth-century advocate by that name.⁶⁷ The manuscript has been subject to a contemporary series of pagination and a modern series of foliation.

William Hay MS (Adv MS 25.1.13) The manuscript's date of completion has not been recorded. The watermark apparent in this volume is of a one-handed jug bearing the initials "CAB" with a lid of five skittles each with a trefoil, and also a quatrefoil and fleur-de-lis atop the middle skittle. This is akin to the watermarks found in several seventeenth-century English volumes.⁶⁸ The signature of a William Hay appears on the recto of the first flyleaf; his signature, as well as that of a John Hay, appears on the page after the end of the text of the *Institutions*.⁶⁹ The paper catalogue of Advocates' Library manuscripts has identified the signature of William Hay as being by "an early 18th century hand" and that of John Hay as "a similar hand". What the paper catalogue has referred to as "a variety of jottings in a contemporary hand, or hands" appears on the original front flyleaf. This includes on the recto a note about the history of Aberdeen, and an inscription in two inks stating that "W[illia]m Melvill[e] died in 1672. | JH[?] Innes his spouse died in dec 1678"; on the verso is a note about "obligement" by a different hand. What purports to be an index to the *Institutions* (but is really a list of title and chapter headings, although it

64 Dolezalek, *Scotland under Jus Commune*, vol. 1, pp. 291–3.

65 Heawood, *Watermarks*, figures 342–69 (mostly dated to the later seventeenth century, with some from the first ten years of the eighteenth century).

66 See further Ford, *Law and Opinion*, p. 68 n. 295. Cf. Watson, *Making of the Civil Law*, p. 31 n. 15. The citation of *Laurie v Ker* in this manuscript wrongly gives the date as 1680, but should have provided 1630 as the date (Colquhoun MS, fo. 29v, p. 54; *Institutions*, 10.9/1.10.9).

67 See also the paper catalogue of Advocates' Library manuscripts. Grant lists two advocates by the name of Archibald Colquhoun. The first was the son of William Colquhoun of Garscadden. He passed as an advocate in November 1684 and died in the summer of 1687. The second was Archibald Campbell Colquhoun, son of John Campbell of Clathic. He passed as an advocate in December 1779 and was Lord Advocate between 1807 and 1816. The paper catalogue presumably meant the latter of these men, although the timeline would suggest that either could have owned the manuscript. On these men, see F J Grant, *The Faculty of Advocates in Scotland, 1532–1943: with genealogical notes* (Scottish Record Society, 1944), pp. 38–9; G F R Barker, "Colquhoun, Archibald Campbell- (c.1754–1820)", rev E Metcalfe, *Oxford Dictionary of National Biography*, 2004 edition, available at <http://www.oxforddnb.com/view/article/5986>, accessed 14 October 2013.

68 Heawood, *Watermarks*, 3670–80 (dated to the late seventeenth century, England), 3683 (dated to 1669, London), 3686–93 (largely dated to the late seventeenth century, England, but one from 1598, Schieland).

69 William Hay MS, fo. 412v.

omits the chapter headings of title 31) has been copied into the manuscript before the text, probably by the copyist. The chapter headings do not appear in the text, with the exception of those of title 1. At least one folio leaf once separated the index and text, but it has been torn out. The text of the *Institutions* reflects Stair's later revisions,⁷⁰ and was made by one scribe. The copyist has included before several of the title headings notes that appear to introduce the material that follows. A later hand has, or hands have, identified the volume as a copy of Stair's *Institutions* both above the first entry of the index and above the heading of title 1.⁷¹ Also above the heading of title 1 is the shelfmark "Manuscript D". The manuscript has been rebound in the modern period.

Falconer MS (Adv MS 25.1.14) A note now pasted onto the inside of the front cover records that this manuscript was "writt by Sir Alexander Falconars own hand when President of the Session in King Charles tyme"; immediately below this is an inscription "Perth [?]th Aug: 1731, and for that effort".⁷² The latter inscription is in a different ink and appears to be unconnected to the aforementioned note. Alexander Falconer, Lord Halkerton was neither knighted nor Lord President of the Court of Session before his death on 1 October 1671.⁷³ Sir David Falconer, Lord Newton was Lord President from 1682 until his death in 1686.⁷⁴ If the inscription can be relied upon to any extent, it suggests that the copy was made either before October 1671 or between 1682 and 1686; the former possibility would make it one of the earliest datable copies whereas the latter one of the latest.⁷⁵ This date range is supported by the watermark evidence: the watermark on the first flyleaf is identical to that of the Strachan manuscript, which was copied before 1685. The text of the *Institutions* lacks the updated references that were added by Stair in 1666–7.⁷⁶ The paper catalogue of Advocates' Library manuscripts has correctly noted that the lists of chapter headings were omitted for titles 14–18 and 23–31; the title headings were omitted from titles 14, 23, 27 and 28. The paper catalogue has also noted that leaves were left blank after several titles, although this is more extensive than suggested: there are blank leaves after titles 12 and 17–31. Copied at the back of the manuscript is a tract called "actions in general and exceptions"⁷⁷ as well as a collection of notes on cases heard between 1661 and 1663.⁷⁸ Ford has identified what is probably this collection as the practicks of Sir George Mackenzie of Tarbat.⁷⁹ The paper catalogue has plausibly suggested that the same hand copied the text of the *Institutions*, the short tract on actions and exceptions, and the case notes. Also included in the manuscript, on the

70 See also Ford, *Law and Opinion*, p. 63 n. 283, p. 68 n. 295; Watson, *Making of the Civil Law*, p. 31 n. 15.

71 William Hay MS, fos 1r, 15r respectively.

72 The phrase "and for that effort" appears twice here, and once more on the inside of the back cover.

73 W D H Sellar, "Falconer, Alexander, Lord Falconer of Halkertoun (1593/4–1671)", *Oxford Dictionary of National Biography*, 2004 edition, available at <http://www.oxforddnb.com/view/article/9106>, accessed 14 October 2013.

74 S Handley, "Falconer, Sir David (1638/9–1685)", *Oxford Dictionary of National Biography*, 2004 edition, available at <http://www.oxforddnb.com/view/article/9107>, accessed 14 October 2013.

75 See also Ford, *Law and Opinion*, p. 63 n. 268.

76 See also Ford, *Law and Opinion*, p. 63 n. 282; Watson, *Making of the Civil Law*, p. 31 n. 15.

77 Falconer MS, fos 222r–289r.

78 Falconer MS, fos 290r–311v.

79 Ford, *Law and Opinion*, p. 66. The relevant footnote refers instead to Adv MS 25.1.11, but this can presumably be regarded as a misprint.

verso of the back flyleaf, is what the paper catalogue has described as “the rental of the lands within the parish of Garvock out of which John Keith, Minister of Garvock, craves a stipend”. The manuscript remains bound in a contemporary cover.⁸⁰

Gordon MS (Adv MS 25.3.2) This manuscript’s date of completion has not been recorded. That it can be dated to the seventeenth century is suggested by the handwriting and the watermark evidence. A watermark with a crowned, narrow shield featuring a fleur-de-lis is discernible on the first flyleaf following the end of the text; this is akin to those found by Heawood in several manuscripts dating from the 1680s to 1704.⁸¹ On folio 232 is a watermark which is almost identical to that found in the Strachan manuscript, but bearing instead the initials “ABO” or “ARO”. This latter watermark seems to be very similar or identical to one of the watermarks found in the Lindesay manuscript by Dolezalek.⁸² The text of the *Institutions* generally reflects Stair’s revised text, although title 4 was instead drawn from the earlier version, then partially updated by the copyist in a different ink.⁸³ The text was copied by multiple hands. There is a lacuna from the middle of the citation of *White v Douglas* (1629) in title 6 to “being accessory thereto” in title 7.⁸⁴ Leaves were left blank by the copyist after titles 9–21 and 23–31;⁸⁵ the paper catalogue of Advocates’ Library manuscripts has suggested that these were “presumably intended for additions and corrections”.⁸⁶ The chapter headings of titles 15, 19 and 21 may have been omitted by the copyist but added by a later hand; the chapter headings of titles 16, 17, 22 and 31 remain omitted. Some annotations have been added alongside the text. On the first folio is found the signature of a Thomas Marschall.⁸⁷ A note on the recto of the second flyleaf records that the manuscript was presented to the Advocates’ Library by Mr David Laing; the same ink might also have been that used to write two lines of text which are now very faded on the recto of the first flyleaf. David Laing’s signature appears, with the date November 1822, on the verso of the fifth (largely) blank leaf at the front of the manuscript. Nine pages were left blank at the back of the manuscript. Various jottings are now found on these leaves, including on the verso of the last flyleaf the signature “Gordone” and, upside down, “Adamus Gordonus”. A looseleaf insert (currently found at the back of the manuscript) is dated 1753; the paper catalogue has identified this as “a copy of a retour of service in favour of George Taylor, Auchtermuchty”. The manuscript remains in its contemporary binding.⁸⁸

James Hay MS (Adv MS 25.3.3) This copy is recorded in two places as having been completed on 19 October 1677: once on the recto of the leaf following the end of the text, and once on the verso of the next leaf. This date is supported by the watermark evident on folio 9, which appears to be identical (or at least very similar)

80 Paper catalogue of Advocates’ Library manuscripts.

81 Heawood, *Watermarks*, figures 1670–9.

82 Dolezalek, *Scotland under Jus Commune*, vol. 3, p. 30.

83 Cf. Ford, *Law and Opinion*, p. 62 n. 283; Watson, *Making of the Civil Law*, p. 31 n. 15.

84 Gordon MS, fos 26v–33r; *Institutions*, 6.17/1.6.17–7.10/1.7.10.

85 Cf. the paper catalogue of Advocates’ Library manuscripts.

86 On the practice of reserving blank pages in bound manuscripts for the addition of material at a later time, see Jonathan Gibson, “Casting off blanks: hidden structures in early modern paper books” in James Daybell and Peter Hinds (eds), *Material Readings of Early Modern Culture: Texts and Social Practices, 1580–1730* (2010) 208.

87 Paper catalogue of Advocates’ Library manuscripts.

88 Paper catalogue of Advocates’ Library manuscripts.

to that of the Primrose manuscript. The text of the *Institutions* generally lacks Stair's later updates, although at least part of the text of title 23 does contain the relevant revisions;⁸⁹ the date 1669 given in title 10 is erroneous.⁹⁰ It is credible that most of the text was written by one copyist using several different inks. Two of the original pages of title 1 (folios 8v and 11r) were, as the paper catalogue of Advocates' Library manuscripts has noted, "defaced by extensively spilt ink". Replacement pages were written – the latter by a different copyist – and pasted into the manuscript; other spills at folios 147v–148r were not remedied in this manner, although they do not appear to have been as serious. The paper catalogue has also noted that there were blank pages at folios 9r–10v and that "most of f. 162[v] and all of f. 175[r] have been left blank for the inclusion of chapter-headings". Indeed, the first four chapter headings of title 24 have been copied onto folio 162v, whereas the first three chapter headings of title 25 appear at the bottom of folio 174v; it is not clear why the copyist did not complete either list. A list of titles appears at the front of the manuscript on the verso of the first flyleaf. The note "This Book pertaines to Ja: Hay" appears to have been written by the same hand as the note that recorded the date of completion of the manuscript on the folio after the end of the text,⁹¹ and by the same hand and in the same ink as the final sections of text. It is thus plausible that Hay copied this volume for his own use. A later hand has recorded the library's ownership, the author and title of the treatise, and the shelfmark "Manuscript B".⁹² This manuscript was not listed by Watson; if his erroneous reference to "Adv MS 25.3.5" relates to this manuscript, then he misidentified the version of the text to which it adheres.⁹³ The manuscript remains in its original binding.⁹⁴

Marchmont MS (Adv MS 25.4.17) This manuscript's date of completion has not been recorded. However, a watermark of a bugle horn within a shield is discernible on several leaves; this is consistent with Dolezalek's description of several Scottish legal manuscripts dating from the later seventeenth century,⁹⁵ and is akin to watermarks found in English, German and Dutch manuscripts that date from around the beginning of the century.⁹⁶ The opening titles of the text reflect the revisions made by Stair, but the text lacks these from before title 4. The copy was written by multiple hands. The paper catalogue of Advocates' Library manuscripts has identified that "There are blank leaves between Titles 11 and 12 (ff. 69–76), between sections 8 and 9 of Title 16 (ff. 115–26) and following Title 31 (ff. 229–41)." The blank folios 69–76 were not taken into account in the contemporary pagination. The blank folios 115–26 interrupt the text part-way through the citation of *Hunter and others v the relict of Gadgirth* (1610) at *Institutions*, 16.11/2.6.11. After the blank pages, the same copyist resumed writing out the next few lines of the text, only to then be replaced by a different scribe. The paper catalogue has also noted that "The writing on f. 174 (but

89 Cf. Ford, *Law and Opinion*, p. 63 n. 283.

90 James Hay MS, fo. 52r. The case of *Auchmoutie v Hay, Laird of Mayne* was heard in 1609 (Mor 12126); the date given in the manuscript is an error.

91 Paper catalogue of Advocates' Library manuscripts.

92 James Hay MS, fo. 1.

93 Watson, *Making of the Civil Law*, p. 31 n. 15.

94 Paper catalogue of Advocates' Library manuscripts.

95 Dolezalek, *Scotland under Jus Commune*, vol. 1, pp. 294–6.

96 Heawood, *Watermarks*, figures 2636 (dated to 1586, Holland), 2637 (dated to 1600, Cologne), 2639 (dated to 1602, probably England).

not f. 174v.) is upside down”; the upside-down text comprises the chapter headings of title 25. The paper catalogue has also recorded that “The chapter-headings in Titles 30 and 31 are omitted.” An incomplete collection of notes on procedure and possibly acts of sederunt has been copied at the back of the manuscript by a contemporary hand.⁹⁷ Pasted into the front of the manuscript is the bookplate of Sir Patrick Hume of Polwarth, first earl of Marchmont, Chancellor of Scotland,⁹⁸ which bears the date 1702. On the recto of the first flyleaf is the signature of Hume of Polwarth with a quotation from Horace’s *Ars poetica* (“*omne tulit punctum qui miscuit utile dulci*”⁹⁹) and the initials “HDA”.

(2) National Library of Scotland

Hamilton MS (MS 3172) The date of this manuscript’s completion has not been recorded. However, the watermark present appears to be identical to that of the Innominate Advocates’ manuscript, and the handwriting seems typical of the period; the printed catalogue has also concluded that the manuscript dates from the seventeenth century.¹⁰⁰ The text lacks the later updates and revisions,¹⁰¹ and was written by multiple hands. The library’s printed catalogue has suggested that the text comprises “most of Book I and the whole of Books II–III”.¹⁰² It seems that this observation was made on the basis of a comparison with the second printed edition: a brief examination of the relevant folios suggests that the copy of the titles that became known as Book I is a complete copy of that text as it appeared in the manuscript versions. The chapter headings remain omitted from title 31; those for titles 14, 17–18 and 23–30 appear to have been omitted originally but then later written into the space reserved for them; those of titles 15 and 16 were written into the margin, as no such space was left. Two pages were left blank at pp. 217–18; more than a dozen folios remain blank at the end of the manuscript. The text of the *Institutions* has been paginated by a contemporary hand; the remaining leaves have been foliated by a modern hand. The text has been occasionally annotated by several later hands; some of these annotations updated the text in an *ad hoc* manner and were not representative of later versions of the text.¹⁰³ At the back of the manuscript is a subject index that is roughly alphabetical.¹⁰⁴ After this, multiple hands have copied out passages drawn from the second version of the *Institutions*.¹⁰⁵ Ford has observed that this might be

97 Marchmont MS, fos 242r–278v. The collection begins “At the first instance of the session”, and the second, third and fourth sections are titled “Anent continuatone of summonds”, “What is meant by continuation of days” and “Anent kirks and bishops kirks which are either patrimonial or kirks patronage” respectively.

98 On whom, J R Young, “Hume, Patrick, first earl of Marchmont (1641–1724)”, *Oxford Dictionary of National Biography*, online edition, May 2006, available at <http://www.oxforddnb.com/view/article/14150>, accessed 8 October 2013.

99 Horace, *Ars poetica*, 343.

100 *NLS Catalogue of MSS acquired since 1925*, vol. 2 (1966), p. 201.

101 See also Ford, *Law and Opinion*, p. 67 n. 292; Watson, *Making of the Civil Law*, p. 31 n. 15.

102 *NLS Catalogue of MSS acquired since 1925*, vol. 2, p. 201.

103 For example, Hamilton MS, p. 22 has an annotation, in very faint ink, that cites *Scott v Crawford* (1668). This case does not appear to be cited in the first printed edition of the *Institutions*.

104 Hamilton MS, fos 176r–181v.

105 Hamilton MS, fos 182–205v. Each of the sampled citations of cases heard 1663–8 appears in this appendix, with the exception of the citation of *Cranton v Wilkison* (1666), which is provided in an annotation after the last line of the text itself.

an example of how lawyers updated Stair's work.¹⁰⁶ On the recto of the first flyleaf at the front of the manuscript are the signatures of a William Hamilton and a William Carns,¹⁰⁷ as well as other illegible or incomplete signatures and some pen trials; two notes appear on the recto and verso of the second front flyleaf.¹⁰⁸

Williamson MS (MS 3721) The date of completion of this manuscript has not been recorded. However, two watermarks visible on the front flyleaves are very similar to the two watermarks found in the Swinton manuscript, although that of the cross above the initials "IHS" does not appear to have the letter "M" beneath. A third watermark, visible on several leaves, features the initials "ADVRAND" below a crowned coat of arms that appears to be an adaptation of the seventeenth-century French royal coat of arms; this watermark appears to be identical to that found by Heawood in a volume dating from the late seventeenth century,¹⁰⁹ and similar to those found in several other volumes from the mid- to late seventeenth century.¹¹⁰ The opening titles of the *Institutions* reflect the updates added by Stair, but the text appears to lack these updates from some point after title 17.¹¹¹ It appears to have been written by one scribe, and was subsequently annotated (infrequently) by at least one hand. The text of the *Institutions* is incomplete, ending at "Defuncts might exhaust [all] their Dead's part" in *Institutions*, 30.53/3.8.53; four and a half pages were left blank at the back of the manuscript, probably for at least some of the remaining text to be copied. The chapter headings were omitted for titles 7 and 25–30; space was left for them to be copied in later. An index precedes the copy of the *Institutions*; this was left incomplete by the original writer and has been completed by a modern hand in pencil. A short personal note has been written on the verso of the last folio at the back of the manuscript. The note "John Williamson ought this book", as well as the signatures of a Peter Williamson (twice) and the Dean of Calendar, appear on the recto of the first front flyleaf; an attempt was later made to obscure that of John Williamson and one of those of Peter Williamson, possibly by the James Cumming who is noted to have owned the manuscript by 28 May 1714 in an inscription on the recto of the first front flyleaf.

Gray MS (MS 5058) On the verso of this manuscript's first original flyleaf is the note "My Lord Staires first book of practiques 1666";¹¹² this presumably records the manuscript's completion in that year. This date is in keeping with the watermark evidence. Two watermarks present in the volume appear to be similar to those found in the Strachan manuscript, one bearing the initials "MA" and the other with the initials "FDC". Other watermarks found in the volume include: what might be a jug, but is very hard to see through the ink; a flower not entirely dissimilar to one

106 Ford, *Law and Opinion*, p. 66.

107 See also *NLS Catalogue of MSS acquired since 1925*, vol. 2, p. 201.

108 The note on the recto appears to be a copy of a comment on the founding of the College of Justice in 1532.

109 Heawood, *Watermarks*, figure 661 (contains material dated 1673, 1680–93).

110 Heawood, *Watermarks*, figures 659–66 (which can be dated to or have material dating from 1638 to 1679, from London where provenance is known).

111 Cf. Ford, *Law and Opinion*, p. 67 n. 294, p. 68 n. 295; Watson, *Making of the Civil Law*, p. 31 n. 15. The case *Heretors of the Miln of Kythick v Feuars* (1665) at *Institutions* 17.17 appears in this manuscript (Williamson MS, p. 172).

112 This inscription also appears on the recto of this folio, but without the date.

found in a 1661 volume;¹¹³ and, on the original back and front flyleaves, a wheel that appears to be similar to one found in a 1662 volume.¹¹⁴ If it is correct that this copy dates from 1666, then it would have been completed when Stair was just beginning to revise his text. It thus should be (and does appear to be) a copy drawn from only the initial version and lacking the revisions and updates. The copy was written by multiple hands. The title numbers as well as the title and chapter headings were omitted for titles 12–15 and 17–22; the chapter headings only were omitted for title 16. This copy of the *Institutions* is incomplete, ending after title 22.¹¹⁵ The printed catalogue has suggested that title 19 was also omitted,¹¹⁶ but it is in fact copied between titles 17 and 18; this is the normal position of this title in the manuscripts.¹¹⁷ A note on the verso of the first original front flyleaf records that the manuscript was “Ex libris Alexandris Gray”,¹¹⁸ Gray also signed the top of the next leaf, above the heading of the first title, and recorded his profession as a notary public on the verso of the last original leaf. The manuscript was rebound by CARSS and Company of Glasgow.

Jedburgh MS (MS 5434) A scribal mark beneath the chapter headings of title 12 bears the date 1668;¹¹⁹ this is likely the date that this section was started or completed. A note on the first front flyleaf reads “Jedburgh Nov[embe]: 1671”; it is plausible that this records a date of acquisition. Also on the first front flyleaf is the note “This is president Staires booke off pr[a]ctickes”; Stair became Lord President of the Session in January 1671,¹²⁰ so this description is in keeping with the date of acquisition. The watermark of a foolscap is apparent on several leaves; it is similar to that found in the Primrose manuscript. The opening titles of this copy of the *Institutions* reflect the later revisions, but the text lacks these from title 4.¹²¹ The copy of the *Institutions* appears to have been written by multiple hands. The chapter headings of title 31 have been omitted but a space has been left for them; those of title 30 were also omitted but no such space was left. Several folio leaves have been torn out before title 23. Additionally, at least two leaves have been torn out in the middle of *Institutions*, 17.15/2.7.15, but the text continues, apparently uninterrupted, on the next extant folio (folio 89r) in a different hand. The third front flyleaf has also been torn out. A page has been left blank before title 15. A list of titles has been written into the manuscript by a later hand after the copy of the *Institutions*. The same hand that wrote this list appears to have then copied into the back of the manuscript a tract on the jurisdiction of the warden’s court.¹²²

113 Heawood, *Watermarks*, figure 1889.

114 Heawood, *Watermarks*, figure 4062.

115 Ford, *Law and Opinion*, p. 70.

116 *NLS Catalogue of MSS acquired since 1925*, vol. 4 (1982), p. 12.

117 Indeed, all the manuscripts give the title “Tacks” before that of “Teinds”. It thus seems that the order of these titles was changed for the 1681 printed edition. The reasons for this change to the order of titles have not been investigated here.

118 See also Ford, *Law and Opinion*, p. 67 n. 292, p. 70. Cf. Watson, *Making of the Civil Law*, p. 31 n. 15.

119 Jedburgh MS, fo. 54r.

120 On Stair’s life, see for example J D Ford, “Dalrymple, James, first Viscount Stair (1619–95)”, *Oxford Dictionary of National Biography*, online edition, October 2009, available at <http://www.oxforddnb.com/view/article/7050>, accessed 19 May 2014.

121 Cf. Ford, *Law and Opinion*, p. 67 n. 292; Watson, *Making of the Civil Law*, p. 31 n. 15, where the shelfmark is wrongly provided as “MS 5334”.

122 Jedburgh MS, fo. 170r.

Later owners of the manuscript have followed this practice, copying miscellaneous legal material at the back of the manuscript. The last of these annotators exhausted the space at the back of the manuscript, so continued writing on the two folios at the front. The library's printed catalogue has identified the copyist of at least some of these legal notes as Lord Jedburgh.¹²³ The bookplate of an advocate by the name of Mr George Carre is pasted into the front cover (with the motto "*tout droit | fortunam sapientes ferunt*").¹²⁴ The manuscript remains in what is probably its contemporary binding.

Tweeddale MS (MS 7116) The date of completion of this manuscript has not been recorded; the printed catalogue has dated it to "ca. 1671" without explanation.¹²⁵ However, the handwriting and watermark evidence support the conclusion that this is a seventeenth-century copy. A watermark that appears to be identical to that of the Hamilton manuscript is visible on the front and back flyleaves. Another watermark (possibly a crowned shield) is apparent on several leaves beneath the text around the middle of the manuscript. Towards the back of the manuscript is a third kind of paper, with a watermark that is very faint but appears to be identical to that found in the Williamson manuscript. At the front of the manuscript are separate indexes of the title and chapter headings of the *Institutions*, after which are two margined but otherwise blank folio leaves. The copy of the *Institutions* appears to lack the updates and revisions;¹²⁶ and it is plausible that it was written by only one scribe. The chapter headings are written beneath the title headings as well as in the margin alongside the start of the relevant chapter. Pasted onto the inside of the front cover of the manuscript is the bookplate of "John Marques of Tweeddale Earle of Gifford Viscount Walden, Lord Hay of Yester &c".¹²⁷ Some pen trials are present on the first flyleaf. Several folios have been torn out of the back of the manuscript after the conclusion of the text. The manuscript has been rebound.

(3) Aberdeen University Library

Ogilvie MS (MS 559) A note on the recto of the first flyleaf records that "George Ogilvie is the possessor and the wreatter of this book" and, in a later ink, that "he wreat

123 *NLS Catalogue of MSS acquired since 1925*, vol. 4, p. 52.

124 A manuscript held by the Massachusetts Center for Renaissance Studies also bears both the bookplate of George Carre and the signature of (presumably the second) Lord Jedburgh, dated 1647. The curator of that collection has suggested that this might be the George Carre who was elevated to the Bench as Lord Nisbet on 31 July 1755 (MCRS Rare Books Blog, "Early Modern Scottish Provenance in a 1605 Arcadia", 31 October 2011, accessible at http://mcrsrarebooks.blogspot.co.uk/2011_10_01_archive.html, accessed 2 June 2014). Nisbet was the eldest son of John Carre of Cavers (Brunton and Haig, *An Historical Account of the Senators of the College of Justice*, p. 522). The Carres (or Kerrs) of Cavers were cousins of, and intermarried with, the Kerrs who held the title of Lord Jedburgh (Bernard Burke, *A Genealogical and Heraldic Dictionary of the Landed Gentry of Great Britain*, p. 1274). This relationship might explain why at least two volumes held by the Lords of Jedburgh later belonged to George Carre.

125 *NLS Catalogue of MSS acquired since 1925*, vol. 5 (1986), p. 38.

126 See also Ford, *Law and Opinion*, p. 67 n. 292. Cf. Watson, *Making of the Civil Law*, p. 31 n. 15.

127 The earls of Tweeddale were advanced to the marquissship in December 1694. On the first marquess, see John R Young, "Hay, John, first marquess of Tweeddale (1626–97)", *Oxford Dictionary of National Biography*, 2004 edition, available at <http://www.oxforddnb.com/view/article/12726>, accessed 17 June 2014.

this booke att aberbrothoche [Arbroath] the yeir of god 1675".¹²⁸ Two near-identically phrased notes on the inside of the front cover (one written and one part-written, part-printed on an insert pasted onto the cover) indicate that he lost the manuscript then reacquired it in 1681, seemingly after becoming the tutor to his nephew.¹²⁹ A scribal mark with the date 28 September 1675 appears below the text of title 14 of the *Institutions*, before the heading of title 15; it is plausible that this scribal annotation indicates Ogilvie's completion of that section of text. This date is broadly in keeping with the watermark evidence. Two watermarks are present in the volume, which alternate in a manner that suggests that they are a pair rather than indicative of the use of more than one type of paper. The first is a simple bunch of grapes on a stalk, and the other a fleur-de-lis in a crown above a cartouche that reads "G ♥ S". This pair of watermarks is in the same approximate style as four found by Heawood in volumes from early to mid-seventeenth-century England.¹³⁰ The text of this copy of the *Institutions* sometimes reflects the later revisions but often lacks them. However, Dolezalek's suggestion that the last paragraph of the text, including the citation of *Cranston v Wilkison* (1666), was a later addition by the same copyist is not correct.¹³¹ Stair almost certainly added this final paragraph for the second version, but it is not found in eleven of the fifteen manuscripts of Stair's *Institutions* that Dolezalek examined: these eleven copies were either incomplete or adhered to the first version in this place. Thus, Dolezalek concluded here that the "normal end of the text" was the preceding paragraph.¹³² It is credible that the copy was made by one scribe. The chapter headings of titles 14–18 and 24–31 appear to have been added later into the space left for them, as have the headings for chapters 17–78 of title 10. The chapter headings of title 23 were omitted with no such space left. A blank page was left before title 11. The text has in places been updated or corrected by later annotators.¹³³ After

128 Other jottings at the front of the manuscript include a record of the acquisitions or contents of a private library written on the inside of the front cover, and notes which Dolezalek has identified as extracts from the Bible on the recto of the second flyleaf (Dolezalek, *Scotland under Jus Commune*, vol. 3, p. 21). The third flyleaf remains blank.

129 The inscriptions read: "GEORGE: OGILVIE Tutor of Innercaritie [Inverquharity] payed for this booke fyftein Pound Scots in anno 1681 and i boght it first in anno 1675 – GEORG OGILVIE, George ogilvie Tutor of Innercarite". In 1675, the lands of Inverquharity were owned by Sir David Ogilvie, second baronet, formerly an MP for Forfarshire. Sir David's younger brother was George Ogilvie, who lived in Lunan, around eight miles north of Arbroath where the manuscript was written. When Sir David died in 1679, it is possible that his eldest son and heir, Sir John Ogilvie, was still a minor, as his parents married only in 1662 and he himself did not marry until 1697. If this assumption is correct, it is possible that George Ogilvie was appointed tutor during his nephew's minority. On the Ogilvies, see L G Pine, ed, *Burke's Peerage, Baronetage & Knightage* (102nd edn, 1959), p. 1710; J Foster, *Members of Parliament, Scotland ... 1357–1882* (2nd edn, 1882), p. 276.

130 Heawood, *Watermarks*, figures 2237 (dated to 1641 London, a letter from Northumberland), 2239 (letter, 1652), 1038 and 1046 (both London, between 1607 and 1637).

131 Dolezalek, *Scotland under Jus Commune*, vol. 3, p. 21.

132 Dolezalek, *Scotland under Jus Commune*, vol. 3, p. 186. Only four of the manuscripts Dolezalek examined included this section of text. He identified it as a later addition in the entries for two of these manuscripts, the Ogilvie and Smyth manuscripts. He did not comment on this passage in the entry for the Anderson manuscript, and he simply identified the text of the Loudoun manuscript as a copy of Stair's *Institutions* without examining it further. However, he did note of the Burnside manuscript that it omitted "the decision of 1666/7/10 which the more recent manuscripts contain" (*ibid*, vol. 3, p. 149).

133 For example, at the very end of title 16, the annotator has added a passage and citation of a case heard in 1664.

the copy of the *Institutions* follows: an index of its titles written by the same copyist; a copy of Sir Andrew Gilmour's *Absentes rei publicae causa*, described as "An Short Methode or Index set down Alphabeticallie, of the Acts of Parliament relateing to civill Causes, by Sr: And: Gilmore", also written by the same copyist but paginated separately; and a subject index of the *Institutions* by a later hand that is four pages in length.¹³⁴ The last leaf of the manuscript, which had been written on, has been torn out; at least two other leaves were cut out before what is now the last leaf. The manuscript appears to be bound in a contemporary cover.

McGachen MS (MS 592) The date of this manuscript's completion is not recorded within the volume. However, the handwriting and watermark evidence indicates that it is a seventeenth-century copy. Five watermarks have been found in the volume: a one-handed jug similar to those seen in the other manuscripts but with the initials "I|B"; another similar jug with the initials "G|HC"; and a watermark of columns similar to that seen in the Strachan manuscript, but with the initials "CBA" in the cartouche. Additionally, there is a watermark of a two-handed jug with a trefoil and the design of a rabbit, which appears to be a somewhat plainer version of the watermark found by Heawood in an English volume from 1657;¹³⁵ another similar watermark found at the front of the volume has a somewhat malformed rabbit. The text of the *Institutions* appears to lack the updated references and revisions, as has been suggested by Ford.¹³⁶ The manuscript appears to have been written by more than one hand, although it may have been written by one scribe "in many installments"; it is certainly clear, as Dolezalek suggests, that parts were in "Hasty handwriting".¹³⁷ The chapter headings of title 27 have been written in after the text was copied, but possibly by the same hand. The page numbers and the title headings written at the top of each page of the first nineteen titles also appear to have been added later, but by a different hand. The manuscript has been subject to very occasional correction and annotation. Several folio leaves, containing the last part of what is now known as title 18,¹³⁸ have been cut or torn out; there is a change in the paper here, from that which bears the watermark of the jug with the initials "G|HC" to that which has the watermark of the columns. There are no flyleaves at either the front or the back of the volume. There is a note on the (probably original) leather binding on the inside cover that the book was "left here by Ro[ber]t McGachen, 1st June 1742"; his signature also appears at the end of the text, as does the name David and several pen trials.¹³⁹ Above the text of title 19 is a signature that might read "W Mcgachens".¹⁴⁰

Taylor MS (MS 2097) This manuscript contains both a complete and a partial copy of the *Institutions*. One scribe copied the text to midway through *Institutions*,

134 On these, see Dolezalek, *Scotland under Jus Commune*, vol. 3, pp. 21–2.

135 Heawood, *Watermarks*, figure 3675.

136 Ford, *Law and Opinion*, p. 67 n. 292. The case of *Borthwick v Sir Mark Ker* is recorded here as having been heard in 1663 (McGachen MS, p. 139). The dozen other manuscripts checked for this citation instead cite the case as having been heard in 1636 (with the exception of the Constable manuscript, which gives the year 1638). This therefore does not reflect any updating of the text.

137 Dolezalek, *Scotland under Jus Commune*, vol. 3, p. 22.

138 *Institutions*, 18.35/2.8.35, after "power of disposing of the vacant Benefice or Stipend, was taken from the Patron and Stated in the Presbytrie and Paroch". In this manuscript, and the other manuscripts, "Tacks" is title 18 and "Teinds" is title 19. On which, see above, n. 117.

139 McGachen MS, p. 394. It has not been possible to identify this person.

140 McGachen MS, p. 143.

1.7/1.1.7.¹⁴¹ These seven chapters as well as the rest of the text were also copied by a different scribe. Dolezalek suggested that “someone intended commissioning a copy of Stair’s *Institutions*, and that he had found two aspirants for the job. Both were asked to write the first three pages to test their ability”.¹⁴² The first scribe wrote on two folios of paper, the first of which bears a watermark of the initials “PPL” and the second of which has a watermark that seems to be identical to that of the Strachan manuscript. The second scribe wrote his text on paper that bears a watermark of an upright foolscap, akin to those seen in the Primrose and Jedburgh manuscripts. It would thus seem likely that the scribes each sourced their own paper. Horizontally on the back flyleaf is a watermark of a fleur-de-lis in a narrow, crowned shield that appears to be identical or highly similar to that found in the Gordon manuscript. The watermark evidence thus supports the dating of the manuscript to the seventeenth century, although the recent pencil annotations dating it to “[circa 1650]” (on the recto of the first new flyleaf) or “1662” (on the inside of the back cover) are not correct. The opening titles of the complete copy of the *Institutions* appear to reflect Stair’s later revisions, but the text lacks the sample citations after title 4.¹⁴³ As has also been seen in the Strachan manuscript, the copyist of the Taylor manuscript erred in providing dates for events that were then still in the future.¹⁴⁴ The chapter headings of the first twelve titles have been written both under the title headings and also in the margin beside the text. Those of the later titles are written only under the title headings. Those of title 27 either appear to be incomplete or are insufficient to fill the space left for them. The manuscript has been rebound. A bookplate on the inside of the front cover of the manuscript records that it was presented to the library by Professor T M Taylor in 1947.

Lindesay MS (MS 3066/7) The date of completion of this manuscript has not been recorded: the library’s descriptive list has suggested that it dates from “c.1685”, whereas Dolezalek has suggested that the scribe “used characters fashionable in the first half of the 17th century”.¹⁴⁵ Four watermarks have been found in the volume: one that is apparently identical to that found in the Strachan manuscript; a one-handled jug, similar to that seen in several manuscripts but with a plain base and two lines of initials that are very faint but might end with “D”; another one-handled jug, again similar to those seen elsewhere, but with a fleur-de-lis in the base and the initials “G|CH”;¹⁴⁶ and one that appears to be very similar or identical to that found in the Gordon manuscript. Different inks were used to write the text, but

141 Taylor MS, two unpaginated leaves at front of manuscript.

142 Dolezalek, *Scotland under Jus Commune*, vol. 3, p. 26.

143 Cf. Ford, *Law and Opinion*, p. 67 n. 294.

144 Taylor MS, p. 301. Here the copyist gave “1694” for the Act of Parliament that is cited at *Institutions*, 23.37/3.1.37 as having been passed in 1664. The date in the first two printed editions is erroneous. The posthumous editions gave the date as “1644”. However, this is unlikely, as the Acts of that Parliament were repealed by the Rescissory Act 1661. Rather, the citation should certainly be to the Arrestments Act 1661, which legislated on the issue that Stair was discussing in this place. That this Act was passed in 1661 means that this citation could have been added to the first version of Stair’s text, and so does not undermine the suggestion that the text was here drawn from the first version.

145 Dolezalek, *Scotland under Jus Commune*, vol. 3, p. 30.

146 This has not been found either in Heawood’s volume or in the *Gravell Watermarks Archive*, but the initials “G|CH” do appear on a jug with a slightly different design in a watermark used in a “*Book of Names of Publishers in Eng. & Wales*” in 1677 (Heawood, *Watermarks*, figure 3685).

Dolezalek's suggestion that it was made by only one scribe is plausible.¹⁴⁷ The text largely contains Stair's revisions and updates, but some of these at least are lacking from title 23.¹⁴⁸ The manuscript is incomplete, beginning at the last paragraph of *Institutions*, 1.14/1.1.15 and ending midway through *Institutions*, 26.24/3.4.24; the leaves at the front and back of the manuscript are badly damaged, and the rest of the text may have been lost when the manuscript was rebound in the eighteenth century. The chapter headings of titles 18 and 19 were omitted and have not been written into the space left for them. A folio was left blank before title 21. The signatures of a "David Wilker Esq" and "Geo: Martin" have been written into the margins, as has what appears to be another mark of ownership, somewhat obscured, with the date 1788.¹⁴⁹ Written on the replacement binding is a note that the volume was "said to be the stile Book of William Lindesay of Culsh", probably a writer in Edinburgh who resided in Aberdeen at the end of the century.¹⁵⁰ On the first extant folios are some jottings in an eighteenth-century hand, which appear to be unconnected to the text. Occasional amendments were made to the text; occasional pen trials are evident; and a later hand has occasionally rewritten text which had become faded.¹⁵¹

(4) Angus Archives

Montrose MS (M/1/13/1) The date of completion of this manuscript has not been recorded. However, the manuscript evidence supports the conclusion that it is a seventeenth-century copy. Five watermarks are found in this volume: one that seems to be identical to that seen in the Strachan manuscript alternates with a small watermark with the initials "IB" or "HB" in cartouche; one of columns that appears to be identical to that seen in the Gordon manuscript; one of a jug bearing the initials "I|B" that appears to be highly similar or identical to that found in the McGachen manuscript; and another of a similar jug bearing the initials "G|RO". The text of the *Institutions* appears to have been written by only one scribe. The first seven titles of this copy of the *Institutions* initially lacked the updated references and revisions. However, the copyist updated titles 4–6 to reflect these revisions by appendices and interlinear annotations, and title 7 was thus updated by interlinear

147 Dolezalek, *Scotland under Jus Commune*, vol. 3, p. 30.

148 The citations of *Wright v Sheil* (1665) and *Jack v Morwat* (1668) in *Institutions*, 23.18/3.1.18 are present (if somewhat corrupted), but those sample citations in *Institutions*, 23.19/3.1.19 are omitted.

149 Lindesay MS, pp. 27, 124, 19.

150 There appear to have been at least two generations of Aberdonian men with the name William Lindesay of Culsh in the late seventeenth century. The local valuation rolls include the entry "William Lindsay, Writer in Edinburgh, only son to William Lindsay of Culsh, had sasine on the lands of Towie and Culsh on 15th July, 1659. Barbara Guthrie, widow of William Lindsay of Culsh, and mother of William Lindsay, Writer" (*The Valuation of the County of Aberdeen for the Year 1667* (Third Spalding Club, 1933), p. 233). Probably the same William Lindesay was recorded in the tax rolls at the end of the century: "In 1696 William Lindsay of Culsh, Writer in Edinburgh, was there with his mother, Barbara Guthrie" (*The Jacobite Cess Roll for the County of Aberdeen in 1715: From the Ms. of John Forbes of Upper Boyndlie, Now in the Possession of J. C. M. Ogilvie-Forbes of Boyndlie* (1923), p. 174; see also *List of Pollable Persons within the Shire of Aberdeen, 1696*, vol. 2 (1844), p. 15).

151 For example, the marginal annotation on p. 60 of the Lindesay manuscript appears to have been added by the copyist to include material which had been accidentally omitted by him. On p. 61, a later annotator has amended the wording from "the de[?] could only be condemned" to "the defender would not be condemned"; the first and second printed editions give "the Defender could be only condemned" at *Institutions*, 6.12/1.6.12.

annotations only. The copyist has added to title 8 in the same ink as the other updates the word “first” to the phrase “as to the obligations betwixt negotiators” (which is given as the start of *Institutions*, 8.2/1.8.3); this might suggest that he was looking to update this title also. However, it seems that from at least title 9 onwards he was able to include these revisions in the text itself. There are four blank leaves before title 31, as well as blank pages before titles 2, 14–19, 21 and 23–26. A later hand has written “submisione” and two ornate letters as pen trials on the blank leaf before title 20. It seems probable that there was also once a blank leaf before title 13, but this has been torn out. It is possible that these blank pages were reserved for notes: almost three pages were left blank before title 5, one and a half of which were used for the appendix which updated that title to the second version. An index of the title and chapter headings, probably by the same copyist, is found generally loose at the front of the manuscript. It is now incomplete, but the title and chapter headings of title 31 are present. This suggests that the index was once probably largely complete (although the chapter headings of at least title 11 were omitted). There are no flyleaves at either the front or back of the manuscript. The manuscript appears to remain in its contemporary binding. A looseleaf insert, currently found at the back of the manuscript, has written on it on one side in a seventeenth-century hand a partially obscured phrase that might read “Rome in [?]”; on the other side is some arithmetic; a watermark of a jug with initials “G|CH” is present on this paper but nowhere else in this volume. This manuscript has no marks of provenance, but is now held among the archival materials of the royal burgh of Montrose. This manuscript was recently identified by Dr Andrew Simpson, so has not previously been examined by the secondary literature.¹⁵²

(5) Edinburgh University Library

Home Drummond MS (Dc.1.10) The date of completion of this manuscript has not been recorded. However, the handwriting and watermark evidence support the dating of this copy to the seventeenth century. Several leaves at the front of the volume bear a watermark of a leaning foolscap and another watermark with the monogram “RONDEL”. The watermark of the foolscap appears to be close or identical to watermarks found in four manuscripts dating from the 1660s and 1680s.¹⁵³ A watermark of an upright foolscap is found near the middle of the volume; this seems to be at least comparable to the watermarks found in the Primrose, Jedburgh and Taylor manuscripts. A fourth watermark is found on somewhat thicker paper towards the back of the volume; this is very faint but appears to be an image within a decorative wheel. The text of the *Institutions* reflects the later revisions made by Stair.¹⁵⁴ This copy was written in several inks, but a comparison of some allographic lettering suggests that the same scribe may have written all or much of the manuscript.¹⁵⁵ The text has been foliated (imperfectly) by a contemporary hand; many of the first ten folios have the folio number written twice. The text has had more than one annotator,

152 My thanks to Dr Simpson for introducing me to this manuscript.

153 Daniel W Mosser and Ernest W Sullivan II (eds), *The Thomas L Gravell Watermark Archive*, available at www.gravell.org, accessed 17 June 2014, FCP.001.1 (1663), FCP.018.1 (c 1683), FCP.025.1 (1683), FCP.024.1 (1683).

154 Cf. Ford, *Law and Opinion*, p. 67 n. 294.

155 Cf. Dolezalek, *Scotland under Jus Commune*, vol. 3, p. 186.

at least one of whom updated some sections of the titles on obligations according to the first printed edition. The date 1785 and “*Semper Verrus*” have been written beside the list of chapter headings of title 11;¹⁵⁶ the same hand also wrote “Geo: Home” on a later folio.¹⁵⁷ George Home, or Home Drummond (b. 1743), was the only son of Henry Home, Lord Kames; “*Semper Verus*” was the motto of the family.¹⁵⁸ The numbers 1743 and 1744 as well as some pen trials appear on the recto of the only original front flyleaf; a list of titles and folio numbers has been written on the verso of that leaf. Four folios remain blank at the back of the volume. The manuscript has been rebound and is identified on the spine as “*Institutio Juris MSS*”; a recent note in pencil on the flyleaf identifies the manuscript as a copy of Stair’s *Institutions* “according to the [?] impression”. The description of this manuscript in Dolezalek’s census is not correct, and includes details (specifically those relating to the name given on the spine and the appearance of signatures) which are applicable rather to the Carnegy manuscript.¹⁵⁹

Carnegy MS (Dc.4.24) This manuscript does not record its date of completion. However, the handwriting and watermark evidence support the dating of the manuscript to the seventeenth century. Five watermarks have been found in the manuscript. One found towards the back of the volume is similar to that in the Innominate Advocates’ manuscript but is smaller and bears the initials “IM” (or “MI”); another found towards the front of the volume is similar to this again but bears the initials “CB” and has somewhat malformed columns. Three watermarks found in the manuscript feature one-handed jugs: one found in the middle of the volume appears to be very similar to that of the William Hay manuscript but for the initials “I|R” being present on the body of the jug and the fleur-de-lis in its base being more sophisticated; another also found towards the middle of the volume is similar but bears the initials “C|DA”; and at the start of the volume is again a similar watermark but with the initials “P|IH”. A contemporary note on the recto of the second new flyleaf notes that the manuscript purports to be a copy of Stair’s *Institutions* “but it differs materially from the printed editions”. The text of the *Institutions* appears to include only some of the revisions and updates.¹⁶⁰ It was written in multiple inks but by one scribe.¹⁶¹ Above the second title is the heading “pars prima: Off the Nature of the Severall Kynds of Rights” and a short description of rights.¹⁶² The copyist wrote similar, brief introductions to the subsequent titles up to and including title 13 as well as for titles 24–26. The chapter headings were omitted for titles 14 and 21–31; the title headings were also omitted for titles 14, 27, 28 and 31. A page was left blank before titles 27, 29, 30 and 31. The blank page before title 30 was used by

156 Home Drummond MS, fo. 76r. This folio number is actually used twice; this reference is to the first use of this number.

157 Home Drummond MS, fo. 137r.

158 T Robson, *The British Herald, or Cabinet of armorial bearings of the nobility and gentry of Great Britain and Ireland*, vol. 2 (1850), “Home [Kames]”. George Home (or Home Drummond) was described by James Boswell as “a good honest fellow and applies well to his business as a merchant” (F A Pottle, ed, *Boswell’s London Journal, 1762–1763* (2nd edn, 2004), 2 January 1763, p. 116).

159 Dolezalek, *Scotland under Jus Commune*, vol. 3, pp. 185–6.

160 Cf. Ford, *Law and Opinion*, p. 67 n. 294.

161 Dolezalek, *Scotland under Jus Commune*, vol. 3, p. 190.

162 Carnegy MS, p. 31.

a later hand to write a note about events in 1730 relating to the local laird and lady.¹⁶³ The same hand has written into the space on the facing page, originally reserved for the title and chapter headings of title 30, a note that “This Book belongs to James Bower of Easter Methiee” as well as several dates in the 1730s. A different hand also wrote here a note which may have been a record of the gift of the manuscript from the previous owner “To James Bower Bower”.¹⁶⁴ Above the heading of the first title¹⁶⁵ are the signature of “Decon [Su?]mers the father in [?]orfyn”¹⁶⁶ and a note that the manuscript was “Ex libris Carnegy”.¹⁶⁷ Later hands have also added annotations, corrections and occasional cross-references within the material. One gives “Incorrect” in the margin alongside *Institutions*, 30.17/3.8.17. The text here roughly adheres to that of the first printed edition, so this is presumably a comment not on the accuracy of the copy but on Stair’s reading of the law. This manuscript was rebound in or before the early nineteenth century; the new binding has the spinal imprint “Stair’s Institutions M.S.S.” and the signature of “George[?] Jos. Bell 1815” on the verso of the second new flyleaf. The first paginated leaf of the manuscript has been lost, presumably when it was rebound.

Loudoun MS (Gen 1427) This manuscript’s date of completion has not been recorded, but it does appear to be a seventeenth-century copy. The watermark of a foolscap present on several leaves under the text is similar to that of the Primrose, Jedburgh, Taylor and other manuscripts. Other watermarks bearing the initials “MPB” and “RONDEL” and a foolscap in a leaning posture are found on the fifty blank leaves at the back of the manuscript; the latter two watermarks are identical or nearly identical to those found in the Home Drummond manuscript. Stair’s *Form of Process* was copied into the first thirty-three paginated pages of the manuscript. The word “*finis*” under the *Form of Process* has been partially cut through when the manuscript was bound; any date of completion that may have been provided underneath has been lost. There are then seven pages which remain blank. The copy of the *Institutions* follows thereafter, with a new series of pagination. Idiosyncrasies in the hand might indicate that one scribe copied the text of the *Institutions*; the slight changes in the hand might be explained by changes in the pen or pace. It seems probable that the *Form of Process* was, however, written by a different scribe. The text of the *Institutions* reflects Stair’s later revisions and updates. Folios were left blank before titles 2, 13, 19 and 23. Space was left above the title headings of titles 4–7, 9, 10, 14–18, 21, 22, 24, 27 and 28; this space may have been reserved for notes to be added later. The copy was richly annotated by multiple hands, which both added supplementary information and added chapter headings to the text. On the inside of the front cover is pasted the bookplate of John Campbell, fourth earl

163 Carnegy MS, p. 696.

164 Carnegy MS, p. 697.

165 Carnegy MS, p. 3.

166 This was tentatively interpreted by Dolezalek as “Postorfyn” (Dolezalek, *Scotland under Jus Commune*, vol. 3 p. 185). It does not appear to be “Corstorphine”: it seems that deacons were not appointed in that parish after 1662, when the incumbent minister was removed (Ministers of the Respective Parishes, *The New Statistical Account of Scotland*, vol. 1 (1845), pp. 205–46, especially pp. 235, 239; Hew Scott, *Fasti Ecclesiae Scoticae: The Succession of Ministers in the Church of Scotland from the Reformation*, vol. 1: *Synod of Lothian and Tweeddale* (new edn, 1915), pp. 5–9).

167 Cf. Dolezalek, *Scotland under Jus Commune*, vol. 3, pp. 185–6, 190.

of Loudoun, “a conscientious, but conspicuously unlucky, professional soldier”.¹⁶⁸ The manuscript appears to be in a contemporary cover, on the spine of which is the imprint “System of Law MS”.

Pringle MS (La.III.416) Although the date of completion of this manuscript has not been recorded, it must have been before 14 March 1687, when Robert Pringle signed his name on the third flyleaf at the front of the manuscript. A watermark at the front of the manuscript of a flower and the monogram “M LOYSEL” appears to be identical to that found in an English newsletter dated 1682.¹⁶⁹ A different watermark, found towards the back of the manuscript, is similar to that of the Innominate Advocates’ manuscript, but bears the initials “MDC”; this appears to be the same as (or highly similar to) a watermark found in an English manuscript dating from 1632.¹⁷⁰ The text of the *Institutions* lacks Stair’s later revisions and updates,¹⁷¹ and appears to have been written by one scribe. The title and chapter headings were omitted from titles 14, 23 and 27; space has been left for those of the latter two titles. The chapter headings only were omitted from titles 15–18 and 24–31; space was left only for those of titles 14, 17, 18, 24–26 and 28–30. Two contemporary series of pagination were used for the text of the *Institutions*: one for titles 1–22, and a second for titles 23–31. There are occasional annotations by at least two hands; often these annotations appear to correct the text. Various phrases written on the recto of the first flyleaf have been obscured, although still legible is “*et quo non justice alter*”; a modern hand has here added an annotation identifying the manuscript as “Stair’s Institutes”. The second flyleaf has been cut out.¹⁷² On the recto of the third original front flyleaf is an “Index of the Severall Titles contained in this booke” by a later hand. A dozen folios were left blank at the back of the manuscript, the first nine pages of which were margined and the first four of which were paginated. A short note about the disposing of servitudes of common pasturage has been written at the top of one of the unfoliated leaves towards the back of the manuscript. The manuscript remains in what appears to be its contemporary binding. Currently found between pages 322 and 323 of the first set of pagination is a small scrap of paper, apparently torn from a page of untidy script, which has written on one side “Copie for John Matherstoun”.

Brown MS (La.III.417) This manuscript was copied by one scribe. A note written after the end of the text records that he began copying on 20 January 1677 and completed the task on 20 November 1677. This date is consistent with the watermark evidence. On several leaves towards the front of the volume is a watermark bearing a horn in a shield, which is at least similar to that found in the Marchmont manuscript and quite close to those found in some English papers dating from the

168 S Brumwell, “Campbell, John, fourth earl of Loudoun (1705–1782)”, *Oxford Dictionary of National Biography*, online edition, January 2008, available at <http://www.oxforddnb.com/view/article/4516>, accessed 7 November 2013.

169 *Gravell Watermark Archive*, FLR.035.1.

170 *Gravell Watermark Archive*, COL.058.1.

171 See also Ford, *Law and Opinion*, p. 67 n. 292.

172 The practice of later owners of manuscripts cutting out folios can also be seen elsewhere, such as in the seventeenth-century miscellany manuscript associated with Robert Edward. On which, see Priscilla Bawcutt, “Scottish Manuscript Miscellanies from the Fifteenth to the Seventeenth Century” in Peter Beal and A S G Edwards (eds), *Scribes and Transmission in English Manuscripts 1400–1700* (English Manuscript Studies 1100–1700 12, 2005) 46, p. 49.

later seventeenth century.¹⁷³ The watermark of an upright foolscap, similar to that found in the Primrose and other manuscripts, is found on several leaves in the middle and at the back of the manuscript. A third watermark, bearing the initials “CM” or “GM”, is also found at the back of the manuscript. The text of the *Institutions* lacks the later revisions and updates,¹⁷⁴ and is identified by an ornate heading as “Systema Juris”. At the front of the manuscript is a list of “The Paragraphs of the ensuing Titles”, which was apparently written by the same scribe, probably because he did not provide the chapter headings within the text itself. At the top of each page is a header box with the page number, title number and name, and a note of the contents of the page for easy reference. The heading of title 28 has been Latinised as “*Gestio pro Haerede*”. The text does not appear to have been annotated, but in places the scribe has written into the margin words or citations which he omitted accidentally or copied inaccurately.¹⁷⁵ What would have been the first, third and fourth folio leaves have been torn out of the manuscript. A modern hand has identified the volume as a copy of “Stair’s *Institutions* written 1677” on the remaining front flyleaf. Seven blank folios remain at the back of the manuscript; some mathematical sums have been written on the (otherwise blank) page following the end of the text. Markings which appear to have been made by a child practising his signature are found at the bottom of the last page of the text.¹⁷⁶ The signature of an Alexander Neilson Josiah Brown and the date 17 May 1749 are written on the recto of the penultimate leaf of the manuscript, and the signature of an Alexander Home is written above the heading of the first title. The manuscript apparently remains in its contemporary binding, on the spine of which is the description “Institute of Law MM”.

Laing MS (La.III.418) On the recto of the second flyleaf of this manuscript is an elaborate title page which reads: “The laws and customes of Scotland, in matters civil. Wherin is to be seen, Hou the Civill-law, and the laws and customes of other nationes, doe agree with, and supply ours. By sir James Dalrymple of Staires Lord President of the Sessione. Edinburgh written anno Dominj 1680.” This date is consistent with the watermark evidence. A watermark bearing the initials “IOR” is found throughout the volume. A watermark of the arms of Amsterdam is also found throughout much of the volume. Towards the back of the volume is a third watermark, which is also of the arms of Amsterdam but with the initials “DCH” and very thin lions with somewhat malformed faces. The title page appears to have been written by the same hand as the “Alphabetical Table Of The contents of this Booke”, which was copied on thirteen folios at the back of the manuscript. The copyist of the title page and the table appears to have added these to the manuscript after what may have been a different scribe copied the text of the *Institutions* itself. The text of the *Institutions* reflects the later revisions and updates.¹⁷⁷ The copyist of the text appears to have used two inks and/or pens, one of which was used specifically to pick out chapter headings and certain words at the start of chapters to indicate their contents. This copy is almost free from later annotation, although the initials

173 *Gravell Watermark Archive*, SLD.045.1 (c 1649–1717), SLD.074.1 (c 1660).

174 See also Ford, *Law and Opinion*, p. 67 n. 292.

175 Brown MS, e.g. pp. 140, 201, 222, 264.

176 Brown MS, p. 276.

177 See also Ford, *Law and Opinion*, p. 67 n. 294.

“J D” are written on pages 172 and 173, and what appears to be the initials “R M” are written on page 171. The manuscript was paginated by a contemporary hand. It was rebound, probably in the eighteenth century.

(6) Glasgow University Library

Pitcairn MS (MS Gen 1495) The date of completion of this manuscript has not been recorded. However, the watermark of a foolscap in the upright position appears on several leaves throughout the volume; this is broadly similar to that seen in the Primrose and other manuscripts, if larger and less decorative. Ford has shown that the text of the *Institutions* initially lacked the revisions and updates.¹⁷⁸ The manuscript's entry in the library's electronic catalogue indicates that “The latest date encountered in the body of the text is 1659”, but this is not correct: there are references to later dates, such as the reference to the Arrestments Act 1661 in the title “Assignations”.¹⁷⁹ Dolezalek has concluded that the copy was “Written by only one scribe”.¹⁸⁰ Two flyleaves have been left blank at the front of the manuscript, and almost thirty leaves remain blank at the back. The manuscript was foliated by a contemporary hand, probably the copyist. The chapter headings of titles 19–22 seem to have been omitted by the copyist and written in by a later hand; the space left for those of titles 17 and 18 remains unused; the chapter headings for title 16 were omitted without any space being left for them. The title number, title heading and first twelve chapter headings of title 23 were also omitted by the copyist and were written by a later hand into the space left for them.¹⁸¹ The text up to and including title 11 was updated according to Stair's revisions by marginal, interlinear and looseleaf annotations;¹⁸² it is not clear why only the titles on obligations were updated in this manner. These updates are by at least three different hands, which suggests that this was probably not a sustained effort to update the manuscript but was done *ad hoc*; it seems unlikely that this would have resulted in comprehensive updating of these titles, but this has not been checked. Partial watermarks visible on two of the looseleaf inserts suggest that this updating was carried out at some point between the late 1660s and 1680s. In the top left corner of one of the looseleaf inserts, which has updates for “foll 12 titel 4” and “foll 13 Titt 4”, there is the uppermost right-hand corner of a watermark of a fleur-de-lis above a quatrefoil above five skittles; this appears to be the one-handled jug design that is found, with some variation, in many of the manuscripts. The bottom part of (possibly the same) jug, bearing the initials “N|LM” or “N|IM” with a fleur-de-lis on the base, was used for the insert for “Tit 5 fol:15”.¹⁸³ The name Patrick Pitcairn is written three times on the inside of the front cover of the manuscript, as well as more than a dozen times on the recto of the first flyleaf; the signature of a “Euan

178 Ford, *Law and Opinion*, pp. 68–70.

179 Pitcairn MS, fo. 131v; *Institutions*, 23.26/3.1.27. See also Pitcairn MS, fo. 127r.

180 Dolezalek, *Scotland under Jus Commune*, vol. 3, p. 315.

181 Pitcairn MS, fo. 128r.

182 Cf. Ford, *Law and Opinion*, pp. 69–70, where it is suggested that title 12 was similarly updated. The looseleaf insert that would have had the two sample citations from title 1 is indicated beside the text but seems to have been lost. The other sample citations are written in the margin.

183 If the two inserts were cut from the same piece of paper, then the watermark would appear to be identical or nearly identical to one found in a volume from 1659 (*Gravell Watermark Archive*, POT.408.1).

Cameron” appears at the top of the first page of “Common Principles”.¹⁸⁴ Upside down on the inside of the front cover, a contemporary hand has written “Craig de feudis compendised”; Craig’s *Jus feudale* is not bound in this volume. The manuscript seems to remain in its contemporary binding.

(7) Mitchell Library

Constable MS (SR 175/124141) This manuscript’s date of completion has not been recorded. The first folio leaf, which was left blank, has become detached. This bears the watermark of a one-handled jug with the initials “C|BA”. This watermark is also apparent under the text of the copy of Stair’s *Form of Process* that is written on the first twenty (unfoliated) folios,¹⁸⁵ and under the set of practicks relating to the admiralty court that follows on the next six folios. The copy of the *Institutions* is written on at least three different types of paper: one with a watermark that appears to be identical to that of the Strachan manuscript; one with a watermark that appears to be very close to this but bearing the initials “ARC” in the cartouche; and one with a watermark of a bugle within a shield that seems to be broadly similar to (if smaller than) that seen in the Marchmont manuscript. The text of the *Institutions* appears generally to reflect the revisions made by Stair, but lacks them in at least title 12.¹⁸⁶ The text is incomplete, ending at *Institutions*, 28.2/3.6.2 at “when the intrometter was not apparent heir himself”. The copy was written by several hands and inks; a modern label on the inside front cover wrongly identifies the handwriting as “a Scotch hand of the time of Charles I”. The first ninety-nine folios of the copy of the *Institutions* have been foliated by a contemporary hand. The title and chapter headings were omitted from titles 27 and 28, but a space was left for them to be copied in later. The chapter headings only were omitted in the same manner for titles 9, 18 and 26. The title heading for title 15 was written after the end of the text of title 14 on paper with the watermark of the bugle horn, after which two folios of the same paper were left blank. A different scribe then rewrote the title heading and continued with the chapter headings and text on paper bearing the watermark of the columns and cartouche with the initials “CAB”. The name “David Constable” has been written in the margin beside the start of the text of the *Form of Process*; the modern label on the inside front cover identifies him as “the friend of Walter Scott”. The bookplate of a Sir William Nicolson, Bart. is found on the inside of the front cover. Several leaves have been torn or partially torn from the back of the volume.

(8) National Records of Scotland

Dalhousie MS (GD45/26/62) A note at the end of the text records that this manuscript was completed on 12 August 1675;¹⁸⁷ a note on the recto of the first front flyleaf records that it was thereafter purchased on 2 September 1675. The dating of this copy to 1675 is supported by the watermark evidence. A watermark apparent on the first flyleaf appears to be very close to the one-handled jug with the initials “I|R” found in the Carnegie manuscript, but with the initials “I|GB”. A

184 Pitcairn MS, fo. 1r.

185 Dolezalek, *Scotland under Jus Commune*, vol. 3, pp. 285–6.

186 Cf. Ford, *Law and Opinion*, p. 67 n. 294.

187 Dalhousie MS, p. 389.

second watermark, a crowned shield bearing a fleur-de-lis, is also apparent towards the front of the manuscript; this is very faint but might be similar to that of the Swinton manuscript, although without the initials. A third watermark, a horn in a crowned shield, is found towards the middle and at the back of the manuscript; this is akin to that of the Brown manuscript, but is somewhat more tightly drawn. A fourth watermark is possibly identical to that found in the Strachan manuscript. The text appears to have been written by one scribe. There is a lacuna from part-way through chapter 65 of title 10 to the beginning of title 11;¹⁸⁸ on the basis of the brief examination conducted for this research, it would seem that the text before this point reflects Stair's later revisions, and after this point it lacks them.¹⁸⁹ A space was left above the heading of the first title, possibly for an ornate heading.¹⁹⁰ No chapter headings were provided for titles 1–6, and no space was left for them to be copied in later. Thereafter it seems that the copyist changed his practice, instead leaving space to write these in later: he underestimated the space required to copy the chapter headings of title 14, but overestimated the space required for those of titles 17, 24 and 26. Three leaves remain blank at the front of the manuscript; twenty-seven pages have been left blank at the back of the manuscript. There are no signatures or bookplates in the manuscript, but the Archives' catalogue attributes its provenance to the "Maule Family, Earls of Dalhousie".¹⁹¹

Tarbat MS (GD135/171)¹⁹² A note at the end of the manuscript records its date of completion as 7 October 1673. It is plausible that the text was written by one scribe. The opening titles reflect Stair's later updates, but the text lacks them by title 4.¹⁹³ Two and a half folios have been left blank after title 22. The chapter headings were omitted in the manuscript's text for titles 14–17, 19, 24–26 and 29–31. The title headings as well as the chapter headings were omitted for titles 23, 27 and 28. At the beginning of the manuscript is an "Index of the Titles of the whole book, with the summatives subjoined". The chapter headings provided in this index do not correspond with those provided in the text of this manuscript copy. Rather, this index was copied from the first printed edition, which divided the text differently and gave different descriptions to the chapter headings.¹⁹⁴ Drawing this list from the printed edition may have been necessary because of many of the chapter headings being omitted in the text. A later hand has written the title numbers and names at the top of the pages, and has corrected some of the mistakes in the title headings. Possibly the same annotator has extensively updated a large part of title 30 according to the first printed edition; this may also have been the same hand that wrote the index at the front of the manuscript. The manuscript is otherwise generally free from annotation. This

188 Dalhousie MS, pp. 117–24.

189 Cf. Ford, *Law and Opinion*, p. 67 n. 294.

190 Dolezalek, *Scotland under Jus Commune*, vol. 3, p. 71.

191 See also Dolezalek, *Scotland under Jus Commune*, vol. 3, p. 71. The Ramsays were the earls of Dalhousie in the seventeenth century but were related to the Maules of Panmure. On these families, see Pine (ed.), *Burke's Peerage, Baronetage & Knightage*, pp. 605–7.

192 This manuscript, as well as the collection GD135 generally, is now temporarily closed to the public. As such, this entry and the reading of the text of this manuscript are based on an initial examination of the manuscript and have not been checked.

193 Cf. Ford, *Law and Opinion*, p. 67 n. 292.

194 This is particularly clear in relation to the index's reference to the three passages on the law of prize that Stair added for the 1681 edition. These passages do not appear in this manuscript.

manuscript was rebound, probably in the nineteenth century. The opening leaves were not retained, but a section of the original flyleaf was pasted onto the new flyleaf. This retained section bears the signatures of “Donum Johannis M[ag?]istri de Tarbat” and “Murdocho [Mac?]kenzie de Ard-ross” as well as the date 22 February 1692; the signature “Jo: Tarbatt” also appears above the first title. Below the place where the section of original flyleaf was pasted into the manuscript is a note indicating that the volume was acquired by “Praehonorabili Johanni Comite de Stair, Vicecomiti de Oxenfoord, ex ordine cardui” as well as the date 1885. This description relates to Sir John Hamilton Dalrymple, tenth earl of Stair (1819–1903).¹⁹⁵ The manuscript also contains a bookplate bearing the heraldic shield of the Earls of Stair.

Fragment MS (RH13/58) This is not a bound manuscript but rather two folio bundles each comprising six folio leaves. The first bundle ends with the phrase “Parents to be obeyed and honoured, Children to be” at *Institutions*, 1.17/1.1.18; the second commences thereafter and ends in the middle of the word “agnoscendis” in the citation of Nicholson’s practicks in *Institutions*, 4.11/-. The first bundle includes the updated citations; the second does not include such citations, but this is to be expected given its content. The date of completion has not been recorded for either bundle. However, they both appear to have been copied by the same seventeenth-century hand. A watermark of a foolscap in an upright position is apparent on leaves within both bundles; this is too faint to identify with certainty, but it seems to be at least broadly similar to those seen in the Primrose and other manuscripts discussed above. The edges of both bundles have become damaged, and the outer folios and paper edges of both have become worn.

(9) Signet Library

Smyth MS (MS 16) This manuscript was completed in or before 1674, according to two inscriptions bearing that date found after the manuscript’s index.¹⁹⁶ This date is consistent with the watermark evidence: a watermark apparent on several leaves around the middle of the manuscript appears to be identical to that of the Strachan manuscript; a different watermark found in the first leaves at the front of the manuscript seems to be identical to that seen in the Carnegy manuscript bearing the initials “I|R”; a third watermark found at the front of the manuscript is not identifiable with certainty. The text of the *Institutions* appears to reflect Stair’s revisions and updates.¹⁹⁷ It was copied principally by one scribe, but a second hand has copied some sections; this second hand is highly reminiscent of that of the scribe who wrote the Dalhousie manuscript.¹⁹⁸ A page has been left blank after titles 23, 27, 29 and 30; space was left blank at the top of the relevant page above the title and chapter headings of titles 4, 5, 7, 14–22, 25–27 and 29. It is possible that these spaces and the blank pages were reserved for notes. Folios 111–14 were bound into the manuscript between folios 82 and 83 after they were paginated; annotations at the bottom of folios 82v, 110v and 114v instruct the reader where to find the next

195 Sir James Balfour Paul (ed.), *The Scots Peerage, founded on Wood’s edition of Sir Robert Douglas’s Peerage of Scotland*, vol. 8 (1911), p. 161; Pine (ed.), *Burke’s Peerage, Baronetage & Knightage*, p. 2120.

196 Smyth MS, fo. 241v (unfoliated).

197 See also Ford, *Law and Opinion*, p. 67 n. 294.

198 Smyth MS, fos 27v–28r, 30v–31r, 42r–43r, 43v–44v, 54r–v.

part of the text. The manuscript has been subject to occasional annotation, including some attempts to correct omissions made by the copyist. Three pages have been left blank after the text of the *Institutions*; after these is an index of titles.¹⁹⁹ The index appears to have been written in a different ink (and possibly a different hand) from the text. Below the index, in the same hand and ink, is an inscription recording the completion of the copy in 1674. Below this is the signature “Georgius Smyth 1674”, which might be written in the same hand and ink as the text; it is possible that George Smyth was the scribe as well as the first owner of the manuscript. The signature of George Smyth also appears, first, on the recto of the first flyleaf (once with the date 1675 and twice with the phrase “*hic liber ad me pertinet*”) and, secondly, on the recto of the back flyleaf, where he is identified several times in at least four inks as the owner or “legittimus possessor” of the volume.²⁰⁰ The inscriptions at the back of the manuscript have largely been obscured by a later hand, possibly that of the John Skene whose signature also appears on that page as “Johannis Skeni”. His signature appears several times on the flyleaves, once (on the recto of the first flyleaf) recording that he was a writer in Edinburgh,²⁰¹ and once (on the recto of the second front flyleaf) recording that the volume was given to him by “Mr Roberti Smetti, Leonis Curia Clerici” in 1698. Several leaves have been cut or torn out of the back of the manuscript. The manuscript was misidentified as Stair’s *Decisions* by a contemporary hand, which wrote out the full title of that work on the second flyleaf; this appears to be the same hand as that which wrote at least the headings at the top of the pages. The imprint on the spine and a recent hand, which has written on the volume in pencil, have followed this error. The manuscript remains in its contemporary binding.

Anderson MS (MS 32) The date of completion of this manuscript has not been recorded. However, on several leaves throughout the volume is a watermark bearing the arms of Amsterdam, which is similar if not perhaps quite identical to that of the Colquhoun manuscript. This watermark and the handwriting suggest that this is a seventeenth-century copy. The text of the *Institutions* includes Stair’s revisions and updates,²⁰² and was copied by one scribe.²⁰³ A page has been left blank before titles 23 and 31. These blank pages were possibly reserved for notes, as perhaps were the spaces left above the title headings of titles 4–7, 9–11, 14, 16, 17, 20, 22–26 and 28. The chapter headings have been written alongside the text in the margin from title 13 to part-way through title 21. A later hand has occasionally annotated the text, in some places adding material that was omitted by the copyist. A list of chapter headings up to and including those of title 10, but with the title heading of title 11 also, has been copied at the back of the manuscript by a different hand. The signature of a David Anderson appears above the heading of the first title. The copy has been rebound in the eighteenth or nineteenth century, and is identified on the spine as “Stair’s Institutions M.S.”.

199 Smyth MS, fos 239v–240v, 241r–v respectively.

200 Some arithmetic is also apparent on this page, apparently in the same ink as one of George Smyth’s inscriptions of ownership.

201 Another signature, on the recto of the second front flyleaf, gives “Joannes Skeen scripsit”. It is likely that this again refers to his profession as a writer.

202 See also Ford, *Law and Opinion*, p. 67 n. 294.

203 See also Dolezalek, *Scotland under Jus Commune*, vol. 3, pp. 148–9.

Burnside MS (MS 33) This manuscript appears to have been copied by 1668 or 1669. The recto of the first original leaf bears the signatures “Burnside, Laird of Whitelaw” and “J. Burnside”²⁰⁴ as well as the inscription “The Laird of [obscured] his Booke, feb ii 1668”; this date was corrected to 1669. The laird also inscribed his ownership with the dates 1668 and 1669 at the back of the volume.²⁰⁵ These dates are in keeping with the watermark of a foolscap apparent on several leaves throughout the volume; this watermark is at least similar to those in the Primrose and Jedburgh manuscripts. The text of the *Institutions* appears to reflect Stair’s revisions in the opening titles, but lacks them by title 4.²⁰⁶ The copy may have been made by one scribe, who has produced a particularly neat and ornate (and so probably expensive) copy. The chapter headings have been omitted from title 15. The manuscript was paginated by a contemporary hand; errors in the pagination mean that the recto is evenly numbered from p. 392 and the numbers 393–6 are omitted. Three leaves have been torn out of the manuscript: pages 197–8, which would have borne the end of title 13 and the heading and first fifteen chapter headings of title 14; pages 450–1, which would have borne the end of the text of title 28 and the heading of title 29; and pages 514–15, which followed after the end of the text. The volume has been annotated with chapter headings, citations, cross-references and corrections. On the verso of the first original leaf is a list of titles. The manuscript was rebound in the eighteenth or nineteenth century; the spine identifies the volume as “Stair’s Institute MSS”.

CIRCULATION OF MANUSCRIPT TEXTS AND SCRIBAL PRACTICE

Before it is possible to appreciate the manuscript tradition of Stair’s *Institutions*, or indeed any manuscript text, it is first necessary to understand the process by which manuscripts were circulated and copied in the relevant period. This process dictated the nature of the manuscript copies that were made, and so is critical to understanding manuscript evidence as a source, both in and of itself and for desuming the original text as written by the author.

Stair’s original manuscript (the “authorial holograph”²⁰⁷) was transcribed into certain first-generation copies. It is likely that these first-generation copies were

204 Walter Burnside received the lands of Whitelaw through marriage to the heiress Jean Whitelaw, who may have been the great-niece of Sir John Nisbet, Lord Dirleton. It is clear that Walter Burnside held the lands of Whitelaw by 1694, in which year he is recorded as such in a case report in Fountainhall’s practicks (M P Brown, *Supplement to the Dictionary of the Decisions of the Court of Session*, vol. 4 (1826), p. 363). He was apparently still alive in at least 1704, as he is discussed in the present tense in the *System of Heraldry* which was started in that year (A Nisbet, *A System of Heraldry Speculative and Practical: with the true art of blazon, according to the most approved heralds in Europe* (1722), p. 326).

205 Burnside MS, pp. 513, 517 (unpaginated) respectively.

206 Cf. Dolezalek, *Scotland under Jus Commune*, vol. 3, p. 149; Ford, *Law and Opinion*, p. 67 n. 294.

207 Woudhuysen has suggested that, in England, there was a widespread practice of authors employing a scribe to have his “foul papers turned into a scribal fair copy: [the authors] would then revise from that fair copy” (H R Woudhuysen, *Sir Philip Sidney and the Circulation of Manuscripts, 1558–1640* (1996), p. 103). It is possible Stair had a similar practice, but there is no evidence of this either way.

written either under Stair's supervision or by Stair himself.²⁰⁸ It is also probable that they were owned by Stair's immediate circle, including his patrons and those he wished to become his patrons, whether presented as gifts or copied at the request and expense of the owner.²⁰⁹ Indeed, there is evidence that Stair had a copy made for Lauderdale in 1664.²¹⁰ However, "the communication of a new work to [an author's] own immediate scribal community could lead to hundreds of additional copies being made".²¹¹ It is not clear whether Stair intended to control or supervise dissemination of his text further,²¹² but his ability to do so would have been reduced or lost entirely as the text proceeded through what Pollard called "a second stage of uncontrolled private copying, then a third stage of copying for sale".²¹³ The extant manuscript copies of the *Institutions* appear to be products of these second and third stages. Identifying the nature of the method of the dissemination of the text, and the process by which parent texts were circulated among copyists, is thus critical to understanding the work's manuscript tradition.

(1) Circulation of texts for copying

There are two methods by which manuscript texts circulated for copying in this historical period. Beal concluded from an examination of the manuscripts of the "Feathery scribe" that he and his team of scribes "would appear customarily to preserve the exemplars intact, each scribe working on one at a time".²¹⁴ It is probable that some of the copies of the *Institutions* were likewise transcribed from complete, bound manuscripts, some of which would have been in the possession of lawyers. This is not surprising. Lending of privately owned manuscripts for the purpose of copying was part of the contemporary culture. Love has noted that "individuals who assembled large numbers of scribally [*sic*] published documents were also likely to be active transmitters of texts".²¹⁵ Thus, the Kames manuscript, for example, appears to have been used as a parent text after it had been acquired by a lawyer who annotated its text. Although it is not certain, it is highly probable that it was bound before being acquired by that lawyer. His annotations were received into the text of the descendant copies.²¹⁶ The owner's reluctance to be repeatedly deprived of a volume

208 Graham Pollard, "The pecia system in the medieval universities" in M B Parkes and A G Watson (eds), *Medieval Scribes, Manuscripts and Libraries: Essays presented to N R Ker* (1978) 145–61, p. 105; Woudhuysen, *Sir Philip Sidney and the Circulation of Manuscripts*, pp. 96–7; Harold Love, *The Culture and Commerce of Texts: Scribal Publication in Seventeenth-Century England* (1993 rept 1998), pp. 47–54.

209 On presentation manuscripts for patrons, see Woudhuysen, *Sir Philip Sidney and the Circulation of Manuscripts*, pp. 90–1.

210 Ford, *Law and Opinion*, pp. 86 n. 388, 455.

211 Pollard, "The pecia system in the medieval universities", p. 106.

212 Not all authors attempted to control dissemination. Marotti observed, in the context his discussion of the circulation of the poetry of John Donne, that authors who allowed their texts to circulate in manuscript "had to have known they would have their own independent histories" (Arthur F Marotti, *Manuscript, Print, and the English Renaissance Lyric* (1995), p. 159). On what he calls "the social textuality" of manuscripts, see *ibid*, ch 3.

213 Pollard, "The pecia system in the medieval universities", p. 105.

214 Peter Beal, *In Praise of Scribes: Manuscripts and their Makers in Seventeenth-Century England* (1998), p. 79.

215 Love, *The Culture and Commerce of Texts*, pp. 79–80.

216 See below, pp. 53–4.

that was useful to him could explain why only one manuscript appears to have been copied directly from the Kames manuscript.

Other manuscripts appear to have been copied using the method predominant in the medieval period. Neatly written copies of treatises called “exemplars” were produced, then divided into small bundles comprising only a few folio leaves; these folio bundles circulated separately. This allowed an exemplar of a text to be copied by several scribes at the same time, each working on a different section of the text.²¹⁷ Unfortunately, there is not yet a term for these bundles accepted among the scholars of the early modern period.²¹⁸ The term used for these units by medievalists, “pecia”, is somewhat controversial. The first comprehensive study of peciae was by Destrez, whose research examined the circulation of parent manuscripts in the context of medieval university communities.²¹⁹ His findings were developed (also in the context of medieval universities) by Pollard.²²⁰ These and subsequent scholars have suggested that the use of pecia bundles in “the higher faculties, Civil and Canon Law and Theology”²²¹ was a practice that appears to have been supervised and regulated by or on behalf of certain universities from the thirteenth century until the later medieval period.²²² Medieval universities thus “achieved some measure of control over the production and sale of academic texts”.²²³ This supervised circulation of sections of manuscripts for copying has been called the “pecia system”. However, the method of breaking up a manuscript into sections for simultaneous copying is much older, and is thought to date from at least the eighth century.²²⁴ One must therefore distinguish between the medieval, university-regulated “pecia system” and the unregulated circulation of manuscript sections for copying among a scribal community.²²⁵

217 Dolezalek, *Scotland under Jus Commune*, vol. 1, p. 10.

218 See, for example, Love, *The Culture and Commerce of Texts*, p. 124. The terms “quires” and “fasciculi” simply denote bound bundles of folio leaves. The term “pecia” also usually refers to such a bundle but has a greater association with being circulated for the purpose of scribal copying.

219 Jean Destrez, “La pecia” dans les manuscrits universitaires du XIII^e et du XIV^e siècle (1935), especially pp. 11–42.

220 Pollard, “The pecia system in the medieval universities” generally.

221 Pollard, “The pecia system in the medieval universities”, p. 150. He has discussed Paris as an exception to this general rule, as here the students studying the arts also used peciae “and the University price lists included many works outside the curriculum of any faculty” (ibid, p. 151). On the circulation of legal texts, see Frank Soetermeer, “Between Codicology and Legal History: Pecia Manuscripts of Legal Texts” (2005) 49 *Manuscripta* 247–67.

222 Pollard, “The pecia system in the medieval universities”, pp. 148–9. The prevalence of the pecia system has been questioned: see, e.g., David d’Avray, “Printing, Mass Communication, and Religious Reformation: the Middle Ages and After” in Julia Crick and Alexandra Walsham (eds), *The Uses of Script and Print, 1300–1700* (2004) 50, p. 52.

223 Godfried Croenen, “Introduction” in Godfried Crownen and Peter Ainsworth (eds), *Patrons, Authors and Workshops: Books and Book Production in Paris around 1400* (2006) 1, p. 3; Aleksander Gieysztor, “Management and Resources” in Hilde de Ridder-Symoens (ed.), *A History of the University in Europe*, vol. 1: *Universities in the Middle Ages* (1992) 108–43, p. 128.

224 M B Parkes, “Book provision and libraries at the Medieval University of Oxford” in idem, *Scribes, Scripts and Readers, Studies in the Communication, Presentation and Dissemination of Medieval Texts* (1991) 299–310, p. 305.

225 See, for example, A I Doyle and M B Parkes, “The production of copies of the Canterbury Tales and the Confessio Amantis in the fifteenth century” in M B Parkes and A G Watson (eds), *Medieval Scribes, Manuscripts and Libraries: Essays presented to N R Ker* (1978) 163–210, p. 164 n. 5.

It is unclear whether a university-regulated pecia system operated in medieval England.²²⁶ However, it is clear that, in medieval England, exemplars were divided into small folio bundles by stationers or booksellers and circulated to scribes for the purposes of copying.²²⁷ These bundles were still called “pecia” by contemporaries, and this term was used without association with a licensed, university-regulated distribution.²²⁸ One could thus distinguish the term “pecia” from the full implications of the “pecia system”. Indeed, the use of the term “pecia” in this general sense will be familiar to members of the Stair Society from Dolezalek’s three-volume census of manuscripts;²²⁹ it is this sense in which the word will be used here.

This method of circulating exemplars is known to have survived into the seventeenth century in England, but the extent to which it was used is not yet known. Love was not aware of evidence for a system of “progressive copying” but recognised that “the manufacture of copies would have been a much more prolonged business without it”.²³⁰ Beal found two manuscripts of the Feathery scribe which he believes were copied from peciae.²³¹ Two volumes which will examine the transmission of manuscript texts in early-modern Scotland are forthcoming.²³² However, some work has already been done in this regard by Dolezalek and Murray in relation to the transmission of legal texts, and it seems clear that peciae were used to produce copies of the practicks.²³³ There is also evidence that Stair’s *Institutions* was circulated in this manner. Dolezalek has suggested that the two bundles that comprise what is here called the Fragment manuscript were part of a model manuscript that was broken into peciae, noting among other things that these folios “had never properly been sewn into a book spine” but rather were “only loosely held together by loops of string”; he has identified this as being in keeping with the medieval method of binding peciae.²³⁴

226 Parkes, “Book provision and libraries at the Medieval University of Oxford”, p. 308; cf. Pollard, “The pecia system in the medieval universities”, pp. 148–9.

227 Parkes, “Book provision and libraries at the Medieval University of Oxford”, p. 308; Parks and Doyle, “The production of copies of the Canterbury Tales”, p. 202.

228 Parkes, “Book provision and libraries at the Medieval University of Oxford”, p. 306. In his earlier work with Doyle, he was careful to avoid the term “pecia” when explaining that the Trinity manuscript (Cambridge, MS R.3.2 (581)) was copied from an exemplar “distributed in portions among the scribes for simultaneous copying”, emphasising that the pecia system was one of “hiring portions of licensed exemplars” (Parks and Doyle, “The production of copies of the Canterbury Tales”, p. 202).

229 Although Dolezalek prefers the spelling “petia”. See e.g. Dolezalek, *Scotland under Jus Commune*, vol. 1, p. 10.

230 Love, *The Culture and Commerce of Texts*, pp. 123–4.

231 Beal, *In Praise of Scribes*, pp. 79–82.

232 A J Mann and S Mapstone (eds), *The Edinburgh History of the Book in Scotland*, vol. 1: *Medieval to 1707* (forthcoming by EUP, August 2015); Sebastiaan Verweij, *The Literary Culture of Early Modern Scotland: Manuscript Production and Circulation, c. 1560–c. 1630* (forthcoming).

233 Dolezalek, *Scotland under Jus Commune*, vol. 1, p. 10.

234 Dolezalek, *Scotland under Jus Commune*, vol. 3, p. 124; *ibid.*, vol. 1, p. 10. Pollard has said of peciae: “the most obvious physical signs are that it is internally worn, rubbed, folded or patched in a way that is quite unusual in most manuscripts ... The pecia number, if there is one, is in the top margin of the first page ... ‘Corrigitur’ is generally in the lower margin of the first or last page, and there is a catchword at the foot of the last page of each gathering. All these features can be found individually in manuscripts that are not peciae, and not all of them are present in every original pecia, but when found in conjunction they are sufficient to show that it is the actual manuscript which a stationer hired out for scholars to copy” (Pollard, “The pecia system in the medieval universities”, p. 153). Of these features, only the catchword is seen in the Fragment manuscript. However, several of the manuscripts have catchwords, and this does not appear to be uncommon or necessarily related to the division of peciae.

Indeed, several of the extant manuscript copies of Stair's *Institutions* appear to have been copied from peciae.

The practice of copying from peciae often resulted in the scribe's manuscript copy having certain features or characteristics. These include changes in the watermarks (indicating a change in the paper type), pecia numbers, changes in handwriting, sections of repeated text, blank folios, sections of text that is missing, sections of densely written or widely spaced text, scribal marks and differential wear on the folio leaves.

Changes in the paper type could indicate that a manuscript was copied from peciae. A scribe might have purchased only a limited quantity of paper on which to begin his copy, meaning he would have later required to purchase additional folios as copying progressed; these folios might have a different watermark. If he copied the peciae out of order, probably as a result of their availability, then the watermarks would alternate in the final manuscript. Pecia copying might thus be inferred where the appearance of the watermarks suggests that the folios may have been written out of sequence. Several of the manuscripts containing copies of the *Institutions* have more than one watermark, indicating that they might contain more than one type of paper. The most compelling example of alternating watermarks is, however, found the Montrose manuscript, which will be discussed shortly.

Pollard has suggested that "The essential feature of pecia copies is that they have numbers in the side margins, not in the top or bottom margins ... opposite a break in the transcription of the text, shown by a change of hand or ink or line spacing, but often inconspicuous."²³⁵ The Kames manuscript has such numbers: the number 5 appears on folio 9r, the number 6 appears on folio 11r, 7 on folio 13r and so on. The McGachen manuscript also has numbers at the bottom of the pages that appear to be pecia numbers: the number 2 appears on page 5, the number 5 appears on page 17, 8 appears on page 21, 14 on page 53, 15 on page 57 and so on. The number 16 is found in the inside margin of the recto of the second extant leaf, page 15, of the Lindsay manuscript. These numbers might have been pecia numbers, according to Pollard's description.

The Montrose manuscript evinces both alternating watermarks and pecia numbers. A detailed examination of this manuscript illustrates how the entire text of the *Institutions* may have been divided and copied in the exemplar from which it was copied. The first pecia number is found above the heading of title 1, and marks the start of the first folio bundle, which is twelve folios long. The next bundle bears the pecia number "2" and begins at *Institutions*, 3.4/1.3.4. This bundle appears to be thirteen folios in length, implying that one folio has been lost from it. The bundle bearing the pecia number "3" begins with the final paragraph of the fifth title, and again lasts for twelve folios. The bundle bearing the pecia number "4" begins at *Institutions*, 7.12/1.7.12-13 and comprises only ten folios. The bundle bearing the pecia number "5", on which starts *Institutions*, 9.16/1.9.16, has fourteen folios. The bundle bearing the pecia number "6" begins with *Institutions*, 10.18/1.10.18 and comprises twelve folios. The bundle marked "7" once comprised twelve folios, but the last folio of this bundle has been torn out. The first page of this seventh bundle has the catchword "sale", which is the first word of *Institutions*, 10.64/1.14.2.

235 Pollard, "The pecia system in the medieval universities", p. 152.

Beyond this, however, the bundle remains blank (barring a later pen trial on the penultimate leaf). These pages should bear the end of title 10 and title 11; this lacuna results from these pages being reserved for text that was never copied. The pecia number "8" is then found above the heading of title 12. This bundle also once comprised twelve leaves, but the last has been torn out. The pecia number "9" is found above title 13 and starts a bundle which comprises only eight leaves. Although bundles 1–9 vary in length, from eight to fourteen folios, they all feature the same watermark of columns bearing a cartouche with the initials "CAB". This suggests that they were likely sourced from the same paper manufacturer. However, the following seven folio bundles (numbers 10–16) appear to have a different origin, as the watermark is instead the jug with the initials "I|B". The bundle bearing the pecia number "10" is eight folios long and begins at *Institutions*, 13.29/2.2.29; the bundle marked "11" comprises twelve folios and begins with text that is probably *Institutions*, 13.46/2.2.46; the bundle marked "12" is also twelve folios and begins with *Institutions*, 14.23/2.4.23; the bundle bearing the pecia number "13" comprises ten folios and begins with *Institutions*, 15.9/2.5.9; the bundle bearing the number "14" comprises twelve folios and begins with *Institutions*, 17.6/2.7.6; the marker "15" is found above *Institutions*, 19.23/2.9.23, and begins a bundle comprising twelve leaves; the bundle marked "16" also comprises twelve leaves and begins at *Institutions*, 18.22/2.8.22.²³⁶ The following two bundles comprise twelve leaves and bear the watermark of columns with a cartouche bearing the initials "ABO" or "ARO": that marked "17" begins with the heading of title 21, and that marked "18" begins with *Institutions*, 22.15/2.12.15. Again, it would seem that the paper of these two bundles was sourced at a different time to that of the previous bundles. The next eight bundles (numbers 19–26) are again made from the paper bearing the watermark with columns and the cartouche of "CAB"; this watermark is the same as that found in the bundles numbered 1–9, and so these bundles may have been sourced at the same time. The bundle marked "19" begins with the heading of title 24 and comprises twelve folios; the bundle bearing the pecia number "20" begins at *Institutions*, 24.40/3.2.39 and also comprises twelve folios; the bundle identified as "21" begins at *Institutions*, 25.29/3.3.29 and comprises twenty-four folios; the twenty-second bundle (the marker for which has almost been lost when the paper was cut for binding) comprises twelve folios and begins with *Institutions*, 26.18/3.8.18; the bundle marked "23" comprises twelve folios and begins at *Institutions*, 27.5/3.5.5; the bundle bearing the pecia number "24" comprises eight folios and begins at *Institutions*, 27.34/3.5.34; the bundle marked "25" comprises twelve folios and begins with *Institutions*, 27.51/3.5.51; the bundle marked "26" begins at *Institutions*, 30.13/3.8.13 and appears to comprise eight folios. The marker for the twenty-seventh bundle is missing. It is possible that it was lost when the paper was cut before the manuscript was bound, in the same manner as the marker for the twenty-second bundle was almost lost. However, the watermark of the jug bearing the initials "G|RO" is found from the sixteenth folio from the back of the manuscript, indicating that this is likely to be the start of the final bundle. Two conclusions can be drawn from these observations. First, it seems highly probable that the Montrose manuscript was copied from peciae. Secondly, it suggests that

236 As noted above, titles 18 and 19 were the other way around in the manuscript versions.

the index was probably copied after the text was completed. It was inserted into the front of the manuscript even though the marker "1" above the heading of the first title indicated that this should be at the front of the bound manuscript. These observations also have implications for our understanding of the supply of paper among the legal-scribal community, but these will not be explored here.

Changes in the handwriting might also suggest that a manuscript was copied from *peciae*, as more than one scribe might be hired to copy out the *peciae*; the practice of commissioning scribes will be discussed later. The scribes might be provided with an exemplar by the commissioning party, but might also have been required to source their own exemplar. If the scribes both worked from different exemplars, sections of text might be repeated in the final manuscript. Indeed, the Kames and Strachan manuscripts have sections of text which are copied twice in titles 7 and 2 respectively. This suggests that the different scribes were working with little supervision,²³⁷ and were copying simultaneously rather than taking over from each other as copying progressed. It also suggests that these manuscripts were copied from *peciae* drawn from at least two exemplars that divided the material differently, possibly because their *peciae* were different lengths.²³⁸ Simultaneous copying might also be presumed of the Constable manuscript, in which the heading of title 15 was written by one scribe on one type of paper, then by another on a different type of paper.

Blank leaves and unusually spaced handwriting might also be indicative of copying from *pecia*. A scribe copying from *peciae* would have to estimate the space which would be required to copy each *pecia*.²³⁹ If he did not see a particular *pecia* in advance of making this estimate, he would have to make assumptions as to the number of folios contained in it and the quantity of text likely to be on each page. If he erred in this calculation, he would have had too much or too little space in which to write the text when he eventually received the *pecia*. That section of the final manuscript copy would therefore have blank or partially blank leaves or would have sections of more densely written text (normally at the ends of gatherings). Blank folios are also found in seventeen of the manuscripts. Some of these blank folios might be the result of the copyists overestimating the amount of text contained in a *pecia*, although others may have been reserved for the owners' annotations and corrections. More compellingly, the Gordon, Dalhousie and Montrose manuscripts have blank folios reserved for sections of the *Institutions* that were never copied; these were presumably contained within *peciae* that were never made available to the scribe. The blank pages at the back of the Williamson manuscript might likewise have been reserved for the final sections of the text, perhaps contained in a *pecia*.

A scribe might insert a mark alongside the text to indicate that he had reached the end of the relevant *pecia*. A scribal mark at the end of the incomplete copy of the *Institutions* in the Gray manuscript might be an example of this practice, as might the dates written beside the text in the Jedburgh and Ogilvie manuscripts.

237 See also Doyle and Parkes, "The production of copies of the *Canterbury Tales*", pp. 164–7. Cf. Beal, *In Praise of Scribes*, pp. 72–9 where it is suggested that scriptoria were still in use in seventeenth-century England.

238 Pollard, "The *pecia* system in the medieval universities", p. 156; Soetermeer, "Between codicology and legal history", p. 250.

239 Soetermeer, "Between codicology and legal history", p. 251.

Finally, if peciae were no longer required for the purposes of copying, then they may have been collected and bound into a manuscript. Manuscripts composed of peciae might be identified by differential wear on the leaves. The insides of the folio leaves may also have been punctured several times, as a result of the leaves being sewn loosely together as peciae then more tightly together into the book spine, as has already been discussed. These characteristics have not been found in the manuscripts of Stair, although, as some of the manuscripts are very tightly bound, it is possible that these characteristics are present.

The use of peciae could explain why almost none of the ancestor manuscripts identified by this research are now extant. It is possible that those that were peciae could have been discarded as they became damaged through use. On the other hand, the descendants that were bound and acquired by private persons were more likely to survive. Overall, however, what is clear is that the manuscript copies of the *Institutions* were produced using the various methods that were expedient to the individuals involved, about whom something will be said below.

(2) Contamination

Both of the copying processes outlined could result in a manuscript becoming “contaminated”, i.e. containing material copied from more than one parent text.²⁴⁰ The process of contamination might, for example, result from peciae having been drawn from more than one exemplar. A stationer might acquire more than one exemplar of a popular work, and might not always have been careful to lend peciae from the same one for any particular commission.²⁴¹ The two exemplars from which the Strachan manuscript was copied appear to have divided the text of “Of Liberty and Servitude” differently, but the two parent texts were very similar and so are likely to have been closely related; the exemplars may therefore have been borrowed from the same stationer. Scribes copying from peciae might have contaminated their text deliberately by using different stationers for different parts of the text depending on which peciae were available at the time. There is evidence that the scribe of the Gordon manuscript may have done so when copying the text of title 4, and in doing so knowingly contaminated his copy. Scribes copying from complete, bound exemplars might have contaminated their text if they had to return the first exemplar to the owner before production of the descendant was finished, and so had to copy the rest of the text from a different exemplar. The extent of contamination might be extensive, but could also be very limited. Leaves within a pecia could become

240 Beal’s definition of “contamination” is very broad, including “when [a text] appears to be subject to a significant number of scribal errors, or has been sophisticated, or subject to alteration that editors might conclude to be non-authorial, unauthorized, or lacking legitimacy. The term may also be applied to textual traditions when, for instance, one independent line of descent becomes, in a particular copy, contaminated by the introduction of readings from another independent line of descent” (Peter Beal, *A Dictionary of English Manuscript Terminology, 1450–2000* (2007), pp. 88–9). Here the term will be used more narrowly, along the lines of Beal’s latter sense of the term, to denote only those instances where a scribe copies into his manuscript sections of text from more than one parent text.

241 D’Avray, “Printing, Mass Communication, and Religious Reformation”, p. 53. Pollard has shown that there is evidence in the inventory of the business when sold in 1289 that the university stationer at Bologna “Solimano was equipped to have three sets of the peciae for the ‘Decreta’ and five sets for the decretals on hire concurrently” (Pollard, “The pecia system in the medieval universities”, p. 157).

lost or damaged; such wear can be seen with the outer leaves of the peciae that comprise the so-called Fragment manuscript. Such leaves might be replaced with corresponding leaves from a different manuscript. This might explain why chapter 12 and most of chapter 13 of “Of Liberty and Servitude” in the Montrose manuscript appear to descend not from its principal parent but from a different ancestor. An exemplar may also have been broken up into single folio leaves, as Dolezalek has shown was probably the case with exemplars of Sinclair’s practicks.²⁴² The impact of contamination could be compounded through the generations of copies: if a contaminated copy was itself broken into peciae which were made available for the purpose of copying, its direct descendant might become even more extensively contaminated if the scribe used only some of these peciae as well as some from another exemplar.

However, in this title there does not appear to be much evidence of copyists contaminating the text by comparing parent manuscripts and “incorporating changes they had noted in other manuscripts”.²⁴³ Examples of what might appear to be this kind of active contamination can often be dismissed as coincidence. For example, paragraph numbers were added to some of the citations in one of the ancestor manuscripts – here called “manuscript ι ”²⁴⁴ – and so appear in its extant descendants. The James Hay manuscript also included such numbers, but did so independently: errors in the numbers that can be presumed to have been present in the ancestor manuscript were not present in the James Hay manuscript, and vice versa. The Falconer manuscript also gives one of these paragraph numbers, but again it is likely that the copyist was working independently: it would otherwise be difficult to explain why he had updated only one of the citations. The reception of a quotation found in manuscript ι into the text of the Smyth manuscript might, however, be the result of the copyist’s active contamination of the text in this manner.

There is more significant evidence of later *annotators* causing contamination of the text. An annotator of the Gordon manuscript added a citation and quotation of Paul (D.9.2.45.4) found in the descendants of manuscript ι ; presumably the citation had been original to this ancestor manuscript and was intercalated into the text of its descendants when it was copied. A later annotator of the Anderson manuscript appears to have compared the text of the entire title “Of Liberty and Servitude” with that of another manuscript and amended the wording of the Anderson manuscript where there were differences. This corrected several variants present in the Anderson manuscript as the result of scribal error, but also introduced variants found in other manuscripts into the text of the Anderson manuscript.

(3) Variant readings of the manuscript text

Manuscripts were not exact replicas of their parent or parents: variant readings of the text would be introduced as the text was copied. Ford has completed an extensive

242 G Dolezalek, “The Court of Session as a *ius commune* court – witnessed by ‘Sinclair’s practicks’, 1540–1549” in H L MacQueen, ed, *Miscellany Four* (Stair Society vol. 49, 2002) 51–84, p. 63.

243 Ford, *Law and Opinion*, p. 68. This practice (and the aforementioned problems) seem to have been more common in literary manuscripts, on which see, e.g., Arthur F Marotti, *Manuscript, Print and the English Renaissance Lyric* (1995), pp. 135–59.

244 The ancestor manuscripts proposed by this research will be identified by Greek letters, as is common practice in studies of this sort by literary scholars.

textual study of the Primrose and the Swinton manuscripts, on the basis of which he concluded that there were “almost constant variations in spelling, punctuation and abbreviation”,²⁴⁵ this observation is also true of the other extant manuscripts of Stair. Variations in spelling, punctuation and abbreviation have also been observed in copies of other manuscript texts of the period. Dolezalek has noted of Sinclair’s practicks that copyists modernised language, were careless with punctuation, and “often misinterpreted Latin shorthand abbreviations”.²⁴⁶ Sutherland’s survey of the manuscripts of Maitland’s practicks has also found that there was significant variation in spelling, as well as “a clear process of Anglicisation of vocabulary and spelling”.²⁴⁷ The variation in spelling in manuscript sources has been explained by Grant Simpson, who has noted that in Scotland “There was no agreed set of spelling conventions accepted by the educated ... individuals were often cheerfully inconsistent in their personal spelling habits”.²⁴⁸ This issue has also been commented upon by Love: “The transcriber no less than the compositor would be expected to impose his own practice with regard to spelling, punctuation and minor points of grammar, to modernize, and to correct solecisms and apparent errors ... [and] the use of the contracted and apocopated forms”.²⁴⁹ The decision as to whether to preserve an error or to correct it was with the individual copyist.²⁵⁰ Simpson has shown that there were, however, general trends in page layout, spelling, punctuation and abbreviation.²⁵¹

More critical for the purposes of this study are what Ford has called “the less constant but not infrequent variations in the exact wording used”.²⁵² This observation is supported by an examination of the manuscript copies of “Of Liberty and Servitude”. Most of the manuscript copies appear to have been made carefully. Despite this generally careful copying, an accumulation of variants has resulted from there having been several generations of manuscript copies descended from Stair’s authorial holograph. Thus, although “Of Liberty and Servitude” is only around 1,900 words in length, there are around 1,200 places of variance, many of which have several variant readings. Most of these variants appear to have been the result of scribal error rather than a deliberate alteration of the text. The manuscripts of Stair do not reveal the extensive abridgement (“short-copying”) that Dolezalek has noted is common in Scottish legal manuscripts and that Sutherland has found in copies of Maitland’s practicks.²⁵³ Omissions from the text of “Of Liberty and Servitude” tend rather to be single words, short phrases, or clauses between two appearances of the same word; even the omission of chapter 6 in the Montrose and Ogilvie manuscripts is presumably the result of an error in their common ancestor.

245 Ford, *Law and Opinion*, p. 63.

246 Dolezalek, “Court of Session as a *ius commune* court”, p. 62.

247 R Sutherland, *The Practiques of Sir Richard Maitland of Lethington, from December 1550 to October 1577: A transcription of John Orr’s MS, Glasgow University Library MS Gen 1333* (Scottish Record Society 30, 2007), pp. 17–18.

248 G Simpson, *Scottish Handwriting 1150–1650: An Introduction to the Reading of Documents* (1973), p. 42.

249 Love, *The Culture and Commerce of Texts*, p. 120.

250 Love, *The Culture and Commerce of Texts*, p. 121.

251 Simpson, *Scottish Handwriting*, pp. 40–6.

252 Ford, *Law and Opinion*, p. 63.

253 Dolezalek, *Scotland under Jus Commune*, vol. 1, p. 11; Sutherland, *Maitland’s Practiques*, p. 7.

(4) The scribal community

That at least most of the copyists worked carefully is not entirely surprising. As Ford has noted, men hired as professional scribes “would have been expected to adhere closely to the substance of any text they transcribed, at least when fulfilling a commission”.²⁵⁴ Many of the extant manuscripts of Stair’s *Institutions* would likely have been copied in fulfilment of a commission or as part of an employment. The Brousterland manuscript is recorded as having been written for John Smyth of Brousterland, presumably by a scribe employed on a commission. The persons who commissioned the Primrose and Taylor manuscripts appear to have allowed more than one scribe to audition for the job before hiring one to complete the rest of the manuscript.²⁵⁵ Indeed, that the two scribes who auditioned to copy the Taylor manuscript wrote on different types of paper suggests that they had to source their own materials rather than receiving them from the commissioning party. The James Hay manuscript was written mostly by one scribe, who appears to have been unable to complete the task, resulting in another scribe writing the final two titles; it is likely that at least one of these two scribes was working on commission. Indeed, it is probable that those other manuscripts which appear to be written by more than one hand were also copied on commission. This probably includes at least the Innominate Advocates’, Swinton, Kames, Smyth, Gordon, Strachan, Marchmont, Hamilton, Gray, Jedburgh and Constable manuscripts. There is a very good reason why a person might have engaged more than one scribe. The production of a copy of Stair’s *Institutions* by one scribe appears to have taken just less than a year: the Brown manuscript took one scribe ten months to copy, from 20 January 1677 to 20 November 1677, and Watson has observed that a copy in a private collection made by Robert Baillie of Jerviswood took nearly eight months to copy, from 7 November 1678 to 26 June 1679.²⁵⁶ Hiring more than one scribe would allow the text to be copied more quickly, especially if each scribe was working on a separate section contained in a discrete piece.

There were various persons who might commission a scribe to copy a manuscript text. As already mentioned, booksellers and stationers would commission scribes to produce copies with a view to selling them, sometimes resulting in many manuscript copies of a text.²⁵⁷ Although Baker has noted that in England there does not appear to have been a “book-selling trade in law manuscripts”,²⁵⁸ there does appear to have been such an industry in Scotland. Ford has noted that

Although the inventories of the stationery booksellers in Edinburgh tend to show that their stock consisted exclusively of printed matter, these booksellers fought a running

254 Ford, *Law and Opinion*, p. 62.

255 Dolezalek, *Scotland under Jus Commune*, vol. 3, p. 26.

256 Watson, *Making of the Civil Law*, p. 31 n. 16; Ford, *Law and Opinion*, p. 67 n. 288. It is not entirely clear where this manuscript is now held.

257 Love, *The Culture and Commerce of Texts*, p. 37; Woudhuysen, *Sir Philip Sidney and the Circulation of Manuscripts*, pp. 48–50, 66.

258 J H Baker, “The books of the common law” in L Hellinga and J B Trapp (eds), *The Cambridge History of the Book in Britain*, vol. 3 (1999) 411–32, p. 423. Cf. Love, *The Culture and Commerce of Texts*, pp. 75–6, in which it has been suggested that “Law booksellers ... also provided treatises and copies of the speeches of eminent judges and counsel ... although there is no specific evidence that these actual texts were being commissioned by law stationers in commercial quantities”.

battle against the itinerant chapmen who set up stalls in and around Parliament House ... [who may have] bought books in manuscript and had copies made and bound for sale to the lawyers who were their most likely customers.²⁵⁹

Indeed, there is some evidence in the manuscripts of Stair's *Institutions* that such practice did occur. The Dalhousie manuscript has the completion date of 12 August 1675 written at the end of title 11, and on its front leaf has a note recording its sale on 2 September 1675. Thus, only three weeks passed between the scribe of the first eleven titles finishing his work and the seller (possibly one of the chapmen referred to by Ford) finding a buyer. This indicates that there was sufficient demand for copies of Stair's *Institutions* in the mid-1670s for booksellers to have commissioned copies confident of a sale, and a quick sale too given that three weeks was not much time to have collated the leaves from different scribes and employed a bookbinder to bind the copy. Lawyers might also hire a scribe directly.²⁶⁰ Sir John Lauder of Fountainhall's journal recorded that he had commissioned a copy of Mackenzie's *Matters Criminal*, and the Writer to the Signet Habakkuk Bisset was commissioned by Sir James Balfour of Pittendreich to copy the latter's practicks.²⁶¹ It is also possible that the copy made by Baillie of Jerviswood was produced as part of such a commission: although he was not a lawyer, he was described by his cousin as "learned in the law"²⁶² and was associated with the legal community.²⁶³

However, lawyers at all stages of their careers would also write out copies of manuscript texts for their own use.²⁶⁴ Murray has suggested that "young lawyers were told to transcribe parts of Sinclair's practicks as an exercise".²⁶⁵ Sutherland has noted that copies of Maitland's practicks were "clearly the work of practical lawyers using them with understanding and for the purposes of the law".²⁶⁶ Ford has suggested that David Falconer, Lord President Newton may have personally handwritten a copy of the *Institutions* to imprint the text on his memory.²⁶⁷ The copyist of the Tait manuscript may have been the James Brown who was the Dean of Faculties at Glasgow University.²⁶⁸ The practice of lawyers copying manuscripts for their own use might have implications for our understanding of the text. Ford has noted that lawyers "would have [had] little reason to reproduce texts exactly as they had been written".²⁶⁹ However, the Tait and Falconer manuscripts seem to have been generally faithful to the text of their parent manuscripts in "Of Liberty and Servitude".

259 Ford, *Law and Opinion*, p. 61.

260 This practice is seen elsewhere with literary and miscellany manuscripts. See Bawcutt, "Scottish manuscript miscellanies from the fifteenth to the seventeenth century", p. 50.

261 Ford, *Law and Opinion*, p. 61; D Crawford, ed, *Journals of Sir John Lauder, Lord Fountainhall, with his observations on public affairs and other memoranda, 1665-1676* (Scottish History Society, 1900), pp. 264-5, 270.

262 Bishop Burnet's *History of His Own Time, from the Restoration of King Charles II to the Settlement of King William and Queen Mary at the Revolution*, vol. 2 (1724), p. 540.

263 T Harris, "Baillie, Robert, of Jerviswood (d. 1684)", *Oxford Dictionary of National Biography*, online edition 2004, <http://www.oxforddnb.com/view/article/1068>, accessed 27 April 2013.

264 Pollard, "The pecia system in the medieval universities", p. 156.

265 Dolezalek, "Court of Session as a *ius commune* court", p. 62.

266 Sutherland, *Maitland's Practiques*, p. 10.

267 Ford, *Law and Opinion*, p. 63 n. 268.

268 See above, p. 6.

269 Ford, *Law and Opinion*, p. 63.

(5) Stair's later revisions, and other subsequent updates

Ford's examination of the extant manuscripts allowed him to conclude that "Stair revised the first part of his book during the vacation from March to May 1666, that he revised the second part during the vacation from August to October 1666, and that he revised the whole text again and made a few slight alterations in the following year."²⁷⁰ It is likely that Stair did so by working on his original manuscript, adding his revisions or updates by marginal annotation or – where a larger section of text was to be added – looseleaf inserts.

Some of the extant manuscript copies appear to lack these updates: the sample updates were not found in the Brousterland, Brown, Grey, Falconer, Primrose, Pringle or Tweeddale manuscripts. It is probable that such copies descend from ancestor manuscripts that were drawn from Stair's first circulating version. The other manuscripts seem to reflect at least some of the revisions made by Stair in 1666–7. It is possible that some of these manuscripts descend from an ancestor that was copied from Stair's authorial holograph after 1667 and so included all his revisions and updates. It is plausible that one such exemplar was "manuscript π ", which seems to be the ancestor of four extant manuscript copies, all of which appear to reflect Stair's updated, revised text. It is also possible that manuscripts that include the revised sections of text descend ultimately from a first-version ancestor and that it or an intermediate ancestor was annotated to include Stair's revisions and updates. It has already been seen that users of the Pitcairn and Hamilton manuscripts updated their texts thus, and some stationers may have adopted a practice of updating their exemplars to ensure their continued relevance. Indeed, the proposed ancestor manuscripts " α " and " β " were certainly copies of the first version of the *Institutions*, given that manuscripts copied directly from them must have been completed before Stair's revisions began to circulate. However, their descendants through "manuscript ι " include Stair's later revisions in at least the opening titles. This can be explained by annotators contaminating that intermediate ancestor with updates found in other manuscripts, and these being intercalated into descendant texts by their copyists.

It is possible that the updated ancestor manuscripts included only some of Stair's revisions, as is seen in the Pitcairn and Hamilton manuscripts. Such partial updating might result from the updater having limited access to copies that included the revisions, his accidentally omitting to transcribe some of the updates, or his being only interested in updating certain titles. Any copies transcribed from such a partially updated ancestor manuscript could only include some sections of text that reflected Stair's later revisions and would in other places adhere to Stair's original text version. Further, some copyists used an exemplar containing the earlier version with a view to updating their manuscript once that containing the revisions and updates became available, as did the copyists of the Gordon and Montrose manuscripts, but copyists may not always have been aware of whether the text that they were transcribing contained Stair's revisions. Indeed, more than a third of the manuscripts seem to contain some but not all of the sample updated references, so can be considered to have been only partially updated. This partial updating might be difficult to detect: the Taylor manuscript has what seems to be Stair's revised text in the passage known

²⁷⁰ Ford, *Law and Opinion*, p. 70.

as *Institutions*, 23.18/3.1.18, but lacks the updates added to *Institutions*, 23.19/3.1.19. This might be the result of a scribe or annotator omitting to copy out some of Stair's updates, or the result of very limited contamination. Further investigation would be required to confirm whether any particular manuscript wholly reflects either the original or revised text.

Further, whereas these updating efforts may have added new sections of text, it seems they did not often extend to amending existing wording according to the revised version. Thus, the wording found in a manuscript that includes the revisions of 1666–7 might reflect Stair's deliberate changes, but might also simply preserve corrupted variant readings inherited ultimately from a first-version ancestor. This means that it is the interrelationships between manuscripts, and the variant readings inherited from their ancestors, which dictate their textual nature. Thus, an analysis of these relationships and variants must be made before any conclusions about the changes to the text made by Stair could be drawn.

It is not necessarily the case that scribes knew that the updates in their model manuscripts were reflective of Stair's revisions. Scribes clearly saw some value in preserving in their copies those annotations found in a parent manuscript, irrespective of whether they might be by the original author of the work. A practice of intercalation of annotations has been found in copies of the interregnum practicks and was observed by Dolezalek in his study of the manuscripts of Sinclair's practicks.²⁷¹ Several copyists of the manuscripts of Stair's *Institutions* appear to have intercalated into their text annotations present in their parent manuscript that were originally added by other lawyers. Aforementioned examples of this include the addition of both paragraph numbers to citations and quotations of Paul and Ulpian to the descendants of manuscript t, and the incorporation of marginal annotations original to the Kames manuscript into its descendants.

However, aside from the revisions to the text made by Stair, the copies of "Of Liberty and Servitude" do not appear to have been annotated or updated extensively. This may have been because of the nature of this title, which would have had limited practical application. However, only a few of the manuscripts appear to have been heavily annotated anywhere in the text. The Loudoun manuscript has been richly annotated, and the Home Drummond and Tarbat manuscripts have been extensively annotated in some places. The text of the *Institutions* in ten other manuscripts has been annotated, but only infrequently. But annotation of the text was not the only method of keeping a manuscript volume current. Ford has shown that copyists and users of some of the manuscripts of the *Institutions* also included later collections of case notes and other similar material for reference at the back of the volume in an effort to update that manuscript.²⁷² The Innominate Advocates', Falconer and Constable manuscripts include collections of case notes or practicks at the back of the manuscript. Other notable material copied into the manuscripts includes: Gilmour's tract on statutes in the Ogilvie manuscript; a tract on the jurisdiction on the warden's court in the Jedburgh manuscript; and copies of Stair's *Form of Process* in the Colquhoun, Loudoun and Constable manuscripts.

271 Dolezalek, "Court of Session as a *ius commune* court", p. 62; Adelyn L M Wilson, "Practicks in Scotland's interregnum" (2012) *Juridical Review* 319–52.

272 Ford, *Law and Opinion*, p. 66.

STEMMATOLOGY AND GENEALOGICAL VARIANTS IN MANUSCRIPT TEXT

The variants and intercalated annotations present in the texts of the extant manuscripts obscure Stair's original wording. It is thus necessary to distinguish these variants and intercalated references from Stair's original text and his later revisions. Simply checking more than one manuscript is insufficient to make this distinction: sample manuscripts might be descended from a common ancestor and so might preserve an inherited variant or intercalated reference rather than Stair's own wording. Rather, it is necessary first to identify how the extant manuscripts are related to and descended from the authorial holograph. This will allow the variants introduced during the various stages of transmission of the text to be identified. Only then can one reconstruct Stair's original wording (or probable wording), and any changes that he made in 1666–7, in the absence of the authorial holograph.

Those manuscripts which share a common ancestor can be said to belong to the same family group. Much work has been done to advance the method of stemmatology, the reconstruction of family groups ("stemma") of manuscript texts. This method compares the texts of the extant manuscripts to identify variants that might be inherited from a common ancestor. Every manuscript is likely to have errors unique to it that were introduced by its copyist, as has been shown. However, where the same variant appears in more than one manuscript, it might be that this variant was inherited from a common ancestor. On this assumption, familial relationships may be inferred between manuscripts that share multiple variants that otherwise appear to be unique to those manuscripts. Those manuscripts within that family group which share additional, otherwise unique variants might have an even more immediate relationship. Thus, the construction of the stemma allows the identification of the different generations of the extant manuscripts and, in turn, those manuscripts related most closely to the authorial holograph.

Not all variants are useful in constructing the stemma. Salemans has explained that "only very few textual differences can serve as genealogical, relationship-revealing elements".²⁷³ He has proposed rules for identifying variants that can be considered to be genealogically revealing. First, the variant must be incorporated "inconspicuously in a text version" because thus "it is plausible that it keeps its form during the text transmission and will not be submitted to changes".²⁷⁴ Salemans has therefore recognised that a conspicuous error might be subject to attempted correction by the copyist(s) of a descendant manuscript. Secondly, "[t]he place of variation must be kept as small as possible to avoid the danger that it contains several genealogical variants introduced during independent stages of textual transmission".²⁷⁵ For example, chapter 5 of "Of Liberty and Servitude" includes the phrase "from her liberty of going where she will". New variants are added to this short phrase at different stages in the copying of one of the family groups proposed

273 B J P Salemans, "Cladistics or the resurrection of the method of Lachmann: on building the stemma of Yvain" in P van Reenen and M van Mulken (eds), *Studies in Stemmatology* (1996) 3–70, p. 4 (italicised in the original).

274 Salemans, "Cladistics or the resurrection of the method of Lachmann", p. 6.

275 Salemans, "Cladistics or the resurrection of the method of Lachmann", p. 15.

below, “ α group”. It seems that the most recent common ancestor, “manuscript α ”, had omitted the word “her” and thus gave “from liberty of going where she will”.²⁷⁶ Thereafter a descendant manuscript, “manuscript η ”, omitted “liberty of” and also gave “whither soever” rather than “where”.²⁷⁷ This phrase was thus transmitted to the immediate descendants of manuscript η as “from going whither soever she will”. A second-generation descendant of manuscript η , the Burnside manuscript, substituted the word “in” for “from”,²⁷⁸ and thus gave “in goeing [*sic*] whither soever she will”. Thus, even this short phrase has four places of variance in only one path in the transmission of the text. Finally, there must be at least two competing variants which are each preserved in at least two manuscripts. A variant unique to one manuscript might have been original to that manuscript rather than inherited; it thus cannot be used as a genealogically revealing variant. Salemans has derived from these rules characteristics that must be present for a variant to be considered to be revealing genealogically. Not all of these are relevant here, as some involve rhyming conventions and other literary devices, and others simply express again the rules set out above. However, Salemans has particularly emphasised the importance of discounting variants that are non-substantial terms (such as adjectives), that might be accidental (such as nonsense or orthographical variation), or that might be “parallelisms” (spontaneously arising variants). He has noted, however, that alterations to the order of words can be genealogically revealing, as long as it is not merely the difference in the placing of an adverb. The addition or omission of words can be genealogically revealing as long as these are not crucial to the text:²⁷⁹ these might be subject to correction by copyists of descendant manuscripts.

The identification of variants that might be parallelisms is challenging. Salemans himself has identified four types of variants which can be considered to be liable to parallelism: regional spelling, use of synonyms, inflections or changes in tense, or changes in the lexicon over time.²⁸⁰ Schmid has concluded “that we might not be able to find a single type of variant readings that is entirely free from liability to parallelism”.²⁸¹ On the other hand, Smelik has suggested that variants that are of a type prone to parallelism should not simply be discounted, as they could be helpful in establishing or testing a stemma if used critically. He has noted that even orthographical fluctuation “may corroborate our observations about certain individual relationships between textual witnesses”.²⁸² Abbreviations could be “useful if a copyist made a mistake when he filled out an abbreviation in his exemplar”, although “Some of the variants agree with each other by pure chance, because copyists filled out

276 Variant 5.85.

277 Variants 5.83, 86–7.

278 Variant 5.86.

279 Salemans, “Cladistics or the resurrection of the method of Lachmann”, pp. 29–32.

280 Salemans, “Cladistics or the resurrection of the method of Lachmann”, pp. 9–11.

281 U Schmid, “Genealogy by chance! On the significance of accidental variation (parallelisms)” in P van Reenen et al (eds), *Studies in Stemmatology II* (2004) 127–43, p. 141.

282 W F Smelik, “Trouble in the trees! Variant selection and tree construction illustrated by the texts of Targum Judges” in P van Reenen et al (eds), *Studies in Stemmatology II* (2004) 167–206, p. 171. See, for the use of such variants, Randall McLeod, “Obliteration: Reading a censored text of Donne’s ‘To his mistress going to bed’” in Peter Beal and A S G Edwards, *English Manuscript Studies, 1100–1700*, vol. 12: *Scribes and Transmission in English Manuscripts, 1400–1700* (2005) 83, especially pp. 108, 120.

abbreviated words”.²⁸³ On the other hand, he has warned that “Scribal slips are often typical, and susceptible to repetition”.²⁸⁴

Some of the variants in “Of Liberty and Servitude” evince the difficulty in identifying parallelisms. One particularly remarkable parallelism relates to Stair’s quotation of a passage from Gaius, the first word of which is “*Adversus*”. Manuscripts from three of the family groups proposed give rather a citation of an apocryphal jurist, as “and Versius” or “and Verseius”.²⁸⁵ These family groups appear to be otherwise distinct, and thus it seems that these corruptions of “*Adversus*” are parallelisms.

THE MANUSCRIPT TRADITION OF THE TEXT OF STAIR’S TITLE “OF LIBERTY AND SERVITUDE”

Appendix I to this article sets out the variants found in the manuscripts and printed editions. Despite the issues discussed, a method can be derived from the work of Salesmans and others for the construction of a plausible stemma of the manuscripts of this title of Stair’s *Institutions*. Only variants that might be genealogically revealing as defined by the criteria set out above were used to construct the stemma of the manuscript tradition: non-substantial terms and accidental variants were discounted. Also discounted for this purpose were variants that could be liable to parallelism, such as changes from plural to singular, and the substitution of “and” for “or”, and vice versa. The identification of parallelisms and the further assessment of the remaining variants are nonetheless mainly and necessarily subjective. One of the particular criticisms of stemmatology is that the philologist will himself or herself subjectively select the variant reading which will represent the original text in the construction of the stemma, and might “marginaliz[e] at each turn evidence that doesn’t fit the logic of the tree-maker”.²⁸⁶ Additionally, as McLeod has noted, “the lines of derivation ... even if they should happen to be correct, do not necessarily connect [manuscripts’ texts] by direct descent, as mother to daughter, but rather may connect them less directly, as aunt to niece”.²⁸⁷ Even if the philologist’s reading of the variants is correct, small sections of conflated or contaminated text might not be apparent if very few variants result. The stemma produced by this method will also only be certain if a large number of variants were introduced by the scribes that both obviously deteriorated the text but also could not be corrected by copyists of descendant manuscripts; such variants are likely to be rare in texts produced by a community of careful copyists.

Thus, it is necessary to test the stemma derived from a study of variants considered to be genealogically revealing in the manner discussed by Smelik, by taking account of all the variants. There are almost 1,200 points of variance in this title, each being a place where one or more of the extant manuscripts departs from the text as it may have been written by Stair. If two manuscripts have many alternative readings in common, then it can be said that their texts are similar, so might be closely related;

283 Smelik, “Trouble in the trees”, p. 172.

284 Smelik, “Trouble in the trees”, p. 172.

285 Variant 3.68.

286 McLeod, “Obliteration”, p. 110.

287 McLeod, “Obliteration”, p. 107.

if two manuscripts share few alternative readings, it can be said that their texts are quite different, and so it is less likely that they are closely related. Thus, the conclusions drawn from a study of the genealogically revealing variants above can be tested against the general similarity of the texts. By taking account of these two methodological approaches, it is possible to propose that the manuscript texts of "Of Liberty and Servitude" belong to five manuscript groups; these might be called the α , ξ , π , ν and τ groups.

(1) The largest family of manuscripts, "α group"

Twenty-three of the extant manuscripts appear to have text that derives, directly or indirectly, from a common ancestor more recent than Stair's authorial holograph. This ancestor is now lost but can be referred to as "manuscript α". The interrelationship of these twenty-three extant manuscript texts suggests that probably at least thirteen other intermediate ancestors also descended from manuscript α. Thus, the "α group" seems to have comprised at least thirty-seven manuscripts, including manuscript α itself. Figure 1 illustrates the stemma proposed for this family group.

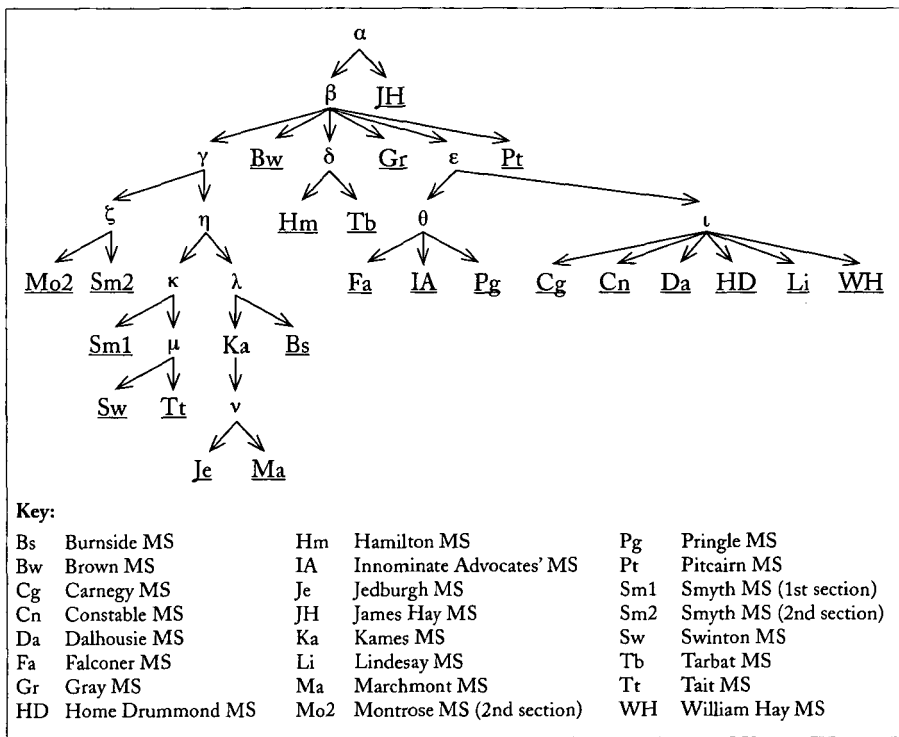


Figure 1: stemma of α-group manuscripts

The variants that were inherited from ancestor texts can become compounded, and so unrecognisable, as generations of descendants are copied. Nonetheless, a

few genealogical variants that were inherited from manuscript α are still present in all the extant manuscripts from this group. Manuscript α gave “over” rather than “of” in chapter 1,²⁸⁸ omitted “of his” from chapter 5,²⁸⁹ gave “conquerors” rather than “enemies” in chapter 10,²⁹⁰ and omitted “do” from chapter 11.²⁹¹ A fifth variant present in manuscript α was the substitution of “use” for “up” in chapter 10; this is preserved in sixteen of the manuscripts but appears to have been independently corrected by the copyist of the Home Drummond manuscript and is in a phrase omitted from the Smyth manuscript.²⁹² Other variants common to these manuscripts also appear independently in other manuscripts and so can be dismissed as being liable to parallelism.²⁹³ However, as noted by Smelik, the full number of variants can be used to test the proposed stemma. Ten variants that differ from what may have been Stair’s probable text appear in all of these twenty-three extant manuscripts. Indeed, the texts of these manuscripts do seem to be very similar: each of these manuscripts generally shares at least forty variants with each of the other manuscripts in this proposed group. Many share significantly more, as will be shown.

It appears that manuscript α may have been copied twice. The James Hay manuscript might have been copied directly from manuscript α : no intermediate ancestors are apparent. Nor was the James Hay manuscript an ancestor of any other extant manuscript: around twenty variants present in its text are unique to this manuscript. If it is correct that the James Hay manuscript was copied directly from manuscript α , this gives some insight into the nature of the latter volume. The reception of Stair’s revisions into only some of the titles in the James Hay manuscript, as well as the folio leaves that were left blank by the scribe, indicate that it might have been copied from *peciae*. Thus, if the stemma proposed is correct, it follows that manuscript α was likely an exemplar that had been broken up into *peciae* before 1677 when the James Hay manuscript was completed.

The other copy that may have been transcribed from manuscript α was the intermediate ancestor of the other manuscripts in this family group. This intermediate ancestor is now lost but can be called “manuscript β ”. Four variants that could be considered to be genealogically revealing were present in this manuscript. First, manuscript β omitted “in” in chapter 5; this was corrected independently by the copyists of the Lindesay, Constable and Home Drummond manuscripts.²⁹⁴ Secondly, manuscript β gave “diligence” rather than “delinquence” in chapter 5; this variant is preserved in most of the manuscripts but appears to have been corrected independently in the Lindesay, Smyth, Constable, Home Drummond and William Hay manuscripts.²⁹⁵ Thirdly, manuscript β gave “follow” rather than “fall out” in chapter 16.²⁹⁶ Finally, manuscript β gave “first imprisonment” rather than “false imprisonment” in chapter 16; this variant was corrected independently by the copyist

288 Variant 1.5.

289 Variant 5.31.

290 Variant 10.30.

291 Variant 11.75.

292 Variants 10.40, 42.

293 See, for example, variants 1.11, 3.59.

294 Variant 5.110.

295 Variant 5.149.

296 Variant 16.63.

of the Brown manuscript.²⁹⁷ This pattern of independent correction by the copyists means that in fact all the variants that are shared by these twenty-two descendant manuscripts are also shared by the James Hay manuscript. It is possible that the inference of a manuscript β is overly generous, and that the copyist of the James Hay simply corrected these four variants in much the same way as did the copyists of the Brown, Lindesay, Constable, Smyth and Home Drummond manuscripts. If that were the case, then it would seem likely that manuscript α and manuscript β might be one and the same.

Manuscript β (failing which, manuscript α) is the most recent identifiable ancestor of another three of the extant manuscripts, namely the Gray, Brown and Pitcairn manuscripts. These might have been copied directly from manuscript β , although any one of these might have descended from it through intermediate ancestors. What is clear is that the Gray, Brown and Pitcairn manuscripts were not themselves ancestors of any of the other extant manuscripts. Each preserves variants that are found only in that manuscript, and so were not passed on through the copying of that text. The Gray manuscript has almost twenty such variants, the Brown manuscript around seventy such variants, and the Pitcairn manuscript around fifty.

Three other manuscripts also appear to have been copied directly from manuscript β ; these are intermediate ancestors of other extant manuscripts in this family group. These manuscripts are now lost but can be called manuscripts “ γ ”, “ δ ” and “ ϵ ”.

(a) *γ group*

Manuscript γ is an ancestor of eight of the extant manuscripts as well as of six lost intermediate ancestors. Two copies were made directly from manuscript γ ; these can be called manuscripts “ ζ ” and “ η ”. Both of these direct descendants of manuscript γ are now lost. As with manuscripts α and β , their descendants can be regarded as witnesses to their text. Unfortunately, it appears that manuscript ζ was not a complete copy. Rather, it seems to have contained only the section of text between the last sentence of chapter 11 and the midpoint of chapter 14. This might indicate that manuscript ζ was a replacement folio leaf that was inserted into an existing, damaged *pecia*.²⁹⁸ Although very interesting as a possible insight into textual circulation, this has significant implications for understanding the transmission of Stair’s text. Variants can only be attributed to manuscript γ if they are preserved in its descendants through both manuscript ζ and manuscript η . Thus, only variants found between the last sentence of chapter 11 through to the midpoint of chapter 14 of these extant descendants can be attributed to manuscript γ . Variants in other passages are not evinced by manuscript copies from both descendant branches so could have been original to either manuscript γ or the intermediate ancestor of the second branch, manuscript η . Thus, only two genealogically revealing variants can be attributed to manuscript γ : in chapter 12, this manuscript gave “servants” rather than “bondmen”,²⁹⁹ and omitted “these who were”.³⁰⁰

297 Variant 16.31.

298 The *pecia* in question appears to have been part of an exemplar which can be called “manuscript τ ”, as is discussed below.

299 Variant 12.12.

300 Variant 12.14.

The partial copy manuscript ζ was an ancestor of the relevant sections of the text of the Smyth and Montrose manuscripts. This ancestor appears to have added several genealogically revealing variants to the text: it gave “cannot be applied by their masters to” rather than “their masters cannot apply them to” in chapter 11;³⁰¹ it omitted “they” from chapter 11;³⁰² it gave “emission” rather than “dimission” in chapter 13;³⁰³ and it added “of” to chapter 14.³⁰⁴ The number of variants that can be attributed to manuscript ζ suggests that it was not a particularly careful copy.

The reverse of the earlier statement is also true: only variants found in the last sentence of chapter 11 through to the midpoint of chapter 14 can be attributed to manuscript η with certainty. This includes around ten variants, only one of which could be considered to be genealogically revealing in nature: the substitution of “old” for “former” in chapter 13.³⁰⁵ Several other variants were clearly present in the text of manuscript η, although it cannot be determined whether they were original to it or inherited from manuscript γ. Manuscript η omitted “which” from chapter 1,³⁰⁶ “so” from chapter 5,³⁰⁷ “it” and “did” from chapter 10,³⁰⁸ and “the” from chapter 11.³⁰⁹ It added “done” after “injuries” in chapter 2.³¹⁰ It substituted “cutting away” for “hurting”, “whither soever” for “where”, and “natural” for “lawful” in chapter 5,³¹¹ “man to” for “unto” in chapter 9,³¹² “place first” for “first place” in chapter 10,³¹³ “made” for “constitutes” and “exceedingly” for “extremely” in chapter 11,³¹⁴ and “most exactly” for “with much exactness” in chapter 16.³¹⁵

It seems that manuscript η was copied twice, by the copyists of now-lost manuscripts that can be called “κ” and “λ”. Manuscript κ was copied twice: by the intermediate ancestor of the Swinton and Tait manuscripts – “manuscript μ” – and into the first eleven chapters of the Smyth manuscript. The copying of only these chapters of this text into the Smyth manuscript suggests that manuscript κ was broken into *peciae* that divided the text towards the end of chapter 11. If this is correct, it seems likely that the copyist of manuscript μ was provided with both *peciae* from manuscript κ, but the copyist of the Smyth manuscript was given only the first of these *peciae* and copied the rest of the text from a *pecia* drawn from a different exemplar. Again, therefore, only the first eleven chapters of the descendants of manuscript κ can be relied upon as witnesses to its text. More than seventy variants that differ from the probable text of Stair’s authorial holograph are present in these chapters in the three extant manuscripts, so may have been present in the text of manuscript κ. The genealogically revealing variants among these include the omission of “a” from

301 Variant 11.116.

302 Variant 11.130.

303 Variant 13.8.

304 Variant 14.18.

305 Variant 13.50.

306 Variant 1.3.

307 Variant 5.57.

308 Variants 10.8, 31.

309 Variant 11.4.

310 Variant 2.40.

311 Variants 5.40, 87, 121.

312 Variant 9.18.

313 Variant 10.19.

314 Variants 11.14, 76.

315 Variant 16.35. This last variant is not found in the Smyth manuscript, the latter chapters of which were copied from a parent text from a different family group. On which, see below, pp. 61–3.

chapter 8,³¹⁶ “of nations” from chapter 10,³¹⁷ and “nature of” from chapter 11.³¹⁸ Variants in later chapters in the Smyth manuscript can be attributed to a different exemplar, as will be discussed below. Variants in later chapters in the Swinton and Tait manuscripts – such as the omission of “of this nation” from chapter 16³¹⁹ – might be attributable to either manuscript κ or manuscript μ.

Variants that appear in the first eleven chapters of both the Swinton and Tait manuscripts but not the Smyth manuscript can, however, be attributed to manuscript μ. It substituted “likewise” for “also” in chapter 5.³²⁰ It added “hindered or” to chapter 5.³²¹ It also omitted “neither could there be any civil action for or against them” and the subsequent citation from chapter 9.³²² In total, more than another 100 variants are common to both the Swinton and Tait manuscripts, many of which are liable to parallelism. The overall similarity of their texts nonetheless suggests that they were both copied directly from manuscript μ. That the Swinton manuscript was completed little more than six months after the Tait manuscript might suggest that manuscript μ was an exemplar broken into *peciae*, and that the copyists of the Swinton and Tait manuscripts were working at the same time. Neither appears to have been a parent copy of any of the other extant manuscripts: the Swinton manuscript has around five variants unique to its text, and the Tait has more than ten.

The other copy transcribed from manuscript η was manuscript λ. This latter manuscript appears to have been the parent text of the Kames and Burnside manuscripts. It omitted “a right” from chapter 6,³²³ and the entire phrase from chapter 10 “it followed the mother and not the father, *partus sequitur ventrem*, and in some cases, both by the Judicial law, and the Roman law”.³²⁴ It also substituted “limbs” for “lands” in chapter 5, a variant which was corrected by a later hand in the Burnside manuscript.³²⁵ Manuscript λ also gave “set” rather than “settled” in chapter 10,³²⁶ “give and sell” rather than “sell and give” in chapter 10,³²⁷ and “slaves” rather than “slavery” in chapter 11.³²⁸ The overall similarity of the extant manuscripts seems to support the inference of manuscript λ: around 110 variants that differ from Stair’s probable authorial holograph are shared by the Kames, Burnside, Jedburgh and Marchmont manuscripts. The Burnside manuscript does not appear to have been an ancestor of any other extant manuscript, as it has around forty variants unique to its text. These variants might be original to the text of the Burnside manuscript or inherited from a now-lost and otherwise unconfirmed intermediate ancestor.

The Kames manuscript also added several variants to the text; these were inherited by its descendants. More than 140 variants that differ from the probable text of Stair’s authorial holograph are common to the Kames, Jedburgh and Marchmont

316 Variant 8.16.

317 Variant 10.12.

318 Variant 11.5.

319 Variant 16.3.

320 Variant 5.93.

321 Variant 5.154.

322 Variant 9.88.

323 Variant 6.10.

324 Variant 10.75.

325 Variant 5.114.

326 Variant 10.13.

327 Variant 10.94.

328 Variant 11.93.

manuscripts. Many of the variants that seem to have been introduced into the text in the Kames manuscript are genealogically revealing. It omitted the word “*habent*” as well as the phrase “*quid alicui utile est, id statim mihi licet, ei per vim imponere, nam his qui*” from the quotation of Grotius in chapter 5.³²⁹ It gave “*serui*” rather than “*servus*” in the citation of D.50.17.107,³³⁰ and “*villances*” rather than “*villains*” in chapter 11.³³¹ It abbreviated “*omnem*” to “*oem*” in the quotation of Cicero in chapter 3.³³² All these variants are present in the text of the Marchmont and Jedburgh manuscripts, which are descendants of the Kames manuscript. However, this relationship is most clearly evinced by the intercalation into the text of the Marchmont and Jedburgh manuscripts of a marginal annotation added to the Kames manuscript. This annotation read “*inspicienda est ipse Grotius*” and was added to the Kames manuscript beside the quotation of Grotius in chapter 5. Its intercalation into the text of the descendant manuscripts obscures the sense of the quotation.³³³ The copying from the Kames manuscript also seems to have taken place after an annotator of that manuscript added “*over*” to chapter 9 to remedy the omission of the word “*of*”; this substitution is present in both extant descendant manuscripts.³³⁴

However, there appears to have been an intermediate common ancestor between the Kames manuscript and the Marchmont and Jedburgh manuscripts. This manuscript is now lost but can be called “*manuscript v*”. Given what has just been said, it was clearly the practice of the copyist of this intermediate ancestor to incorporate into the text marginal annotations found in the parent manuscript. Manuscript *v* also included some minor genealogical variants, which are present in both the Marchmont and Jedburgh manuscripts. It omitted “*ope*” from the quotation in chapter 3,³³⁵ “*of liberty*” from chapter 5,³³⁶ and “*their*” from chapter 9.³³⁷ Other variants that appear to have been present in manuscript *v* do not meet Saleman’s criteria as set out above; they can nonetheless be useful in confirming the relationships between the manuscripts in the manner discussed by Smelik. Thus, for example, it omitted the “*r*” from the name of the apocryphal jurist, “*Verseius*”, in chapter 3,³³⁸ and gave “*appear*” rather than “*appears*” in chapter 9.³³⁹ Overall, the Jedburgh and Marchmont manuscripts have more than 150 variant readings in common that appear to be distinct from Stair’s original wording.

(b) *δ group*

Manuscript *δ* appears to have been a first-generation descendant of manuscript *β* and the most recent common ancestor of the texts of the Tarbat and Hamilton manuscripts. Several genealogical variants were present in manuscript *δ*, and are present in the text of both extant descendants. It seems that manuscript *δ* omitted

329 Variants 5.210, 188.

330 See Appendix I, ch 9, citation x.

331 Variant 11.142.

332 Variant 3.53.

333 Variant 5.186.

334 Variant 9.49.

335 Variant 3.58.

336 Variant 5.70.

337 Variant 9.50.

338 Variant 3.68.

339 Variant 9.58.

“of liberty” in chapter 2.³⁴⁰ It also substituted “what” for “where” in chapter 3,³⁴¹ “pleaseth” for “will” in chapter 4,³⁴² and “that” for “were these who” in chapter 10.³⁴³ It added “the” before “other” in chapter 3,³⁴⁴ and “his” before “conjugal” in chapter 5.³⁴⁵ It also omitted “or” from chapter 16, which was added subsequently to the Hamilton manuscript by a seventeenth-century hand.³⁴⁶ Indeed, in total the Tarbat and Hamilton manuscripts share almost 100 variants in common that differ from the probable text of Stair’s authorial holograph, suggesting that the texts of these two extant manuscripts are very similar. The Tarbat and Hamilton manuscripts each have more than twenty variants that are unique to their respective texts, which suggests that neither was an ancestor of any other extant manuscripts.

(c) ϵ group

It is possible that another now-lost manuscript might have been the ancestor of the remaining extant manuscript texts in the α family group. Only one clear genealogical variant appears in the nine remaining manuscripts, specifically the addition of the word “action” to the phrase “personal execution” in chapter 7.³⁴⁷ Two other variants that are less clear nonetheless suggest that a common ancestor was shared by these manuscripts. Most of these manuscripts have the addition of the word “as” in chapter 14, although this is further corrupted in the William Hay manuscript and was in a phrase originally omitted in the Pringle manuscript.³⁴⁸ Most give “*nec servitus*” rather than “*nec servus*” in chapter 9; it is plausible that this variant was preserved in a common ancestor but was further corrupted in the Innominate Advocates’ manuscript as “*nec servitutis*”.³⁴⁹ Another variant that might suggest a close connection between these manuscripts is the addition of “through” before “with” in chapter 10. However, this additional word also appeared in the Burnside manuscript, which suggests that it is a variant liable to parallelism.³⁵⁰ Indeed, in total there are around twenty-five variants that are common to these nine extant manuscripts but which appear to differ from the probable wording of Stair’s authorial holograph. If these variants can be regarded as supporting the inference of a common ancestor, then this ancestor might be regarded as “manuscript ϵ ”. That there are few variants that can be attributed to the text of manuscript ϵ might be explained either by it being a highly accurate copy of manuscript β , or that its other variants became so corrupted in its descendants that they can no longer be identified as having been present in this ancestor text.

If it is correct that there was an intermediate ancestor manuscript ϵ , then it appears that two manuscripts descended directly from it. These two descendant manuscripts can be called “manuscript θ ” and “manuscript ι ”. Both are now lost, but their text is attested to by their descendants.

340 Variants 2.42, 43.

341 Variant 3.15.

342 Variant 4.14.

343 Variant 10.37.

344 Variant 3.8.

345 Variant 5.91.

346 Variant 16.61.

347 Variant 7.16.

348 Variant 14.47. The annotation in the Pringle manuscript gave this variant, which was then corrected.

349 Appendix I, ch 9, citation viii.

350 Variant 10.54.

Manuscript ι was the ancestor of six of the extant manuscripts in this family group. Given the ten-page lacuna in the Dalhousie manuscript, it is highly probable that manuscript ι was an exemplar that was broken up into peciae. More than twenty genealogical variants were present in the text of manuscript ι . Some of the most notable examples are among the many amendments that manuscript ι made to the citations of Roman law in chapter 9. Most of these citations were given by Stair in the medieval style, by specifying the opening phrase of the paragraph rather than the paragraph number.³⁵¹ Manuscript ι added the paragraph number to the medieval-style citation of D.50.17.118. This addition is preserved in the Carnegy, Constable, Home Drummond, Lindesay and William Hay and manuscripts, but was corrupted in the Dalhousie manuscript as “ii and”. Presumably the copyist of the latter misread the “8” as an ampersand; he also added the number “16” at the start of the citation, which might be explained by his misreading an abbreviation of “*liber*”.³⁵² Additionally, manuscript ι cited paragraph 12 in what should have been a citation of D.50.27.22. This error appears in five of the extant manuscripts, while the paragraph number was omitted entirely from the Carnegy manuscript.³⁵³ Manuscript ι also amended Stair’s medieval-style citation of D.41.1.10 by adding the paragraph number and correcting the opening phrase of the paragraph to the present passive indicative third-person plural; the paragraph number was also provided in the Smyth manuscript, apparently independently.³⁵⁴ Stair had given this phrase in the singular – an error that he had copied from Petrus Gudelinus, from whom he had borrowed this citation.³⁵⁵ Manuscript ι also added a reference to the sub-paragraph number and omitted the siglum in the citation of D.1.5.3. The text of manuscript ι here might have been hard to read: the sub-paragraph was omitted by the copyist of the Constable manuscript, and the paragraph number appears variously as 2, 4 or 25 in the descendant manuscripts.³⁵⁶ Even more persuasive for the identification of manuscript ι are the additional citations and quotations that it added to the text. It added at the end of chapter 3 a quotation of D.9.2.45.4: “and Paulus, *vim enim vi defendere omnes leges omnia que iura permittunt*”. This quotation is present in each of the extant descendant manuscripts; it was also present in the Smyth manuscript and was added by a later hand to the Gordon manuscript, which are probably examples of deliberate contamination by the copyist and annotator respectively.³⁵⁷ Manuscript ι also added a partial citation to chapter 9, “*d. l. 1. §.*”. This partial citation was present in all the descendant manuscripts; it was also added by a later hand to the Gordon

351 On Stair’s use of medieval-style citations, see Adelyn L M Wilson, “The sources and method of the *Institutions of the Law of Scotland* by Sir James Dalrymple, 1st Viscount Stair, with specific reference to the law of obligations” (PhD thesis, University of Edinburgh, 2011), pp. 71–4.

352 Appendix I, ch 9, citation ii.

353 Appendix I, ch 9, citation ix.

354 Appendix I, ch 9, citation vi.

355 P Gudelinus, *Commentariorum de iure novissimo libri sex optima methodo, accurate ac erudite conscripti, additis harum vicinarumque regionum moribus ... accessit clarissimi viri Maxaemiliani VVittebort* (1620), 1.3; P Gudelinus, *Commentariorum de iure novissimo libri sex ...* (1644), 1.3; *Corpus iuris civilis tomus primus, quo continentur Institutionum libri quatuor et Digestorum* (1644), D.41.1.10. On Stair’s use of Gudelinus, see Wilson, “The sources and method of the *Institutions*”, chapter 5.

356 Appendix I, ch 9, citation i.

357 Variant 3.75.

manuscript.³⁵⁸ Additionally, manuscript ι added at the end of chapter 9 the full text of D.50.17.209: “*Servitutem mortalitati fere comparamus*”; this quotation is present in all six descendant manuscripts.³⁵⁹ Manuscript ι also had more typical variants, such as the kinds of changes to the wording of the text that have been seen above. For example, it added “that” after “so” in chapter 5,³⁶⁰ gave “observeth” rather than “says” in chapter 5 (modernised as “observed” in the Dalhousie manuscript),³⁶¹ gave “*juris alieni*” rather than “*alieni juris*” in chapter 9,³⁶² gave “and patrimony are” rather than “in their patrimony and are” in chapter 9,³⁶³ gave “*nam partus*” rather than “*partus*” in chapter 10,³⁶⁴ added “absolutely” before “bound” in chapter 11,³⁶⁵ and gave “From bondage or servitude” rather than “From servitude” in chapter 13.³⁶⁶ Overall, more than sixty variants that differ from the probable text of Stair’s authorial holograph are common to these six extant manuscripts, suggesting a degree of similarity that would support the inference of the common ancestor, manuscript ι . There is no compelling evidence to suggest that an intermediate ancestor was shared by only some of these six extant manuscripts; it is thus possible that all six were copied directly from manuscript ι .

There is weak evidence to suggest that the final three extant manuscripts in α group shared an intermediate ancestor, which can be called manuscript θ . Possibly the strongest evidence for manuscript θ is the substitution in the Falconer, Innominate Advocates’ and Pringle manuscripts of “delinquents” for “delinquencies” in chapter 16.³⁶⁷ Further to this, however, the variants unique to these manuscripts cannot be regarded as revealing genealogically. For example, all three manuscripts give “page” rather than “paragraph” in the citation of Grotius in chapter 5. However, several other manuscripts give “p.” or “pag.,” so the extension of this abbreviation to “page” is not surprising.³⁶⁸ Additionally, all three give “them Ro:” rather than “the Romans” in chapter 9. The Hamilton manuscript also abbreviates “Romans”, although it gives “Rom:” and it does not substitute “them” for “the”.³⁶⁹ However, it is again not clear that this substitution and the abbreviation could be regarded as sufficient to infer a common ancestor. The texts of these manuscripts are similar, however, sharing around eighty variant readings that differ from Stair’s probable wording. The similarity of the texts would thus suggest a close relationship between them. It is unlikely, however, that any of these three copies were themselves ancestors of other extant texts: the Innominate Advocates’ manuscript preserves more than forty variants unique to that copy, the Pringle manuscript has around twenty, and the Falconer manuscript a few unique variants.

358 Appendix I, ch 9, citation v.

359 Appendix I, ch 9, citation xi.

360 Variant 5.57.

361 Variant 5.179.

362 Variant 9.15.

363 Variants 9.25, 28.

364 Variant 10.79.

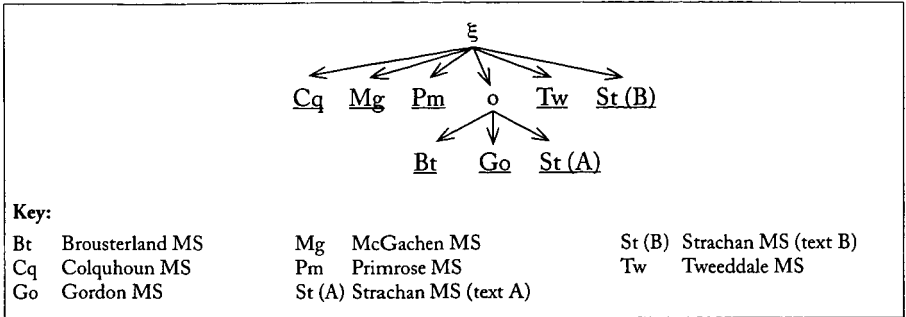
365 Variant 11.105.

366 Variant 13.1.

367 Variant 16.68.

368 Variant 5.185.

369 Variant 9.44.

(2) The second-largest family of manuscripts, “ ξ group”Figure 2: stemma of ξ -group manuscripts

A smaller family group descended from a different common ancestor that is now lost but can be called “manuscript ξ ”, as is illustrated in Figure 2 above. This family comprises seven extant manuscripts, specifically the Brousterland, Primrose, Strachan, Colquhoun, Gordon, McGachen and Tweeddale manuscripts. Something must be said of the Strachan manuscript in particular. The text of “Of Liberty and Servitude” in the Strachan manuscript was copied by two scribes. A small section of the title’s text was copied by both scribes, repeated at the end of one scribe’s section and at the start of the other’s section. This repetition indicates that, first, the two scribes were working from peciae and, secondly, that these peciae were drawn from two exemplars that divided the text differently. The sections of text copied by the two different scribes must, therefore, be analysed separately. Nonetheless, both of the texts, which can be called “A” and “B”, appear to descend from manuscript ξ . It is thus possible that the same stationer provided the peciae, although different copyists were employed to transcribe the text.

Some variants were clearly present in manuscript ξ and are preserved in the descendant texts. Manuscript ξ added “the” to chapter 9.³⁷⁰ It substituted “natural law of liberty” for “nature of liberty” in chapter 11³⁷¹ and “others” for “these” in chapter 12,³⁷² and confused the order of “thankfulness, reverence” in chapter 13.³⁷³ Indeed, in total around fifteen variant readings that differ from Stair’s probable wording are shared by these seven manuscript texts, suggesting that there is a high degree of similarity between them.

Further to this, the relationship between the copies that descended from manuscript ξ is not particularly clear. A dozen variants that might be considered to be genealogical are present in some but not all of these manuscripts, and the pattern of their occurrence is somewhat obscure. Probably the strongest, if not a strong, case can be made for a closer relationship between the Brousterland and Gordon manuscripts and text A of the Strachan manuscript. All three texts omit “or as dead men” from chapter 9; this is added to the Gordon manuscript as “or

370 Variant 9.47.

371 Variant 11.5.

372 Variant 12.15.

373 Variant 13.18. “Thankfulness” is omitted in the Primrose manuscript.

dead” by a later hand.³⁷⁴ They have the additional word “also” in chapter 5, as do the Swinton and Tait manuscripts.³⁷⁵ All three also omit “especially” from chapter 11, as do the Montrose and Ogilvie manuscripts.³⁷⁶ Only the first two of these variants could be said to be of a genealogically revealing nature, whereas the latter two are clearly liable to parallelism or otherwise fall short of Salemans’s criteria. Overall, there are around thirty-five variants shared by these three extant manuscripts that do not appear to reflect Stair’s original text. If these variants might be read as supporting the inference of a common ancestor between these three manuscript texts, then it might be called “manuscript ρ ”. Given what has been said of the Strachan manuscript, it follows that manuscript ρ would have been an exemplar broken into peciae.

Thus, there appears to be sufficient evidence to suggest that these seven extant manuscripts are closely related, but insufficient evidence to identify those relationships more precisely with certainty. What is more clear is that none of these manuscripts is an ancestor of one of the others: the Brousterland, Primrose, Colquhoun, McGachen and Tweeddale manuscripts each have between around twenty and forty variants only found in that one manuscript, the Gordon manuscript has around seventy such variants, text A of the Strachan manuscript has around fifty such variants, and the shorter text B of the Strachan manuscript still has a few.

(3) The third-largest family of manuscripts, “ π group”

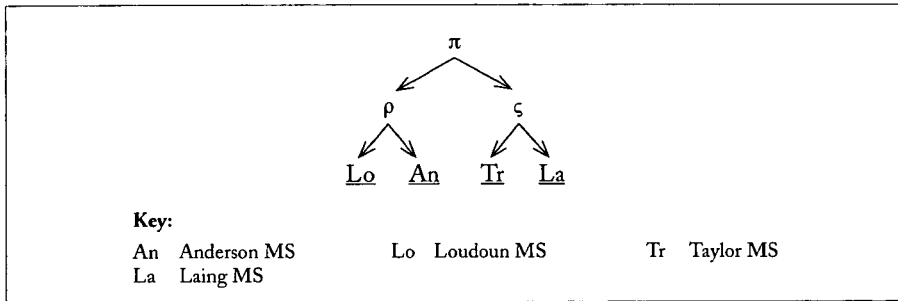


Figure 3: stemma of π -group manuscripts

The third-largest family group that can be identified comprises four extant manuscripts, as set out in Figure 3 above. There are fewer variants present in the texts of these manuscripts in comparison to those from other family groups. This suggests that these manuscripts’ texts are close to what might be presumed to be Stair’s original text. However, it also means that the precise relationship between them is less certain than might otherwise be the case.

The clearest relationship seems to be that between the Loudoun and Anderson manuscripts, which appear to have shared an intermediate common ancestor, which might be called “manuscript ρ ”. This manuscript had several variants. Both

374 Variant 9.110.

375 Variant 5.92.

376 Variant 11.79.

of its extant descendants rearrange “in rather” to be “rather in” in chapter 2,³⁷⁷ “services and to other farms” to be “farms or to other services” in chapter 11,³⁷⁸ and “labour and work” to be “work and labour” in chapter 15.³⁷⁹ They add “any” to chapter 5,³⁸⁰ and seem to add “in” to chapter 14.³⁸¹ They omit “not” from chapter 8.³⁸² They extend the abbreviation “*serv.*” to “*servis*”, which is not correct.³⁸³ Both also substitute “and were” for “who being” in chapter 10.³⁸⁴ The full number of variants also evinces a close relationship between the Anderson and Loudoun manuscripts. These two manuscript texts have respectively around 100 and ninety points of variance that differ from what may have been Stair’s original wording. Almost seventy of these are common to both manuscripts. These texts are thus very similar, and a close relationship between them could be presumed. It is probable that neither extant manuscript was an ancestor of the other, as the Anderson manuscript has more than twenty variants that are unique to that particular text, and the Loudoun manuscript has around ten.

It seems probable that the Taylor and Laing manuscripts may also share an intermediate common ancestor, which might be called “manuscript ζ”. It seems that this manuscript omitted “reverence” from chapter 13,³⁸⁵ and relocated the phrase “these who were always free, who were called *ingenui*, and in” in chapter 14.³⁸⁶ Both descendants also give “and” rather than “who” in chapter 14.³⁸⁷ Further to these genealogically revealing variants, there is only relatively weak evidence that the two manuscript texts are closely related. The Laing and Taylor manuscripts have only around thirty-five variants in common; the Taylor manuscript has roughly the same number of, if not more, variants in common with the Fragment, Gordon, Ogilvie and Williamson manuscripts. However, this low number may be reflective of the general accuracy of the Laing manuscript. It has only around 100 variants that differ from the proposed text of Stair’s authorial holograph, making it one of the closest manuscripts to that text (along with the Anderson and Loudoun manuscripts). Around a third of the variants found in the Laing manuscript are thus also present in the Taylor manuscript, so the overall similarity could be said to be quite high in terms of a percentage of the variants present in the Laing text. Again, it is clear that neither the Taylor nor the Laing manuscript is an ancestor of the other, as these contain around sixty and around twenty unique variants respectively.

There is weak evidence to suggest that all four manuscripts descend from a common ancestor that is now lost but can be called “manuscript π”. The Anderson, Laing and Loudoun manuscripts give “*qui sunt*” rather than “*quam*” in the citation of D.15.1.4 in chapter 9; what may be a further corruption of this (“27 [space]

377 Variant 2.29.

378 Variant 11.122.

379 Variant 15.17. Similarly, the Colquhoun manuscript gives “service, work or labour”.

380 Variant 5.95.

381 Variant 14.18.

382 Variant 8.38.

383 Appendix I, ch 9, citation x.

384 Variant 10.26.

385 Variant 13.18.

386 Variant 14.10.

387 Variant 14.25.

siquis”) appears in the Taylor manuscript.³⁸⁸ The word “they” is omitted from all the manuscripts with the exception of the Anderson, Loudoun and Taylor manuscripts. It is plausible that “they” was present in the text of manuscript π but omitted from the Laing manuscript.³⁸⁹ Other variant readings common to these four manuscripts are liable to parallelism. For example, all four omitted “due” from chapter 2, as did the Montrose, Gordon, Ogilvie and McGachen manuscripts.³⁹⁰ There is also some weak evidence for manuscript π in the total number of variants that these manuscripts have in common. The Anderson, Laing and Loudoun manuscripts have almost twenty divergent variants in common, and the four manuscripts have almost ten in common. However, the Anderson and Loudoun manuscripts have around the same number of variants in common with the Montrose and Ogilvie manuscript texts, so the support for the inference of manuscript π is not strong.

Thus, it would seem that there is strong support for a very close relationship between the Anderson and Loudoun manuscripts (and thus for the existence of their common ancestor, manuscript ρ). There is also fairly strong evidence for a relationship between the Taylor and Laing manuscripts. There is only relatively weak evidence that there was a close relationship between the Anderson, Laing and Loudoun manuscripts, and between these three and the Taylor manuscript. The precise nature and degree of those relationships thus remain somewhat elusive.

(4) The fourth-largest family of manuscripts, “ τ group”

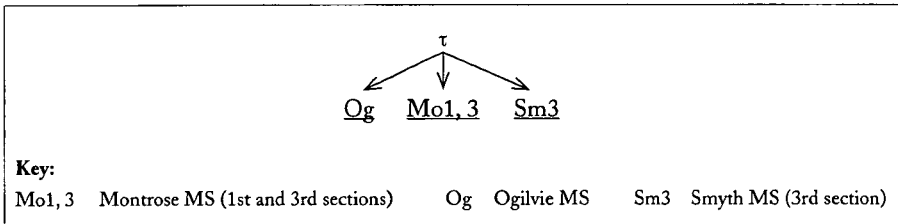


Figure 4: stemma of τ -group manuscripts

The number of variants common to their texts reveals a strong relationship between the Montrose, Ogilvie and Smyth manuscripts. These three manuscripts share around thirty variants that appear to be distinct from those of the probable text of Stair’s authorial holograph. In addition to these thirty variants shared by all three manuscripts, the Smyth and Montrose share another fifteen divergent variants, the Smyth and Ogilvie manuscripts share around another ten, and the Montrose and Ogilvie share more than another 100. This evidence would therefore suggest that the Montrose and Ogilvie manuscripts differ extensively from Stair’s text but are very close to each other. The Smyth manuscript seems to be very close to both of these manuscripts, although slightly closer to the Montrose than to the Ogilvie manuscript. However, the Smyth manuscript has already been shown to have a significant degree of similarity with the manuscripts of α group.

388 Appendix I, ch 9, citation vii.

389 Variant 9.64.

390 Variant 2.55.

This evidence thus suggests a complex relationship between these manuscripts. This has resulted from the latter two manuscripts being contaminated within the relevant title. It nonetheless seems likely that all three manuscripts have sections of text that descend from a common ancestor. It has already been shown that the text of the first eleven chapters of this title in the Smyth manuscript descends from manuscript κ of the α group. The texts of these chapters in the Montrose and Ogilvie manuscripts are very similar and clearly share a common ancestor; the variants indicate that this ancestor was not a member of the α group. This ancestor (which can be called “manuscript τ ”) was a highly inaccurate manuscript that introduced many variants into the text. The Montrose and Ogilvie manuscripts have around 100 variants in common in the first eleven chapters of title 2. Many of the genealogically revealing variants among these 100 were omissions, including two that are particularly significant: the omission of chapter 6,³⁹¹ and the omission from chapter 5 of the phrase “where the natural liberty is not hemmed in with a natural obligation, there, unless by his own delinquency or consent, man cannot justly be restrained, much less constrained upon pretence of his utility or profit”.³⁹² Manuscript τ also had variants that were substitutions, such as “of property” for “of liberty” in chapter 2,³⁹³ “*inimicitiam*” (or similar) for “*semper vim*” in chapter 3,³⁹⁴ “sweet” for “servile” in chapter 10,³⁹⁵ and “all law” for “liberty” in chapter 11.³⁹⁶ Manuscript τ also added several words to the text, such as the definite article before “injuries” and “obligations” in chapter 2, and “by” before “the Roman law” in chapter 10.³⁹⁷

However, from the final sentence of chapter 11 up to and including the midpoint of chapter 14, the text of the Montrose manuscript is distinct from that of the Ogilvie manuscript. As has already been shown, it and the Smyth manuscript were copied from the partial manuscript ζ , a member of α group.

Yet, it seems that the texts of the Ogilvie, Montrose and Smyth manuscripts from the midpoint of chapter 14 to the end of chapter 16 all descend from the same ancestor manuscript. As there is no evidence of contamination in this title in the Ogilvie manuscript, this common ancestor might be presumed to be manuscript τ . Certainly it seems that the common ancestor of these chapters was as inaccurate a copy as manuscript τ has been shown to have been. Despite the brevity of these two chapters, there are several variants that appear to have been present in its text. The common ancestor gave “being” rather than “having been” in chapter 14,³⁹⁸ “privileged” rather than “judged free persons” in chapter 15,³⁹⁹ and “at most have” rather than “have at most but”.⁴⁰⁰ It omitted “them to” from chapter 14,⁴⁰¹ and “in” and “as” from chapter 16.⁴⁰² It also seems that the common ancestor gave “constrained” rather than

391 Variant 6.1.

392 Variant 5.134.

393 Variant 2.43.

394 Variant 3.54.

395 Variant 10.69.

396 Variant 11.12.

397 Variants 2.40, 2.53, 10.87.

398 Variant 14.32.

399 Variant 15.9.

400 Variant 15.12.

401 Variant 14.45.

402 Variants 16.7, 54.

“constraint”,⁴⁰³ “law” rather than “fall”,⁴⁰⁴ and “wrong” rather than “false” in chapter 16;⁴⁰⁵ the latter two variants are corrupted further in the Montrose manuscript.

It is possible to speculate as to how the pattern of contamination of these manuscripts may have occurred. The same stationer may have owned manuscript τ as well as manuscript γ , both of which were exemplars broken up into peciae. It is possible that the section of “Of Liberty and Servitude” comprising the final sentence of chapter 11 through to the midpoint of chapter 14 was contained on a single leaf at the beginning of the relevant pecia of manuscript τ . It is possible that this leaf became lost or damaged after the Ogilvie manuscript was copied from the pecia. The stationer might then have used manuscript γ as the source of a replacement leaf; the addition of this replacement leaf (manuscript ζ) resulted in the pecia becoming contaminated, as was proposed above. Thus, when the Montrose manuscript was copied, it became contaminated for only these chapters. It is also possible that the copyist of the Smyth manuscript was provided with a pecia from manuscript γ containing the first eleven chapters, and with this contaminated pecia from manuscript τ . Hence the contamination of the Smyth manuscript in the later chapters of this title. This suggestion is somewhat complicated by the fact that the Smyth manuscript was completed in 1674 and the Ogilvie manuscript in 1675. It is, however, possible that the order in which the copyists transcribed the peciae and the speed at which they did so nonetheless meant that Ogilvie copied the relevant pecia before Smyth.

(5) The smallest family of manuscripts, “v group”

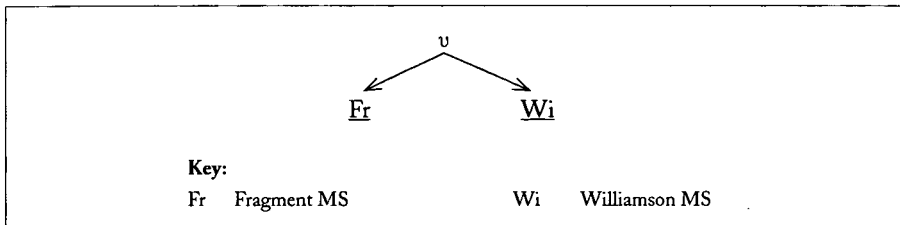


Figure 5: stemma of v-group manuscripts

The variants present in the Fragment and Williamson manuscripts suggest a close relationship between their texts. These manuscript texts differ from Stair’s probable wording around 120 and 140 times respectively; more than sixty of these are variant readings common to both these two manuscripts.⁴⁰⁶

Indeed, an assessment of the genealogically revealing variants also suggests that the Fragment and Williamson manuscripts have a common ancestor. This manuscript is now lost, but can be called “manuscript v”. The conflation present in the Williamson manuscript and the nature of the Fragment manuscript indicate that manuscript v

403 Variant 16.13.

404 Variant 16.14.

405 Variant 16.31.

406 There is also some suggestion of a similarity between both of these manuscripts’ texts and that of the Taylor manuscript, which has around forty variants in common with these two texts.

was probably an exemplar broken up into peciae. Several genealogical variants appear in both extant manuscripts, and so can be attributed to manuscript v. It gave “a” rather than “every” in chapter 1,⁴⁰⁷ “a man” rather than “man” in chapter 3,⁴⁰⁸ “yea” rather than “or” in chapter 9,⁴⁰⁹ “selected” rather than “settled” in chapter 10,⁴¹⁰ and “law” rather than “nature” in chapter 11.⁴¹¹ It also omitted the word “natural” from the phrase “a natural obligation” in chapter 5.⁴¹² Manuscript v also correctly extended the opening paragraph of the citation in chapter 9 of D.15.1.4, “*quam Tuberonis sent*”, which is corrupted as “*quam inheronis*” in the Williamson manuscript.⁴¹³ The Fragment and Williamson manuscripts have around ten and around thirty-five unique variants present in their respective texts, indicating that neither one could be an ancestor of the other.

(6) Observations on the stemma, and the nature and circulation of parent manuscripts

The evidence thus allows the inference of five family groups. Some of these, such as the α group, seem to be fairly clear, if still subject to some speculation as to the closeness or nature of particular relationships within the group. Others, such as the relationship of the Taylor and Laing manuscripts with the Anderson and Loudoun manuscripts, remain somewhat opaque.

This reading of the manuscripts also infers around twenty texts that were used as ancestors but are now lost. It is, of course, possible that this research has been overly generous in interpreting the unique variants as establishing that one extant manuscript could not have been the ancestor of another; these might simply have been corrected or further corrupted in the descendant. It is also possible that too much emphasis has been put on particular genealogically revealing variants, resulting in the inference of too many ancestors. Thus, it is entirely possible that there were not fully twenty ancestor texts. Indeed, one might doubt that a small community of lawyers was likely to produce or require many more than the forty manuscripts that are now extant. However, it is not improbable that so many copies existed. Not all of the copies would have been produced for or by lawyers working in the central courts in Edinburgh: the Ogilvie manuscript was copied in Arbroath by a local man. Nor would all the manuscript copies have been owned by advocates or writers: Ogilvie himself is not known to have been a lawyer, and some of the proposed ancestors likely belonged to booksellers or stationers, kept for the purpose of copying. Some of the texts proposed may not have been part of a full copy: the ancestor text ζ probably comprised only a single folio leaf. Nor is it improbable that so many copies have been lost: exemplars broken into peciae would have become worn through use and might be discarded if in a state of disrepair. Exemplars might be discarded, too, once the demand for copying lessened after the text was available in print. It is also possible that some of these texts survive but

407 Variant 1.23.

408 Variant 3.5.

409 Variant 9.111.

410 Variant 10.13.

411 Variant 11.5.

412 Variant 5.142.

413 Appendix I, ch 9, citation vii.

have not yet been identified. Indeed, the Montrose and Berkeley manuscripts have only recently been identified.

If the stemma proposed here are correct, it follows that some of the ancestor manuscripts of “Of Liberty and Servitude” had considerable longevity as parents. It is probable that manuscript α was already circulating as a parent text by the mid-1660s, given that the Burnside manuscript was its fifth-generation descendant and was completed in 1668. However, manuscript α also appears to have been the parent text of the James Hay manuscript, which was completed in October 1677. Manuscript ξ also had impressive longevity: copied from its text of “Of Liberty and Servitude” were the Primrose manuscript, which was completed by November 1667, and the Colquhoun manuscript, which was probably completed after 1681. This longevity is indicative of the value of these manuscripts to their owners. It also means that there is an increased likelihood that these pecciae would become damaged and have leaves replaced, resulting in the kind of cumulative contamination of texts witnessed in the Smyth and Montrose manuscripts.

Contamination of the manuscripts means that the stemma constructed on the basis of title 2 cannot be applied uncritically to other titles within the *Institutions*. The stemma proposed above could, however, be used as a model which could be tested and then either adjusted or abandoned as the extent of the impact of issues such as conflation, deliberate changes to the text, and intercalation of annotations become apparent.

CONCLUSION: THE PRINTED EDITIONS

This research has shown that the interrelationships of the texts are critical to the nature of the manuscript sources. It has also shown that considerable caution must be used when desuming the text that Stair produced in 1659–62 or the revisions that he made in 1666–7. Yet, it is the text of the printed editions that is important for most research on Stair's *Institutions*. These are not, however, necessarily more accurate in reflecting Stair's intended wording.

Two editions of the *Institutions* were printed during Stair's lifetime, in 1681 and 1693. A proper understanding of the printed editions of the *Institutions* can only be had once their method of printing has been considered. The method of printing in use in the seventeenth century was moveable-type printing. This method used reliefs of individual letters arranged to make words or pages that were subsequently imprinted onto multiple sheets of paper. There were problems with moveable-type printing. First, the carved letters became eroded, resulting in the lettering appearing less clear on the printed page. Secondly, if the press was knocked after a page was typeset, it could upset the lettering, which would then need to be reset. Two books from the same edition or print-run could thus differ. Cairns found that this was the case with Mackenzie's *Institutions of the Law of Scotland* (Edinburgh, 1684);⁴¹⁴ similar variations have been found in the second printed edition of Stair's *Institutions*.⁴¹⁵ Finally, printing standards required that the lines of text on the page be

414 J W Cairns, “The moveable text of Mackenzie: bibliographical problems for the Scottish concept of Institutional Writing” in J W Cairns and O F Robinson (eds), *Critical Studies in Ancient Law, Comparative Law and Legal History: Essays in honour of Alan Watson* (2001) 235.

415 Wilson, “The sources and method of the *Institutions*”, pp. 217, 236 n. 112, 251–2.

justified. In order to achieve lines of equal length, the printers – and not the author – would determine the setting and spacing of letters, spelling, punctuation and any abbreviations. These features of the printed text of the *Institutions* were therefore fixed by the printer rather than Stair; no assumptions about Stair’s intention can be based on these accidents of printing. Both the first and the second printed editions of the *Institutions* were printed by the Heirs of Andrew Anderson in Edinburgh. Anderson had been the King’s Printer since 1671, giving him a monopoly “so extensive that no one in the kingdom was at liberty to print any book, from a bible to a ballad, without a license from Andrew Anderson”.⁴¹⁶ The poor quality of his printing resulted in this monopoly being reduced to Bibles and Acts of Parliament within the year, after he printed a New Testament so inaccurate that it had to be withdrawn by the Privy Council.⁴¹⁷ On the death of Anderson in 1676, his widow ran the printing house as “the Heirs of Andrew Anderson”. Aldis, who researched printing in Scotland before 1700, said of Anderson:

A considerable portion of his type and ornaments had been in use in Edinburgh by a succession of previous presses, and are in a much worn condition. His productions, and those of his successors, are among the poorest and most slovenly that proceeded from the Scottish press.⁴¹⁸

Stair himself mentioned his dissatisfaction at the level of inaccuracy in the first edition,⁴¹⁹ although this was a standard complaint.⁴²⁰ Nonetheless, several changes introduced into the text of “Of Liberty and Servitude” in the first printed edition might be presumed to have been by the printer, either because they obscure the sense of the passage or because the change was unnecessary and so unlikely to be deliberate: the change of “obligations” to the singular, the change of “for” to “so” and the omission of “due” in chapter 2;⁴²¹ the misspelling of “*hoc*” as “*haec*” in chapter 3;⁴²² the omission of “of man”, the misprinting of “is” as “as”, as well as the confusion of the Latin in chapter 5;⁴²³ the misprinting of “whereas” as “as” in chapter 8;⁴²⁴ the mispositioning of the siglum in one of the citations and the misspelling of “procurators” in chapter 9;⁴²⁵ and the printing of “the these” and “loss” in chapter 10.⁴²⁶ Various other apparent

416 C H Timperley, *A Dictionary of Printers and Printing, with the Progress of Literature, Ancient and Modern* (1839), p. 546. On the origins of printing privileges in Europe, see E Armstrong, *Before Copyright: The French book-privilege system 1498–1526* (Cambridge Studies in Publishing and Printing History series, 1990 repr. 2002), pp. 1–20.

417 Timperley, *Dictionary of Printers*, p. 546.

418 H G Aldis, *A List of Books Printed in Scotland Before 1700 including those printed furth of the realm for Scottish booksellers with brief notes on the printers and stationers* (Edinburgh Bibliographical Society occasional publications series, 1904), p. 107.

419 Stair, *Institutions*, 2nd edn, first page of the advertisement.

420 For a similar complaint, see T Craig, *Jus feudale tribus libris comprehensum: quibus non solum consuetudines feudales, & praediorum jura, quae in Scotia, Anglia, & plerisque Galliae locis obtinent, continentur, sed universum ius Scoticum, et omnes fere materiae iuris clare & dilucide exponuntur, et ad fontes iuris feudalis & civilis singula reducuntur* (1655), last two pages of Burnet’s preface, “*Ad Lectorem*”. On authorial supervision of printing houses, see Adrian Johns, *The Nature of the Book: Print and Knowledge in the Making* (1998), pp. 101–5.

421 Appendix I, comments 2.A, E, K.

422 Appendix I, comment 3.F.

423 Appendix I, comments 5.K, U, V, W.

424 Appendix I, comment 8.B.

425 Appendix I, ch 9, citation ix, comment 9.P.

426 Appendix I, comments 10.B, C.

changes to the text might be attributed either to Stair or to the printer, as is discussed in Appendix I.⁴²⁷

Although Stair complained that he had been unable to see the first edition through the press, it is not clear to what extent he supervised the Heirs' printing of the second edition. Variations in the print-run have been found in the second printed edition.⁴²⁸ Changes were introduced into the text of "Of Liberty and Servitude". Some can probably be regarded as printing errors, including: the substitution of "a" for "the" and the omission of the words "so" and "of" from chapter 5;⁴²⁹ the substitution of "been" for "be", "constitution" for "constitutions", and "that" for "their" in chapter 9;⁴³⁰ the misprinting of one of the citations in chapter 9;⁴³¹ the substitution of "Jewes" for "Jewish" in chapter 10;⁴³² and the misidentification of paragraph 16 as paragraph 17.⁴³³ Other changes may have been the result of either a deliberate change by Stair or an error of the printer.⁴³⁴ It is also interesting that not all of the (probable) errors made by the printer in the first printed edition were corrected for the second. Those that were corrected were those which were easily spotted: misspellings, the order of items in a citation, and those which had an impact on the meaning of the text. The survival of the other, more latent errors supports the suggestion that Stair used a printed copy of the first edition, rather than an earlier manuscript of it, to prepare the second.⁴³⁵ Indeed, editing a second edition from a printed copy of the first edition was common and even encouraged by some printers, as Woudhuysen and Moore have noted.⁴³⁶ The problems with the second printed edition – although relatively minor – mean that its text cannot always be presumed to be entirely correct to the text presented to the printer by Stair. That said, the quality of its printing does appear to have been better than that of the first edition. The second printed edition can also be regarded to be superior to the subsequent editions.

There have been four printed editions of the *Institutions* since Stair's death. The third edition was printed in 1759 and is worth discussing in detail. The project was started by the advocate John Gordon, who edited up to and including part of *Institutions*, 9.15/1.9.15; a footnote on page 85 of that edition indicates the precise point to which he edited the text. The rest of the text was edited by William Johnstone, later called Sir William Pulteney, fifth baronet.⁴³⁷ The advertisement printed at the front of the volume sets out the editors' aims in producing this edition

427 See, e.g., Appendix I, comments 2.H, J, 5.L, 5.P, 7.A, B, 9.E, 16.B, C etc.

428 Wilson, "The sources and method of the *Institutions*", pp. 217, 236 n. 112, 251–2.

429 Appendix I, comments 5.A, C, F.

430 Appendix I, comments 9.F, K, N.

431 Appendix I, ch 9, citation iii.

432 Appendix I, comment 10.E.

433 Appendix I, comment 16.A.

434 See, e.g., Appendix I, comments 3.M, 8.C etc.

435 Wilson, "The sources and method of the *Institutions*", p. 252.

436 J K Moore, *Primary Materials Relating to Copy and Print in English Books of the Sixteenth and Seventeenth Centuries* (Oxford Bibliographical Society Occasional Publication 24, 1992), pp. 31–3; Woudhuysen, *Sir Philip Sidney and the Circulation of Manuscripts*, p. 23.

437 On Johnstone, see M J Rowe and W H McBryde, "Pulteney [formerly Johnstone], Sir William, fifth baronet (1729–1805)" *Oxford Dictionary of National Biography*, online edition, January 2008, available at <http://www.oxforddnb.com/view/article/56208>, accessed 11 June 2013. On the editing of this edition, see Stair, *Institutions of the Law of Scotland deduced from its originals and collated with the civil, and feudal-laws, and with the customs of neighbouring nations ... the third edition* (1759), Advertisement.

and the method that they used. Johnstone almost certainly wrote this advertisement, but does purport to speak to the pages edited by Gordon also. The advertisement states that this edition “was undertaken with a View to remove, by the Help of several Manuscripts, the Obscurity which every where occurred in the former Editions”; the advertisement specified that “all these Alterations are printed in Italics”. The editors’ practices in using the manuscripts were different. John Gordon’s amendments are usually identified by footnoted references explaining the source of the replacement text. Many of these references are to the manuscripts generally, or to the first printed edition as well as the manuscripts generally. Some changes were, however, made with reference to specific manuscripts. Gordon referred to five manuscripts in the eighty-five pages that he edited; it is possible that he consulted only these five manuscripts when preparing this edition. All five manuscripts were held by the Faculty of Advocates, and were identified by Gordon by the letter that represents their old shelfmark. Four are still extant, specifically the William Hay manuscript (referred to as “Manuscript D”), the Tait manuscript (referred to as “Manuscript A”), the James Hay manuscript (referred to as “Manuscript B”) and the Kames manuscript (referred to as “Manuscript H”). The fifth manuscript referred to by John Gordon, “Manuscript G”, appears to have been lost.⁴³⁸ Unfortunately, it is the lost “Manuscript G” that Gordon relied upon most heavily when editing “Of Liberty and Servitude”: he made specific reference to this manuscript eight times in the footnotes to this title. In comparison, he here made specific reference to the James Hay manuscript three times, the Kames manuscript twice, and the Tait manuscript only once; he made no reference to the William Hay manuscript in this title. This pattern of reliance seems to be representative of Gordon’s method when editing the eighty-five pages for which he had responsibility, throughout which he made specific reference to “Manuscript G” 171 times, the James Hay manuscript 137 times, the Tait manuscript 126 times, the Kames manuscript 115 times, and the William Hay manuscript only eight times.

The changes that Gordon made to the text of “Of Liberty and Servitude” on the basis of the manuscripts tended to be minor changes in the wording that did not alter the sense of the text.⁴³⁹ As the advertisement stated, words that were added or changed were generally (if not always) printed in italics. This means that instances where Gordon decided to omit words on the basis of the manuscripts are not always identified clearly. For example, the 1759 edition gives “almost every where [I. edit. & MSS] power [I. edit. & MSS] of life and death of their slaves”.⁴⁴⁰ The second printed edition gave “almost every where, the power of the Life and Death of their Slaves”. The definite articles present in the second printed edition before both “power” and

438 The author would like to thank the staff of the National Library of Scotland who assisted her in attempting to locate the manuscript. Six of the eight phrases for which Gordon follows (and thus effectively quotes from) Manuscript G are common to many of the manuscripts. Two are, however, unusual variants: “him in rather” in paragraph two is now found only in the Loudoun and Anderson manuscripts; and “of constraint” is found only in the Lindsay, Constable, Home Drummond and Dalhousie manuscripts, while what is probably a corruption of this appears in the William Hay manuscript. The lost Manuscript G has not been taken into account in the construction of the stemma above, as the reading of the text by Gordon does not provide the complete text and is not now verifiable.

439 However, Johnstone added entire paragraphs, such as the large passage previously found only in the manuscripts but restored in the third edition at *Institutions*, 1.14.7.

440 1759 edition of the *Institutions*, 1.2.9.

“life” were thus omitted in the 1759 edition, but the omissions were not recorded clearly. According to the advertisement, the 1759 edition also included changes “made without the Authority either of the Manuscripts or of the Decisions referred to in the Book”; these were said to be “inclosed by Crotchets; and the former Reading is placed at the Bottom of the Page”. Only one such explicit change is made to the text in “Of Liberty and Servitude”: the change to “for” is marked as “Formerly, so” in a footnote.⁴⁴¹ However, there were also many editorial changes made without any acknowledgement or indication as to the original text: the omission of the word “of” and the addition of the word “it” in chapter 2;⁴⁴² the omission of the phrase “in his oration” in chapter 3;⁴⁴³ the corrections of the Latin quotations of Grotius in chapters 3 and 5;⁴⁴⁴ the modernisation of “forfaulted” in chapters 6 and 13;⁴⁴⁵ the change in tense of “become”, the correction of “been” to “be”, the pluralisation of “constitutions” and the omission of the phrase “as appears by the former law, and consequently” in chapter 9;⁴⁴⁶ the substitution of two instances of “those” for “these”, of “amongst” for “among”, and the substitution of “Jewish” for “Jews” in chapter 10;⁴⁴⁷ the modernisation of “Portugals” and the reversing of the phrase “remains elsewhere” in chapter 11;⁴⁴⁸ the contraction of “parliament” in chapter 12;⁴⁴⁹ other instances of substitution of “those” for “these” in chapters 12 and 14;⁴⁵⁰ the use of parenthesis in chapters 12 and 14;⁴⁵¹ another substitution of “amongst” for “among” in chapter 13;⁴⁵² and the omission of “so” in chapter 16.⁴⁵³ Given the length of the title, this could be regarded as a rate of departure without acknowledgement of more than 1 per cent of the total number of words. Citations of authority were also added. In chapter 1, a citation was added after a previously unattributed quotation of the *Institutes*. In chapter 3, a citation of D.9.2.4.1 was added after a quotation from the Digest; the quotation was actually of the text’s *prooemium*. In chapter 5, a cross-reference was added. In chapter 9, some of Stair’s citations were relocated, one was made more specific by referring to the first paragraph, and five new citations were added. In chapter 16, citations were added after references to Roman actions. Although these added citations are helpful, they were not distinguished in any way from the citations provided by Stair himself; this practice has caused problems for scholars analysing Stair’s use of authority.⁴⁵⁴ Thus, although the 1759 edition did make some critical advances, the unacknowledged changes and the examination of such a small number of manuscripts (at least four of which were members of the α group) means that the text produced cannot be relied upon as a scholarly edition of the *Institutions*.⁴⁵⁵

441 1759 edition of the *Institutions*, 1.2.11.

442 Appendix I, comments 2.L, C.

443 Appendix I, comment 3.D.

444 Appendix I, comments 3.F, J, L, 5.T.

445 Appendix I, comments 6.B, 13.H.

446 Appendix I, comments 9.F, K, L.

447 Appendix I, comments 10.B, D, A, E.

448 Appendix I, comments 11.H, J.

449 Appendix I, comment 12.J.

450 Appendix I, comments 12.D, 14.A, C.

451 Appendix I, comments 12.E, 14.B.

452 Appendix I, comment 13.A.

453 Appendix I, comment 16.E.

454 On which, see Wilson, “The sources and method of the *Institutions*”, p. 266.

455 This edition nonetheless remains useful for the notes that Gordon added to indicate changes to the law. On which, see Appendix I, comments 11.P, 16.P.

The fourth edition of the *Institutions* was printed in 1826 and was edited by George Brodie. The advertisement to the work states that it adheres to the 1693 edition “unless where it is obvious, from the sense or the decision referred to, that a slight inaccuracy exists”. Brodie also noted that he “constantly collated the three former editions with nine manuscripts in the Advocates’ Library, and latterly with a tenth also, obligingly lent to me by Mr. David Laing”; he did not identify these manuscripts further. Brodie was critical of the “liberties used with the text” in the 1759 edition, particularly the occasional adoption of the wording found in the manuscripts or first printed edition in preference to that found in the second printed edition. He did, however, concede that he had in places “adopted the emendations of my predecessor; but rarely, never in any important instance, without stating the circumstance”. He placed emphasis on the claim that “*As for myself I have not presumed to alter or add one syllable*”.⁴⁵⁶ However, this claim was not correct in relation to the title “Of Liberty and Servitude”. Brodie rejected the acknowledged editorial change, the change from “so” to “for”.⁴⁵⁷ But he received the changes made in the 1759 edition under reference to the manuscripts, without acknowledging them as deviations from the second printed edition. Brodie also received into his text all the unacknowledged editorial changes made in the 1759 edition, with the exception of the omission of the phrase “in his oration” in chapter 3 and the use of parenthesis in chapter 14.⁴⁵⁸ He also received the cross-reference and new citations added in the 1759 edition – including the one that was incorrect, which shows that he borrowed these blindly. He followed that edition in relocating several of Stair’s own citations. Brodie himself also made some minor unacknowledged changes to the wording, including: giving “*et inutilium*” rather than “*inutiliumve*” in chapter 5;⁴⁵⁹ omitting “they” from chapter 11;⁴⁶⁰ and restoring the 1681 edition’s spelling of “*clientele*” in chapter 12.⁴⁶¹ It thus seems that, although Brodie cannot have used the 1759 edition as his only source for the text, he did use that edition as an authoritative and probably principal reading of this title.⁴⁶² Brodie’s reliance on the 1759 edition in “Of Liberty and Servitude” does seem to have been his practice elsewhere as well.⁴⁶³ This indicates that Brodie relied upon the 1759 edition more than the advertisement would suggest.

The fifth edition, by John Shank More, was printed in 1832. This edition includes a short biography of Stair’s life in the preface, which mainly relied upon the account

456 Emphasis in the original.

457 Appendix I, comment 11.A.

458 Appendix I, comments 3.C, 12.E.

459 Appendix I, comment 5.O.

460 Appendix I, comment 11.O.

461 Appendix I, comment 12.G.

462 Brodie also relied explicitly upon the 1759 edition’s footnoted annotations to the text, and expanded upon them. On which, see Appendix I, comments 11.P, 16.P.

463 In the paragraph on risk in sale, the 1759 edition erred in its identification of one of the citations, citing D.18.1.3.6 rather than D.18.1.34.6; this error is also made in the 1826 edition. The 1759 edition also made various small changes to the wording of the text, many of which were adopted (or even compounded) in the 1826 edition. For example, the second printed edition’s phrase “peril and profits of the thing” was rather “peril and profits of the thing sold” in the 1759 edition; it was pluralised to “perils and profits of the thing sold” in the 1826 edition. More significantly, the second printed edition read “because the Buyer did voluntarily [*sic*] take possession, and Re-built the House, and was Infest before the burning”; this was amended in the 1759 edition to “but the buyer was infest before the burning, and did afterwards voluntarily take possession, and re-built the house”; the latter wording was received into the 1826 edition.

in William Forbes's *Journal of the Session*.⁴⁶⁴ Also printed in the fifth edition are: a brief account of Stair's *Decisions*, *Physiologia nova experimentalis* and *Vindication of the Divine Perfections*; the Dedication from the first printed edition; the Advertisements from the second and third editions; and Stair's *Apology*. The failure to reprint the advertisement for the fourth edition is indicative of what appears to be More's having ignored the fourth edition when preparing his text. Indeed, More explicitly used the text of the third edition and did not return to the printed or manuscript versions produced in Stair's lifetime.⁴⁶⁵ As such, Gordon's editorial changes (both acknowledged and unacknowledged) were received into More's edition, with the single exception of the addition of a question mark to a quotation from the Bible.⁴⁶⁶ More also preserved Gordon's references to the manuscripts and his additional citations, although there is no reason to presume that he checked them; indeed, his preservation of Gordon's error in citing D.9.2.4.1 suggests that he did not. More's work cannot therefore be regarded as a critical, or possibly even a new, edition of Stair in the strictest sense. The purpose of More's edition was not to produce a new scholarly edition, but rather "to follow out the views of Lord Stair, by collating the different topics discussed in the text with the laws of other countries, and particularly with the law of England" and with "the reported decisions of our courts since the days of Lord Stair".⁴⁶⁷

The sixth edition, edited by David Walker, was released to mark the tercentenary in 1981 of the first printing of Stair's *Institutions*. The editor indicated that this was a reprint of the second edition, and that he had not taken account of the first printed edition and the manuscript tradition.⁴⁶⁸ Walker stated:

I have not altered Stair's text merely because he has or may have misquoted a source, or possibly misinterpreted a decision ... To do so would obscure Stair's own thought, in many places substitute the editor's words for those of Stair, and, in any event, radically alter the balance and substance of the text and probably inflate its size.⁴⁶⁹

However, the text of "Of Liberty and Servitude" in this edition does not support these descriptions: there were many places here where the sixth edition departed from the wording of the second without acknowledgement. In chapter 9, the 1981 edition gave the singular for "witnesses"; this can be presumed to be an error.⁴⁷⁰ Like those responsible for the earlier three posthumous editions, he also modernised some

464 Stair, *Institutions of the Law of Scotland deduced from its originals and collated with the civil, and feudal-laws, and with the customs of neighbouring nations ... the fifth edition* (1832), Advertisement. MacQueen has shown that Forbes's account of Stair's life was, in turn, heavily dependent on Stair's *An Apology for Sir James Dalrymple of Stair, President of the Session, by Himself* (1690) (H L MacQueen, "Stair's later reputation as a jurist: the contribution of William Forbes" in W M Gordon (ed.), *Miscellany Three* (Stair Society vol. 39, 1992) 173–94).

465 J S More (ed.), *The Institutions of the Law of Scotland, Deduced from its Originals, and Collated with the Civil, Canon, and Feudal Laws, and with the Customs of Neighbouring Nations by James, Viscount of Stair, Lord President of the College of Justice* (1832), p. xvi.

466 Appendix I, comment 12.E.

467 Citations of such decisions and other sources, sometimes with explanatory notes, were given in footnotes. On which, see Appendix I, comments 9.I, 11.N, 16.M.

468 See, e.g., D M Walker, ed, *James, Viscount of Stair's Institutions of the Law of Scotland (1693)* (1981), p. 48.

469 Walker, ed, *Viscount of Stair's Institutions of the Law of Scotland*, p. 49.

470 Appendix I, comment 9.O.

but not all of the older spellings. In most of the places where Walker departed from the wording of the second printed edition, he appears to have been receiving instead the amended wording of the 1759 edition: the omission of “thereunto” from chapter 3;⁴⁷¹ the omission of “yet” from chapter 8;⁴⁷² the pluralisation of “constitutions”;⁴⁷³ the use of “amongst” in chapter 10;⁴⁷⁴ the abbreviation of “parliament” in chapter 12;⁴⁷⁵ the substitution of “amongst” for “among” in chapter 13;⁴⁷⁶ the substitution of “those” for “these” and the two omissions of “in” from chapter 14;⁴⁷⁷ the addition of “of” to chapter 16;⁴⁷⁸ the omission of “so”;⁴⁷⁹ and the use of “and thence” rather than “whence” and of “a civil action for damage and interest ariseth” rather than “Civil Actions for Dammage [*sic*] and Interest frequently arise”.⁴⁸⁰ Walker also appears to have made deliberate changes to the wording – or at least the spelling – after comparison to Stair’s sources. He spelled a term in a quotation of Gaius as “*quacumque*”, which is the spelling used in the modern editions of Gaius. This was spelled rather as “*quacunque*” in Stair’s printed editions, which is indicative of Stair’s use of Grotius’s *De jure belli ac pacis* as the source for this quotation.⁴⁸¹ In the same quotation, Walker corrected the tense of “*propulsarent*”, which was erroneously given in the perfect (or future perfect indicative) tense in both the first and second printed editions.⁴⁸² In the quotation of Cicero, he added the word “*possent*”, which had been omitted by Stair but had been added in the 1759 edition.⁴⁸³ These variations in the wording can be regarded as a rate of departure from the text of the second printed edition of around 1 per cent of the total words, although not all have a significant impact on the meaning of the text.

Walker also appears to have relied, at least to some extent, on the later editions when identifying Stair’s citations. He preserved their error in citing D.9.2.4.1, a citation with no equivalent in the text versions produced by Stair. He also appears to have followed the 1759 and subsequent editions in chapter 11, where all four posthumous editions provide a citation for a quotation from the Bible but not for the paraphrase of another verse. That no account was taken of the manuscripts and the first printed edition also appears to have impeded the identification of other citations. The citation of D.1.6.1 became more specific in the second printed edition, in which Stair added the sub-paragraph number; this was in keeping with his method at the time.⁴⁸⁴ However, the sub-paragraph number was printed before the paragraph number, presumably the result of a misprint. Walker interpreted this as two different citations, one of Justinian’s *Institutes* and another of the larger paragraph of D.1.6.1.

471 Appendix I, comment 3.A.

472 Appendix I, comment 8.E.

473 Appendix I, comment 9.K.

474 Appendix I, comment 10.A.

475 Appendix I, comment 12.J.

476 Appendix I, comment 13.A.

477 Appendix I, comments 14.A, C.

478 Appendix I, comment 16.B.

479 Appendix I, comment 16.E.

480 Appendix I, comments 16.O, P.

481 Appendix I, comment 3.I.

482 Appendix I, comment 3.K.

483 Appendix I, comment 3.J.

484 Wilson, “The sources and method of the *Institutions*”, especially pp. 72–3.

This research has addressed several issues relating to the transmission and reliability of the extant manuscripts and printed editions of the *Institutions*. The problems that arise from the process of manuscript transmission mean that no particular manuscript copy (or indeed a sample of several copies) can be fully relied upon to provide an accurate reading of the earliest versions of Stair's text. Nor can the first two printed editions be relied upon to reflect accurately what Stair wrote, given the poor printing of the first edition and those few inherited inaccuracies that affected the second. The posthumous editions have a rate of unacknowledged departure from the text that undermines their ability to reflect Stair's meaning. The only one to advance the text was the 1759 edition, but the use of so few closely related manuscripts means that it cannot be relied upon to give an accurate account of Stair's intended wording at any time in his writing. The result of this is that there are clear methodological problems for the study of Stair's text. A comprehensive examination of the textual tradition of the manuscripts and first and second printed editions is too time-consuming to become a widespread practice. A critical edition of Stair's *Institutions* – that takes account of the nature and interrelationships of the manuscripts and is also free from the errors and alterations of the later printed editions – is thus much needed. Before such a critical edition would be possible, it would be necessary to first try to recover the text as written by Stair (as opposed to that written by the copyists or printed by the printer). That in turn could probably only be done by first desuming the text of Stair's authorial holograph from the extant manuscripts. This would rely upon an accurate understanding of the interrelationships between the manuscripts, which would itself require to be constantly revised and adjusted to take account of issues such as contamination. Once such a text was recovered, then the changes that were introduced when the text was thereafter revised and printed could then be identified and analysed. The title "Of Liberty and Servitude" can again be used as the basis of an initial attempt at such an analysis, as is set out in Appendix I.

APPENDIX I

*Recovered text of Stair's authorial holograph of "Of Liberty and Servitude",
with commentary and notes on textual variation and development*

A comparison of the texts of the extant manuscripts allows the wording of Stair's authorial holograph, or something close to it, to be desumed. Appendix I attempts to recover the text of Stair's authorial holograph through such a comparison. Often the wording of the authorial holograph can be recovered with a high degree of certainty. However, the original text cannot be desumed with certainty where there is significant evidence for two (or more) different readings; these places are indicated in the text by squared brackets. Spelling has been modernised (unless indicative of a particularly notable variant), but terms which are now out of common use have not been replaced with words in modern usage.

Three types of annotations are given on this text. The superscript notes in Arabic numerals relate to the first apparatus below the text. This sets out the other variant readings of that word or phrase found in the extant manuscripts. The manuscripts that give the relevant variant are listed in alphabetical order according to the two-letter abbreviation which was used to represent the manuscripts in the figures above; a full list of these abbreviations is found in Appendix II. The superscript notes in capital letters provide commentary on the evolution of the text and on any editorial changes made in the posthumous editions. The superscript notes in Roman numerals are used for citations. Those citations which were present in Stair's authorial holograph are included in the reading; those which are given in the commentary only were not given by Stair but are provided here for reference. The closing of access to the Tarbat manuscript means that certain variant readings could not be checked in this manuscript; these uncertain variants are indicated with an asterisk and squared brackets.

§ 1:

Liberty is ¹that ²natural power ³which ⁴man has ⁵of his ^A person, ⁶whence a free man is ⁷said ⁸to be ^{9, B}*suae* ¹⁰*potestatis*, ^{11, 12, C}in his own power, and ^{13, 14}it ¹⁵is ¹⁶defined ¹⁷in ¹⁸the law, ^{19, D}to ²⁰be ^{21a} ²²natural faculty, to do that which ²³every man ²⁴pleases, unless he ²⁵be ²⁶hindered ²⁷by law ²⁸or force.

1 that] Rather "a" in Pt. 2 natural] Rather "mutuall" in Tt. 3 which] Omitted from Bs, Je, Ka, Ma, Sm, Sw, Tt. Rather "that" in Fr. 4 man] Rather "a man" in Bt, Cg, Fr, Wi. 5 of] Rather "over" in Bs, Bw, Cg, Cn, Da, Fa, Gr, HD, Hm, IA, Je, JH, Ka, Li, Ma, Pg, Pt, Sm, Sw, Tb, Tt, WH. 6 whence] Rather "when" in Ka. Rather "*quia*" in Mg. 7 said to be] Rather "to be said" in Tr. 8 to be] Omitted in Fr, Ma. Originally omitted but added interlinear, possibly by the copyist, in Mg. 9 *suae*] Probably "*suae*" in Li, Tw. Rather "*sua*" in Cq, IA, Je, Ka, Pm. Rather "*sue*" in Hm. Rather "*suej*" in Cn, Da, HD, JH, Ma, Mo, Og, St (text A), Tb, WH, Wi. Rather "*sui*" in Go, Tr. Rather "*suis*" in Pt. Original obscured by a later hand in Lo. 10 *potestatis*] Rather "*protestatis*" in Pt. Original spelling obscured and "*potestatis*" written interlinear, possibly by the copyist, in Mo. 11 in his own power] Omitted in Bs, Bw, Cg, Cn, Da, Fa, Go, Gr, HD, Hm, IA, Je, JH, Ka, Li, Ma, Pg, Pt, Sm, Sw, Tb, Tt, WH. 12 in] Rather

“of” in Cq, Mg. 13 it is] Rather “its” in Tw. 14 it] Omitted in Sm. Rather “that” in Mg. 15 is] Rather “is to be” in Tt. 16 defined] Original obscured and corrected to “defyned” by a later hand in Bs. 17 in the law] Omitted in Bw, Cg, Fa, Hm, IA, Pg, Tb. 18 the] Omitted in JH. 19 to] Omitted in Sm, Tw. 20 be] Omitted in Sm. 21 a] Rather “ane” in Bt, Fr, Go, IA, Pt, Sm. Rather “an” in Tr. 22 natural faculty] Rather “natural liberty and faculty” in Bw. 23 every] Rather “a” in Fr, Wi. 24 pleases] Rather “pleaseth himself” in St (text A). 25 be] Omitted in Og. 26 hindered] Rather “forced or hindered” in La. 27 by] Rather “be” in Cn, Go, HD, Li. Rather “through” in Da. 28 or] Rather “and” in Da, Pt.

A. The word “own” was added here in the 1681 edition, and was retained in the subsequent editions. **B.** The phrase “*suae potestatis*” was one used often in Justinian’s *Institutes*, e.g. Inst. 1.12.4, 2.12.pr, 2.17.6(5) etc. **C.** The phrase “in his own power” is a direct translation of the Latin given immediately before. It is thus possible that its omission in twenty-three of the manuscripts was a result of an initially deliberate omission by the copyists of the Gordon manuscript and manuscript α. **D.** From “to be a natural faculty” onwards is a direct translation of Inst.1.3.1: “*naturalis facultas eius quod cuique facere libet, nisi si quid aut vi aut iure prohibetur*”. This was apparently observed by the editor of this title in the 1759 edition, who added a footnote to Inst 1.3.1 after the phrase “defined in the law”. The subsequent editions incorporated this footnote into the text but did not acknowledge that it was not original to Stair’s text.

§ 2:

That ¹there is such ³a right, distinct from the dominion of ⁴the ⁵creatures, and from ⁶obligations, ⁷it is evident from this, that ⁸it ⁹can be ¹⁰referred ¹¹to ¹²neither of ¹³these, and ¹⁴yet ¹⁵[it?] is ¹⁶the ¹⁷most ¹⁸[just?] native and delightful ¹⁹right ²⁰of ²¹man, without which, he is ²²capable of no ²³other right. ²⁴For bondage ²⁵exeemeth ²⁶man from the ²⁷account of persons, and brings ²⁸him ²⁹rather ³⁰in ³¹among ³²things, ³⁴³⁵*quae sunt in patrimonio nostro*, and ³⁷the ³⁸encroachments upon, ³⁹and ⁴⁰injuries against ⁴¹this right ⁴²of ⁴³liberty, ⁴⁴of all ⁴⁵others, ⁴⁶are the ⁴⁷most ⁴⁸bitter ⁴⁹and ⁵⁰atrocious and deeply resented; for the ⁵¹non-performance ⁵²of ⁵³obligations, ⁵⁴or duties ⁵⁵due ⁵⁶to us, ⁵⁷or the taking away, ⁵⁸or detaining ⁵⁹of ⁶⁰the things of ⁶¹our property, ⁶²⁶³are ⁶⁴not to ⁶⁵be compared with the ⁶⁶laying ⁶⁷violent ⁶⁸hands ⁶⁹on ⁷⁰our ⁷¹persons.

1 there is such a right] Rather “such a right is” in Bw. 2 there] Original obscured and corrected by later hands to “there” in both Bs and Pg. 3 a] Rather “ane” in Cg, Cn, Go, IA, Sm, St (text A). 4 the] Omitted in Go, Sw. Inserted interlinear in Fa. 5 creatures] Rather “creature” in Mo, Og. 6 obligations] Rather “obligation” in Fr, Go, HD, Lo, Mg, Mo, Og, Tr, Wi. 7 it] Omitted in JH, Sm. 8 it] Originally omitted but added in the margin in Tw. 9 can] Rather “cannot” in Fr, Pt, Sm, Wi. Also originally “cannot” but corrected, possibly by the copyist, in Mg. 10 referred] Rather “inferred” in Mo. 11 to] Rather “from” in Mo, Og. 12 neither] Rather “either” in Cq, Sm, Wi. Rather “non” in An, Lo, La. Rather “none” in Bt. 13 these] Rather “those” in Pg. 14 yet] Rather “that” in Bt. 15 (it?) is] Originally omitted and written interlinear in Go. Reads “it is” in Bs, Bt, Cn, Da, Fr, Go, HD, JH, La, Mg, Mo, Pm, St (text A), Tr, Tw, Wi. 16 the] Omitted in Go. Rather “that” in Cq. 17 most] Rather “must” in Hm, Og. 18 (just?)

native and delightful] Rather “[space] and delightful” in Mo. Rather “native, delightful” in Bs, Bt, Fr, Go, Og, St (text A), Tr, Wi. Rather “and native delightful” in Ka, Sw, Tt. Also originally “and native delightful” but word order corrected by a later hand in Je. Rather “just, native and delightful” in Bw, Cg, Cn, Da, HD, IA, La, Li, WH. Rather “just, delightful and native” in Gr, Mg. Rather “just and native and delightful” in Fa, JH, Pg, Tb. Rather “just and native delightful” in Hm, Pm, Tw. Rather “just and delightful native, a” in Pt. Rather “just and delightful” in Cq. 19 right] Original obscured and corrected to “right” by a later hand in Sm. 20 of man ... no other right] Omitted in Tr. 21 man] Rather “men” in Go, St (text A). Rather originally “manie” but “e” deleted by a later hand in IA. 22 capable of no] Rather “uncapable of any” in Go, Mo, Og. 23 other] Omitted in Wi. 24 For] Rather “so” in St (text A). 25 exeemeth] Rather “exempteth” in Bs, Da, HD, Li. Rather “exemps” in La. Rather “and exeems” in St (text A). Rather “exeems” in Bt, Go. 26 man] Rather plural in HD, Sm. Rather “a man” in Bw, JH, Tr. Rather “(persones) man” in Cn. 27 account] Rather “compt” in Pt. Rather “accounts” in Fr. 28 him] Omitted in Mo, Og. Rather “them” in Da, Sm. Also originally “them” but corrected by a later hand in Pm. 29 rather in] Rather “in rather” in An, Lo. 30 rather] Omitted in Bs, Bt, Bw, Cg, Cq, Fa, Go, Gr, Hm, IA, Je, JH, Ka, Ma, Pg, Pm, Pt, Sm, St (text A), Sw, Tb, Tt, Tw, WH. 31 in] Omitted in Bw, Cg, Fa, Hm, IA, JH, Og, Pg, Sm, Tb, WH, Wi. 32 among] Rather “the account of” in Go. Rather “amongst” in Cg, Cq, Fa, Fr, Hm, IA, Je, JH, Ma, Mo, Pg, Pm, Sw, Tr, Tw, WH. Rather “amongs” in Bw. 33 things] Omitted in St (text A). Rather “persons and things” in Bw. 34 *quae sunt*] Space left blank in Tr. Rather “which are” in Bs, Gr, HD, Je, Ka, Ma, Sm, Sw, Tt. 35 *quae*] Rather “*qua*” in Da, Fr, IA, Pg. Rather “*que*” in Go, Hm, JH. Rather “*quid*” in St (text A). Rather “*quod*” in Wi. Rather “*quie*” in Tb. Rather “*quie*” in Pm. Rather “*quei*” in Mo, WH. 36 *sunt*] Rather “*sit*” in Da. 37 the] Omitted in Og, Tb. Original obscured and corrected to “the” in Tw. 38 encroachments] Rather “approachments” in Pm. Rather “encroachment” in Bs, IA, Je, Ka, Ma. 39 and] Originally omitted but added by a later hand in Pm. 40 injuries] Originally omitted and added interlinear in Tw. Rather “injury” in St (text A). Rather “the inqueries” in Mo. Rather “the injuries” in Og. Also originally “the injuries” but “the” deleted by a later hand in Pm. Rather “injuries done” in Bs, Je, Ka, Ma, Sw, Tt. Rather “injury done” in Sm. 41 this] Rather “their” in Bt. Rather “the” in An, Cq, Lo, Pm, Sw, Tw. 42 of] Omitted in Hm, Tb. 43 liberty] Omitted in Hm, Tb. Rather “property” in Mo, Og. 44 of] Rather “are of” in Bs, Bt, Bw, Cq, Cg, Cn, Da, Fa, Gr, HD, Hm, IA, Je, JH, Ka, Li, Ma, Mg, Pm, Pt, Sm, Sw, Tb, Tt, Tw, WH. Rather “or of” in St (text A). Originally “[?] of” but amended to “are of” in Pg. 45 others] Rather “other” in Bs, Bt, Bw, Go, HD, Je, Ka, Ma, Mg, Mo, Og, St (text A), Sw, Tt. Originally rather “mothers” but corrected by a later hand in An. 46 are] Omitted in Bs, Bt, Bw, Cq, Cg, Cn, Da, Fa, Gr, HD, Hm, IA, Je, JH, Ka, Li, Ma, Mg, Pg, Pm, Pt, Sm, St (text A), Sw, Tb, Tt, Tw, WH. Rather “is” in La. Rather “as” in Tr. 47 most] Rather “must” in Og. 48 bitter] Originally rather “Botter” but corrected to “Büitter [*sic*]” by a later hand in Bs. 49 and] Omitted in Bt, Cq, Go, La, Mg, Og, Pm, Sm, St (text A), Tw. 50 atrocious and deeply resented] Rather “atrocious” in Lo. Also originally “atrocious” but “and deeply resented” is added interlinear in a different ink in An. Rather originally “atrocious and [space]” and a later hand has entered “resented” in Og. Rather “atrocious and deeply represented” in Tb. Also originally “atrocious and deeply represented” but corrected by a later hand in Hm. Rather “atrocious and deeply sented” in Bw. 51 non-performance]

Omitted in Bw. Rather “un-performance” in WH. Rather “none performance” in Bs, Cq, Fa, Hm. Rather “not performance” in Gr, Sm. Rather “non performances” in Mg, Pt. 52 of] Omitted in Bw. 53 obligations] Rather “the obligations” in Mo, Og. Rather “obligation” in La. Originally rather “dueties” but corrected by the copyist in Gr. 54 or] Rather “and” in Bs, Bt, Je, Ka, Ma, Pt, Sm, Sw, Tt. Originally “or” but amended to “and” by a later hand in An. 55 due] Omitted in Go, La, Lo, Mg, Mo, Og, Tr. Originally omitted but added interlinear by a later hand in An. Rather “done” in Bs. 56 to] Rather “be” in HD. 57 or] Rather “as” in Bt. Rather “or to” in Da. 58 or] Rather “and” in Bt, Pt, Sm, Tt. Rather “or the” in Fr, IA, Tr. 59 of] Omitted in An, Cn, HD, La, Li, Lo, Mg, Tb. 60 the] Omitted in Tw. Rather “these” in Sm. 61 our] Originally “ours” but corrected by a later hand in Pg. 62 are not to be compared] Omitted in Hm. 63 are] Originally rather “[?] are” but first word obscured by a later hand in Pm. 64 not] Rather “no” in Cg. 65 be] Omitted in Pm. 66 laying] Rather “laying of” in Bs, Bw, Cg, Cn, Da, Fa, HD, IA, JH, Li, Mo, Pg, Pt, Tb, WH, Wi. 67 violent] Rather “violat” in Cn. 68 hands] Rather “hand” in Fr, Sw. 69 on] Rather “upon” in Bt, Bw, Cn, Cq, Da, HD, Li, Mg, Mo, Pm, St (text A), Tw, WH. Rather “in” in Wi. Rather “one” in Fa, IA. 70 our] Rather “our own” in Fr. 71 persons] Rather “person” in Bs, Fr, Je, Ka, Ma, Sm, Tr, Wi. Rather “selves” in Mo, Og.

A. This was almost certainly plural in Stair’s authorial holograph, but was singular in the 1681 and 1693 printed editions. The sense of the sentence suggests that the change in 1681 was probably an error made by the printer that was then not corrected in the second printed edition. The posthumous editions also gave the singular. **B.** The variant “neither” (or a corruption, “either”) appears to have been present in the ancestor manuscripts α , ξ , τ and υ ; the Brousterland manuscript changed this to “none”. However, manuscript π appears to have given “none”; the Taylor manuscript appears to have changed this to “neither” independently. It is thus likely that the authorial holograph gave “neither”. If this is correct, there was a change to “none” for the 1681 edition. The editors of the later printed editions generally preferred “neither”. The 1759 edition gave “to neither of those”, indicating that the editor followed the manuscripts in using “neither” (but not “those”, which he appears to have changed himself). Both editorial decisions were followed by the 1826 and 1832 editions, the latter of which cited the manuscripts generally in relation to the change to “neither”. The 1981 edition followed the wording of the first two printed editions. **C.** Manuscripts from all five family groups give “it”; if the proposed stemma are correct, the pattern of its appearance would suggest that its addition and omission are parallelisms. Thus, it is uncertain whether the authorial holograph gave “it”. The 1759, 1826 and 1832 editions gave “it is” without comment. Presumably Gordon followed the variant reading in the James Hay manuscript, or perhaps in the lost “Manuscript G”; the other two editions adopted his wording. The 1981 edition followed the wording of the first two printed editions. **D.** It seems that manuscripts ξ and α gave “just” here; it was omitted in manuscripts η and \omicron . “Just” probably did not appear in manuscripts τ , υ and π , but was added independently in the Laing manuscript. Its addition and omission are thus parallelisms, so it is uncertain whether the authorial holograph gave “just”. **E.** “For” was changed to “so” in the 1681 edition, but returned to “for” in the 1693 edition. The return to “for” indicates that the printer of the 1681 edition probably erred in making the initial change. His change had the effect of

making the text that follows an explanation of the preceding sentence rather than a corollary of it. It is suggested, however, that the sense of the passage is that the first sentence sets out the principle and the latter sentences provide an explanation and the basis for this. The posthumous editions gave “for”. F. The phrase “him rather in” is corrupted to some extent in manuscripts from each proposed group, but it nonetheless seems plausible that the authorial holograph read “him rather in”, as did the 1681 and 1693 editions. The 1759 edition gave “him *in rather*”, purporting to follow the now lost “Manuscript G”; of the extant manuscripts, only the Anderson and Loudoun manuscripts support this reading. The 1826 edition preserved this word order (without comment), as did the 1832 edition (with reference to “Manuscript G”). The 1981 edition followed the wording of the first two printed editions. G. The Latin phrase given here is very similar to, and was possibly drawn from, Justinian’s *Institutes* 2.1.pr: “*modo videamus de rebus. Quae vel in nostro patrimonio vel extra nostrum patrimonium habentur.*” H. The variant “this” appears in thirty manuscripts. It probably did not appear in manuscript ρ and does not seem to have appeared in manuscript ξ, but rather may have occurred in the McGachen manuscript and manuscript o independently. It is likely that Stair’s authorial holograph gave “this”, which was changed to “the” for the 1681 edition. This could have been a deliberate change by Stair or an accidental error by the printer. The posthumous editions gave “the” without comment. I. The phrase “of all others are” seems to have been “are of all others” in manuscripts α and ξ; it was corrected in the Gordon manuscript independently and probably by coincidence. It seems likely that Stair’s authorial holograph of the first and second versions gave the same word order as is found in 1681 and 1693 printed editions, which was preserved in the posthumous editions. J. The variant “atrocious and deeply resented” (or a corruption of it) appears in all the extant manuscripts with the exception of the Anderson and Loudoun manuscripts. Stair’s authorial holograph thus probably included this phrase. It is not clear whether Stair deleted this phrase when preparing the 1681 edition, or whether the printer omitted it in error. The subsequent editions followed the 1681 edition. K. The word “due” is present in most of the manuscripts, but was absent from ancestor manuscripts π and τ, and was omitted in the Gordon and McGachen manuscripts independently. It is likely that “due” was present in the authorial holograph. The word “due” was omitted in the 1681 edition, which was probably an error by the printer. The amended wording was retained in the second printed edition. “Due” was reintroduced in the 1759 edition, with reference to the manuscripts generally. The 1826 edition also included “due”, but without comment, and the 1832 edition did so with reference to the manuscripts generally. The 1981 edition inserted the word “due” in squared brackets, indicating that this was an editorial change. L. The 1759 edition omitted “of”, an unacknowledged editorial change. Although some of the extant manuscripts do omit “of”, it is probable that the omission in the 1759 edition was an error: none of the extant manuscripts said to have been consulted by Gordon gives this variant reading. This error also appeared in the 1826 and 1832 editions without comment. The 1981 edition followed the wording of the first two printed editions.

§ 3:

¹This right arises from ²that ³principle of freedom, ⁴that ⁵man ⁶has ⁷of himself and of ⁸other things ⁹, ¹⁰beside man, to ¹¹do ¹²in relation ¹³thereto as he pleases, ¹⁴except

¹⁵where he is ¹⁶tied ¹⁷,^Athereto ¹⁸by ¹⁹his ²⁰obedience ²¹or ²²engagement. And this part of it which ²³concerns personal freedom ²⁴is ²⁵maintained ²⁶by ²⁷that ²⁸,^Bcommon[ly?] ²⁹,³⁰received ³¹principle ³²,³³in ³⁴the law ³⁵of nature ³⁶of ³⁷self-defence and preservation. ³⁸,^CFor as *Cicero* ³⁹says ⁴⁰,^Din his oration, ⁴¹,ⁱ,^E*Pro Milone*, ⁴²,^F*Hoc* ⁴³,^G*et* ⁴⁴,^G*ratio* ⁴⁵*doctis* ⁴⁶*et* ⁴⁷*necessitas barbaris, et* ⁴⁸*mos gentibus*, ⁴⁹*et* ⁵⁰*feris natura ipsa* ⁵¹,^H*praescripsit*, ⁵²*ut* ⁵³*omnem* ⁵⁴,⁵⁵*semper* ⁵⁶*vim* ⁵⁷,^I*quacunq[ue]* ⁵⁸,^J*ope*, ⁵⁹,^K*a corpore*, ⁶⁰*a capite*, ⁶¹,⁶²*a vita* ⁶³,⁶⁴*sua* ⁶⁴,^L*propulsarent*. ⁶⁵And ⁶⁶as ⁶⁷,⁶⁸,^Msays *Gaius*, ⁶⁹,ⁱⁱ,^N,⁶⁹*Adversus* ⁷⁰*periculum* ⁷¹*naturalis* ⁷²*ratio* ⁷³*permittit se* ⁷⁴*defendere* ⁷⁵,^O,^P,^Q.

1 This] Rather “The” in HD, Pm. 2 that] Rather “the” in Bw, Hm, Mo, Og, Tb. 3 principle] Originally rather “right” but deleted and “principle” inserted in Pg. 4 that] Rather “which” in Bw. 5 man] Rather “a man” in Fr, Wi. 6 has] Rather “have” in Gr. 7 of himself] Omitted in Wi. 8 other] Rather “all other” in Sw. Rather “the other” in Hm, Tb. 9 beside man] Omitted in Go. 10 beside] Rather “besides” in Bw, Cq, Gr, Tr. 11 do] Rather “to” in IA. 12 in relation] Omitted in Mo, Og. 13 thereto] Rather “therein” in Mo, Og. 14 except] Rather “accept” in Pm. 15 where] Rather “what” in Hm, Tb. Rather “when” in JH, Wi. 16 tied] Rather “urged” in Bs. Rather “tried” in Pm. 17 thereto] Omitted in Bs, Bw, Cg, Cn, Cq, Da, Fa, Go, Gr, HD, Hm, IA, Je, JH, Ka, Li, Ma, Mg, Pg, Pt, Sm, Sw, Tb, Tt, Tw, WH. Rather “there to” in Pm. Originally “thairto” but deleted by a later hand in An. Rather “thereunto” in La. 18 by] Rather “to” in Bw. 19 his] Rather “the” in Og. 20 obedience or] Rather “obediential” in Cq. 21 or] Rather “and” in Sm. Originally omitted but added, possibly by the copyist, in Mg. 22 engagement] Rather “engagements” in Bs, Sm, St (text A). 23 concerns] Rather “concern” in IA. 24 is] Omitted in Pt, Tr. 25 maintained] Omitted in Tr. Rather “mentioned” in Da, Hm, St (text A), Tb. 26 by] Original obscured and corrected to “by” by the copyist in Bs. Rather “but” in St (text A). 27 that] Amended by a later hand to “these” in JH. 28 common] Reads “commonly” in Fr, Go, La, Lo, Mo, Og, Pm, St (text A), Tw, Wi. Also originally “commonlie” but “-lie” deleted by a later hand in An. Reads “common” in the other manuscripts. 29 received principle] Rather “principle received” in IA. 30 received] Originally rather “reserved” but corrected to “received” in Pm. 31 principle] Rather “principles” in JH. 32 in the law] Rather “in the law in the law” in IA. 33 in] Rather originally “of in” but “of” obscured in Pm. 34 the] Rather “that” in Bs. 35 of nature] Omitted in Sm. 36 of self-defence] In brackets in Pt. 37 self] Rather “relief” in Da, HD, Li, WH. 38 For] Omitted in Tr. 39 says] Omitted in Pt. 40 in his oration] Rather “in oration *sua*” in Cg, Cn, Da, HD. Rather “in oration” in Ka, Sm, Sw, Tt, WH. Rather “inorat” (with “onr” added interlinear by a later hand) in Je. Rather “Moratione” in Ma. Originally omitted “his” but otherwise obscured and amended to “inoratt” in Bs. Originally “in his oration” but “his” deleted by a later hand in An. 41 *Pro Milone*] Rather “for Milo” in Gr, Hm, Li, Pt, Tb. Rather “for Millo” in Fa, IA, Pg. Rather “for *millone*” in JH. Rather “*promilone*” in Sw. Amended by a later hand to “*pro Millo*” in Bs. Rather “*pro Milione*” in Da, St (text A). Rather “*pro Millione*” in Mo, Og. Rather “*pro Melone*” in HD. Rather “*pro Milon*” in Lo. Rather “*pro mille*” in Ka. Originally rather “*pro mille*” but corrected to “*millone*” by a later hand in Je. Rather “*pro Miolone*” in Cg. Rather “*pro Millone*” in Ma. 42 *Hoc*] Omitted in Sm. Rather “*hec*” in Go, Lo. Rather “*haec*” in Sw. Rather “*haec*” in Bt, Bw, La, Tr, Tt, Wi. Rather “*haic*” in Fr. Rather “*heic*” in Mo, Pt. Rather “*loco*” in St (text A). Originally “*hoc*” but amended by a later hand to “*haec*”

in Mg. 43 *et*] Rather “*est*” in An, Bs, Bt, Go, Fr, IA, La, Lo, Mo, Og, Pt, Sw, Tt, Wi. Also originally “*est*” but corrected by a later hand in Je. Rather “*e*” (amended to “*eq*” by a later hand) in Ma. 44 *ratio*] Rather “*oratio*” in Mo, Og. 45 *doctis*] Rather “*dati*” in Bt. Rather “*duotus*” in Bs. Original spelling amended to “*doctis*” by later hand in JH. 46 *et*] Omitted in Bt, Tw. Rather “*est*” in Pt. 47 *necessitas*] Rather “*necessitatis*” in La. Original obscured and corrected to “*necessitas*” by a later hand in Lo. 48 *mos*] Rather “*nos*” in Bs, Fr. Rather “*vuius*” in Pt. Rather “*moos*” in St (text A). 49 *et*] Omitted in Bw. Rather “*est*” but corrected to “*et*” by a later hand in Je. 50 *feris*] Omitted in Bw, Mo, Og. Rather “*faeris*” in Bt. Rather “*foeries*” in Ma. Rather “*foeris*” in Je. Rather “*foris*” in Hm. Rather “*faris*” in Bs. Original obscured and amended to “*feris*” by later hands in Go, JH. 51 *praescripsi*] Rather “*proscripsi*” in Pg, Sw, Tb. Rather “*prascripti*” in Cq, Fr, Mg. Rather “*prescripsi*” in An, Cg, Cn, Da, Fa, Go, HD, Hm, IA, Je, JH, Ka, La, Li, Lo, Ma, Mo, Og, Pm, Pt, Sm, St (text A), Tr, Tt, Tw, WH, Wi. Rather “*sproscripsi*” in Bs. 52 *ut*] Originally, the copyist started “*avita*” here but deleted this and continued with “*ut*” in St (text A). Rather “*in*” in Bw. Rather “*et*” in Bs. Rather “*aut*” in Pt. 53 *omnem*] Omitted in St (text A). Original obscured and corrected to “*omnem*” by a later hand in JH. Rather “*omnenem*” in IA. Rather abbreviated to “*oem*” in Je, Ka, Ma. 54 *semper vim*] Rather “*inimicitiam*” in Og. Rather “*inimisitiam*” in Mo. Rather “*sempervim*” in Cn. 55 *semper*] Omitted in Mg. Originally “*sempem*” but corrected in Pm. 56 *vim*] Rather “*ommentum*” in St (text A). Rather “*unum*” in Da. 57 *quacunque*] Rather “*qua cunque*” in Tb. Rather “*quo cunque*” in Mo. 58 *ope*] Omitted in Je, Ma. Rather “*oper*” in St (text A). Rather “*upe*” in Bs. 59 *a corpore*] Omitted An, Bs, Bw, Cg, Cn, Da, Fa, Gr, HD, Hm, IA, Je, JH, Ka, Li, Lo, Ma, Pg, Pt, Sm, Sw, Tb, Tt, WH. Rather “*a corpora*” in St (text A). Rather “*acorpore*” in Mo. Appears as “*a copore [sic]*” after “*a capite*” in Go. 60 *a capite*] Omitted in Mo, Og. 61 *a vita*] Rather “*avita*” in An, Lo, Mo. Rather “*aviat*” in IA. 62 *a*] Rather “*et*” in Cg, Cn, Da, HD, Li, WH. 63 *sua*] Omitted in St (text A). Rather “*suo*” in Da. 64 *propulsarent*] Rather “*pro pulsarent*” in La. Rather “*pro pulsarint*” in Og. Rather “*propulsarint*” in Cq, Bw, Mo, Tr. Rather “*propulsarunt*” in Fr, Hm, Lo, Mg, Sm, St (text A), Sw, Tb, Tt. Rather “*perpulsarent*” in Cg, HD, JH, Li, WH. Rather “*perpulsarunt*” in Pg. Rather “*perpulserat*” in Cn. Rather “*propulsalint*” in Tw. Rather “*propulserint*” in Gr, Pm, Wi. Rather “*propulserunt*” in Bt, Pt. Original obscured (possibly *propulsarint*) and amended by a later hand to “*propuslarint*” in An. Rather “*prepulsairrunt*” in IA. Rather “*perpulsairint*” in Fa. 65 *And*] Omitted in Bt, IA. 66 *as*] Omitted but a space left in Tr. 67 *says Gaius*] Rather “*Caius sayeth*” in Go, JH. 68 *says*] Originally omitted but added by a later hand in Pg. 69 *Adversus*] Omitted in Cn, Cq, Da, HD, Li, Sm. Rather “*ad versus*” in JH. Rather “*Ad versa*” in Tb. Rather “*Adversum*” in Tr. Rather “*and Verseius*” in Bw, Cg, Fa, Gr, IA, Ka, Sw, WH. Rather “*& Versejus*” in Tt. Also “*and Verseius*” but the spelling of “*Verseius*” has been amended by a later hand in Pg. Originally probably also “*and Verseius*” but amended to “*Adversis*” by a later hand in Hm. Rather “*and Veseius*” in Je, Ma. Rather “*and Vesauis*” in Bs. Rather probably “*& Versius*” in Pt. Rather “*and Versius*” in Fr, Tw. Rather “*and Versus*” in Wi. Rather “*versio*” in Bt. Originally “*adversus*” but amended by a later hand to “*& Verseius*” in An. 70 *periculum*] Omitted in Bs, Bt, Bw, Cg, Cn, Cq, Da, Fa, Gr, HD, IA, Je, Ka, Li, Ma, Pg, Pt, Sm, Sw, Tt, WH. Deleted by a later hand in An. Also originally omitted but added by a later hand in Hm. Rather “*parclulum*” in Wi. Rather “*vim*” in Tb. 71 *naturalis*] Rather “*ratio naturalis*” in Go. Rather “*oraturalis*” in Li. 72 *ratio*]

Rather “*versio*” in Pt. 73 *permittit*] Rather “*promittit*” in IA. Rather “permitted” in Go. Rather “*pmittit*” in Ma, Pt. Rather “*permitter*” in Tt, Wi. Rather “*admittit*” in La. 74 *defendere*] Rather “*ratio adversus periculum*” in Cq. 75 At the end of this passage is added the phrase “and Paulus, *vim enim vi defendere omnes leges omnia que iura permittunt*” in HD, and with some variation in the other manuscripts, specifically: Cg (which gives rather “*et Paul*” and “*repellere*”), Cn (which gives rather “*repellere*” and “*omniaque*”), Da and Li (which give rather “*omniaque*”), Sm (which gives rather “*et Paulus*” and “*repellere*” but omits “*enim*”) and WH (which gives rather “*et Paulus*” and “*oēs leges via que*”). A later hand adds “and as Paulus *vim enim vi pollere omnes leges omniaque] iura permittiat*” in Go.

A. This word is omitted in the manuscripts from the α group and from many in the ξ group, but is present in manuscripts from the τ , υ , π and \omicron groups. It is plausible that it appeared in the authorial holograph. The word was instead “thereunto” in the 1681 and 1693 editions. The 1759 and 1832 edition omitted “thereunto”, with reference to the manuscripts generally; the 1826 and 1981 editions also did so, but without comment. **B.** The variant “commonly” is found in manuscripts from the π and υ groups and in most of those in the τ and ξ groups; this plausibly reflects the wording of the authorial holograph. The other manuscripts give “common”, which was also the wording of the printed editions. **C.** The following references to and quotations from Cicero and Gaius were borrowed by Stair from Grotius’s *De jure belli ac pacis*, 1.2.3.1. On Stair’s borrowing from Grotius, see W M Gordon: “Stair, Grotius and the sources of Stair’s *Institutions*” in idem, *Roman Law, Scots Law and Legal History: selected essays* (Edinburgh Studies in Law series volume 4, 2007) 255; Adelyn L M Wilson, “The sources and method of the *Institutions of the Law of Scotland* by Sir James Dalrymple, 1st Viscount Stair, with specific reference to the law of obligations” (PhD thesis, University of Edinburgh, 2011), chapter 4. **D.** The 1759 edition omitted the words “in his oration, *Pro Milone*” and instead provided a footnote reference; the 1832 edition followed this editorial decision. The 1826 edition gave this phrase as part of the text. **E.** The 1759, 1832 and 1981 editions correctly cited this text as “C.11”. The 1826 edition provided no reference. **F.** Stair borrowed this quotation from Grotius’s *De jure belli ac pacis*, 1.2.3.1; the correct spelling, “*hoc*”, is given in the 1626, 1632, 1642, 1646, 1650 and 1660 editions of that work. It is probable that Stair’s authorial holograph also gave “*hoc*”, as this is the spelling which appears in most of the manuscripts. However, the 1681 and 1693 editions gave “*haec*”. It is probable that this was an error by the printer in 1681 and was not later corrected for the 1693 edition. The 1759, 1826 and 1832 editions corrected the Latin to “*hoc*” without comment; the 1981 edition, however, preserved the error in the first two printed editions. **G.** Many of the manuscripts give “*est*” here; this appears to have been a parallelism. It is likely that Stair correctly gave “*et*” or ampersands, the latter of which were used in the printed editions. **H.** The spelling “*praescripsit*” was used in the modern edition of Gaius and was that favoured in the 1626, 1632, 1642, 1646, 1650 and 1660 editions of Grotius’s *De jure belli ac pacis*, 1.2.3.1, from which Stair borrowed this citation and quotation. This was plausibly the spelling used in Stair’s authorial holograph, although many of the manuscripts give “*prescripsit*”, as did the 1681 edition; the 1693 edition gave “*praescripsit*”. This change is merely orthographical fluctuation. The spelling in the 1693 edition was

followed in the posthumous editions. **I.** The spelling “*quacunque*” is found in nearly all the manuscripts and the 1681 and 1693 editions. The modern text of Gaius gives “*quacumque*”; this difference is merely orthographical fluctuation. The 1759 and 1832 editions preserved the spelling of the first two printed editions. The 1826 and 1981 editions amended the spelling to “*quacumque*” but without comment. The 1626 and 1632 editions of Grotius’s *De jure belli ac pacis*, 1.2.3.1 gave “*quacunque*”; the 1642, 1646, 1650 and 1660 editions gave “*quacumque*”. Further evidence would be required to determine whether this variant was reflective of Stair’s use of one of the earlier editions of Grotius (cf. Stair’s use of the most recent edition of Corvinus: Wilson, “The sources and method of the *Institutions*”, especially p. 250). **J.** Gaius actually wrote “*ope possent*”, and this was preserved correctly in the 1626, 1632, 1642, 1646, 1650 and 1660 editions of Grotius’s *De jure belli ac pacis*, 1.2.3.1. However, “*possent*” was not given in any of the manuscripts or in the 1681 or 1693 editions of Stair. Thus, it appears that Stair copied this quotation incorrectly from Grotius. The posthumous editions corrected the quotation without comment. **K.** It seems that manuscripts α and ρ omitted “*a corpore*”, but it was certainly in the authorial holograph. **L.** The 1626, 1632, 1642, 1646, 1650 and 1660 editions of Grotius’s *De jure belli ac pacis*, 1.2.3.1 gave “*propulsarent*”. This is the spelling preserved in several of the manuscripts, and so it is possible that Stair copied accurately from Grotius. However, the spelling was different (possibly as a result of a printing error) in the 1681 and 1693 editions (“*propulsarint*” and “*propulsarint*” respectively). The modern edition of Gaius gives “*propulsarent*”. The posthumous editions partly corrected the text to give “*propulsarent*”. **M.** The 1693 edition changed the word order to “Gaius sayeth”. The 1759 edition preserved this wording and added to the text the citation “l. 4. § 1. D. ad l. Aquil.” (i.e. D.9.2.4.1). This citation is not correct: the words quoted are found rather in the *prooemium* in both the modern and seventeenth-century editions of the Digest. This incorrect citation and this word order were also given in the three subsequent editions. **N.** Although this phrase is corrupted in many of the manuscripts, it was certainly correct in Stair’s authorial holograph. **O.** The 1759 edition added after “*defendere*” a cross-reference: “See above, 1.1.5”; this reference was received into the 1826 and 1832 editions. **P.** The phrase “which is only to be extended to private and unlawful violence” was added in the 1681 edition, presumably to limit the extent of this right of self-defence. This limitation most obviously affects violence executed by public authorities. **Q.** The citation and quotation included in six manuscripts is a misquotation of D.9.2.45.4, part of which states: “*vim enim vi defendere omnes leges omnia que iura permittunt*”.

i. Cicero, *Pro Milone*, 11 (30).

ii. D.9.2.4.pr.

§ 4:

Opposite ¹unto ²liberty ³are ⁴restraint and ⁵constraint. ⁶Restraint ⁷hinders ⁸man to be ⁹where, ¹⁰and ¹¹go ¹²whither ¹³he ¹⁴will. ¹⁵And ¹⁶constraint ¹⁷forces ¹⁸him ¹⁹to ²⁰A[do?] ²¹what ²²he ²³will not. ²⁴Restraint is exercised ²⁵by imprisonment ²⁶and captivity, ²⁷or in ²⁸the hindrance ²⁹, ³⁰of ³¹the ³²use of things necessary ³³for ³⁴life, ³⁵as ³⁶, ³⁷meat, drink, ³⁸sleep, ³⁹&c. ⁴⁰Constraint ⁴¹is ⁴²exercised by ⁴³beating, ⁴⁴wounding ⁴⁵, ⁴⁶or the like force ⁴⁷, ⁴⁸upon ⁴⁹the body, or ⁵⁰the fear of it, whereby any ⁵¹thing is ⁵²extorted.

1 unto] Rather “to” in Bw, Cg, Cn, Da, Fa, HD, Hm, IA, JH, La, Li, Pg, Sm, St (text A), Tb, WH. 2 liberty] Rather “liberal” in St (text A). 3 are] Rather “or” in Da, Tr. 4 restraint] Rather “restrained” in Mo. Rather “restraints” in Tr. Letters “re-” have been obscured in Pm. 5 constraint] Rather “constrained” in Mo. Rather “constraints” in Tr. Probably “constraint” but the section of the manuscript is lost in Li. 6 Restraint] Rather “Restrained” in Mo. 7 hinders] Rather “hinder” in Tb. 8 man] Rather “a man” in Bs, Bw, Cn, Cq, Da, Fr, Gr, Hm, Pm, Pt, Sm, Tb, Tw, Wi. Rather “men” in Mg, Mo, Og. 9 where] Omitted in Bs, Bt, Bw, Je, Ka, Ma, Sm, St (text A), Sw, Tt. 10 and] Rather “or” in Mg. 11 go] Omitted in Mo, Og. Rather “to go” in Cg, Da, Mg. 12 whither] Rather “where” in Bs, Bt, Hm, Je, Ka, La, Ma, Sm, Sw, Tb, Tt. 13 he] Rather “they” in Mo, Og. 14 will] Rather “pleaseth” in Hm, Tb. 15 And] Omitted in Sm. 16 constraint] Rather “constrained” in Mo. Rather “enforces” in Bw. Probably “Constraint” but obscured in Sm. 17 forces] Rather “him” in Mo, Og. 19 to] Omitted in Bs, Cg, Da, Fa, Hm, IA, Je, Ka, Ma, Mg, Pg, Pm, Pt, Sm, Sw, Tb, Tr, Tt. 20 do] Present in An, Cn, Fr, HD, La, Li, Lo, Tw, WH, Wi. Omitted in Bs, Bt, Cg, Cq, Da, Fa, Go, Gr, Hm, IA, Je, JH, Ka, Ma, Mg, Mo, Og, Pg, Pm, Pt, Sm, St (text A), Sw, Tb, Tr, Tt. Rather “be” in Bw. 21 what] Rather “that” in Og. Rather “where” in Bs, Bw, Cg, Fa, Hm, IA, Je, Ka, Ma, Pg, Sm, Sw, Tb, Tt. Rather “which” in Pt. 22 he] Rather “they” in Mo, Og. 23 will] Rather “would” in Cn, Cq, Mg, Pt. 24 Restraint] Rather “Restrained” in Mo. 25 by] Rather “be” in Fa, Hm, IA, Pg, Sw, Tb. 26 and] Omitted in Cn, La. Rather “or” in Bw, Gr, Mg, Sm, Tw. 27 or] Rather “nor” in Fa. 28 the hindrance of the use of things] Rather “withholding the” in Bw. 29 of the use of] Rather “from” in Sm. 30 of] Rather “in” in Bs, Da, Pg. 31 the use of] Omitted in Mo, Og, Pt. 32 use of] Omitted in Cn. 33 for] Omitted in Go. Rather “for in” in Mo. Rather “or in” in Og. 34 life] Omitted in Go. Rather “the life” in Sm. Rather “the like” in Mo, Og. 35 as] Rather “is” in Tb. Rather “as is” in Bw. Omitted in Mo, Og. 36 meat] Rather “meat and” in Wi. Rather “matter” in Og. 37 meat, drink] Rather “drink, meat” in Cn. 38 sleep] Omitted in Sm. Rather “and sleep” in Fr, Mo, Og, Tr. 39 &c] Omitted in Bs, Bt, Cg, Da, Fr, Go, Gr, Hm, Je, Ka, La, Ma, Mg, Pm, Pt, St (text A), Sw, Tb, Tr, Tt, Tw, WH, Wi. 40 Constraint] Rather “Constrained” in Mo. Rather “and constraint” in La. 41 is] Rather “as” in St (text A). 42 exercised] Omitted in Mo, Og. Rather “used” in Bw. 43 beating] Rather “the use beating” in Go. Rather “bouting” or “baiting” in Hm. Rather “baiting” in Tw. Rather “byteing” in Bt. 44 wounding] Rather “commanding” in Wi. Rather “and wounding” in Pt. Original obscured and amended to “wounding”, possibly by the copyist, in Fr. 45 or the like force upon the body] Omitted in Go. 46 or] Rather “and” in Bt, Og. 47 upon the body] Omitted in Pm. 48 upon] Rather “on” in Pt, Sm. 49 the] Rather “they” in HD. Originally probably “any” but corrected in Tw. 50 the] Rather “by the” in JH. 51 thing] Originally rather “things” but corrected by a later hand in An. 52 extorted] A later hand has added “from him” after “extorted” in Go.

A. This term is omitted in τ group and in most of the manuscripts in α and ξ groups. It is, however, present in the manuscripts from υ group and most of those of π and ι groups. Its addition and omission were thus parallelisms, so it is uncertain whether the term appeared in the authorial holograph. The word “do” was present in the printed editions.

§ 5:

Though liberty ¹be ²A the most ³precious right, ⁴yet ⁵it is ⁷not ⁸absolute, but limited. ⁹First, ¹⁰by the will of God, and ¹¹our obediential ¹²B obligation[s] ¹³to him, and ¹⁴to ¹⁵men ¹⁶by his ¹⁷ordinance. And, ¹⁸C so ¹⁹though ²⁰man ²¹has power ²²of his ²³own ²⁴person, yet ²⁵has ²⁶he ²⁷D no power ²⁸of his ²⁹own life ³⁰or ³¹E of his members to dispose ³²of them ³³at his pleasure, ³⁴either ³⁵by taking away ³⁶F of ³⁷his life or ³⁸amputation ³⁹or ⁴⁰G hurting of ⁴¹any ⁴²member ⁴³H by himself ⁴⁴or ⁴⁵by giving ⁴⁶power to ⁴⁷, ⁴⁸any ⁴⁹other ⁵⁰, ⁵¹so to do, ¹but he is ⁵²naturally ⁵³obliged ⁵⁴to God to maintain ⁵⁵his ⁵⁶J own life: ⁵⁷so ⁵⁸likewise ⁵⁹, ⁶⁰men ⁶¹may ⁶²be ⁶³restrained, ⁶⁴or ⁶⁵constrained ⁶⁶by others, without ⁶⁷encroachment ⁶⁸upon the ⁶⁹law ⁷⁰of liberty, ⁷¹in ⁷²the ⁷³pursuance of ⁷⁴other ⁷⁵obediential ⁷⁶obligations. ⁷⁷As ⁷⁸a husband has power ⁷⁹to ⁸⁰restrain ⁸¹his ⁸²wife, ⁸³, ⁸⁴from ⁸⁵her liberty ⁸⁶of going ⁸⁷where she ⁸⁸will, and ⁸⁹may keep her ⁹⁰within the bounds of ⁹¹conjugal society; so may ⁹²parents restrain their children, and ⁹³also ⁹⁴constrain them to the performance of ⁹⁵moral ⁹⁶duties, and ⁹⁷that ⁹⁸without any ⁹⁹engagement ¹⁰⁰K or law of ¹⁰⁰man. ¹⁰¹We may also without ¹⁰²any injury ¹⁰³restrain ¹⁰⁴a furious person, or ¹⁰⁵one who ¹⁰⁶is ¹⁰⁷inferring ¹⁰⁸violence ¹⁰⁹to himself, ¹¹⁰in ¹¹¹his ¹¹²life ¹¹³or ¹¹⁴limbs, because ¹¹⁵this ¹¹⁶L restraint ¹¹⁷is not against ¹¹⁸any ¹¹⁹act of ¹²⁰his ¹²¹lawful ¹²²liberty, ¹²³and ¹²⁴is ¹²⁵done as ¹²⁶a ¹²⁷duty ¹²⁸; in ¹²⁹us ¹³⁰of ¹³¹love and mercy. But in ¹³²matters of utility ¹³³and profit, ¹³⁴where the ¹³⁵natural ¹³⁶, ¹³⁷liberty is not ¹³⁸hemmed ¹³⁹in ¹⁴⁰with ¹⁴¹a ¹⁴²M natural obligation, ¹⁴³, ¹⁴⁴, ¹⁴⁵there, ¹⁴⁶unless ¹⁴⁷by his ¹⁴⁸own ¹⁴⁹delinquency ¹⁵⁰or consent, ¹⁵¹man ¹⁵²cannot ¹⁵³N justly be ¹⁵⁴restrained, ¹⁵⁵, ¹⁵⁶much less ¹⁵⁷constrained ¹⁵⁸upon ¹⁵⁹pretence of his utility ¹⁶⁰or profit; ¹⁶¹for liberty ¹⁶²O is far preferable to profit, and ¹⁶³in ¹⁶³P matters of utility, every man is ¹⁶⁴left ¹⁶⁵to his ¹⁶⁶own choice, and ¹⁶⁷cannot without injury ¹⁶⁸to God ¹⁶⁹and ¹⁷⁰man, be hindered to do what he ¹⁷¹pleases, ¹⁷², ¹⁷³or ¹⁷⁴Q [be?] compelled to ¹⁷⁵do what he pleases not, ¹⁷⁶in things ¹⁷⁷wherein he is free. ¹⁷⁸As Grotius ¹⁷⁹says, ¹⁸⁰R *De jure belli*, ¹⁸⁰lib. 181 2. ¹⁸², ¹⁸³, ¹⁸⁴cap. 22. ¹⁸⁵, ¹⁸⁶S *parag. 12*. ¹⁸⁶Non ¹⁸⁷enim si ¹⁸⁸, ¹⁸⁹, ¹⁹⁰quid ¹⁹¹alicui ¹⁹², ¹⁹³T *utile* ¹⁹⁴est, ¹⁹⁵, ¹⁹⁶id ¹⁹⁷statim ¹⁹⁸, ¹⁹⁹mibi licet, ²⁰⁰, ²⁰¹ei ²⁰²per ²⁰³vim ²⁰⁴imponere, ²⁰⁵nam ²⁰⁶his ²⁰⁷qui ²⁰⁸, ²⁰⁹rationis, ²¹⁰, ²¹¹habent usum, ²¹²libera ²¹³esse ²¹⁴debet ²¹⁵, ²¹⁶utilium et inutilium ²¹⁶electio, ²¹⁷, ²¹⁸, ²¹⁹alteri ²¹⁹, ²²⁰jus ²²¹, ²²²W *quoddam in* ²²³eos ²²⁴quaesitum ²²⁵sit.

1 be] Rather “is” in Pt. 2 the] Rather “a” in Bt, Cq, Pm. Rather “ane” in Go, St (text A). 3 precious] Rather originally “precious precious” but the first occurrence deleted in IA. 4 yet it] Omitted in IA. 5 yet] Omitted in St (text A). 6 it] Omitted in An. 7 not absolute but] Omitted in Tr. 8 absolute] Rather “so absolute” in Fr. 9 First] Omitted in Bs, Bt. Written as “1o/” in Cg, Cn, Cq, Da, Go, HD, Li, Sw, Tt, WH. Written as “1” in Bw, Fa, Hm, IA, Pg, Pt. Written as “(1o)” in Mg. Written as “(1)” in Je, Ka, Ma. Written as “first” in An, Fr, Gr, JH, La, Lo, Mo, Og, Pm, Sm, St (text A), Tr, Tw, Wi. 10 by] Rather “because” in Da. 11 our] Added interlinear in Gr. 12 obligations] Rather “obligation” in Bw, Cg, Cn, Cq, Fa, Fr, Go, HD, Hm, IA, Li, Mo, Og, Pg, Pt, Tb, Tr, Tw, WH, Wi. 13 to] Rather “unto” in Cq, Fr, Go, Mo, Og, Sw, Tr, Wi. 14 to] Rather “unto” in Mo, Og. 15 men] Rather “man” in Cn, La, Tr. 16 by] Rather “be” in Bs, Je, Ka, Ma, Sw, Tt. Rather “through” in Go. 17 ordinance] Rather “ordinances” in Tr. 18 so] Omitted in Go. Rather “for” in Je. 19 though] Omitted in Gr, Sm. Also originally omitted but added interlinear by the copyist in Tr. Rather “the” in Og. Rather “thought” in Da. 20 man] Original spelling obscured and changed to “man” in Go. 21 has] Rather “have” in Cq, Go, HD, IA, Wi. Rather

possibly "albeit he have" in Sm. Rather "had" in Pt. Rather "hauv" in Bt but a later hand has added "e". **22** of] Rather "over" in An, Bs, Bw, HD, Lo, Ma, Tw. **23** own] Originally omitted but added by a later hand in Go. **24** person] Rather "actions and person" in Cn, HD, Li. Rather "action and person" in WH. Rather "actions or person" in Da. Rather "actions" in Cg. **25** has he] Rather "he has" in Mo. Rather "he hath" in Bs, Sm, Sw, Tt. **26** he] Omitted in Fr, Og, Wi. **27** no] Originally omitted but added interlinear, probably by the copyist, in Bs. Rather "not" in Bw, Cg, Cn, Da, Fr, Go, HD, Hm, La, Li, Sm, St (text A), Tb, Tr, Tw, WH, Wi. **28** of] Rather "over" in Bw, JH. **29** own] Omitted in Bs, Fr, Go, Je, Ka, Ma, St (text A), Sw, Tt, Wi. Originally "action" but amended to "own" by a contemporary hand in Da. **30** or] Rather "and" in Cg, HD. Rather "of" in Og. **31** of his] Omitted in Bs, Bw, Cg, Cn, Da, Fa, Gr, HD, Hm, IA, Je, JH, Ka, Li, Ma, Pg, Pt, Sm, Sw, Tb, Tt, WH. Rather "of his own" in Cq, La. Rather "his" in Go, Og. **32** of] Omitted in Fr. **33** at his pleasure] Rather "as he pleases" in Sm. **34** either] Omitted in Sm. **35** by] Rather "be" in Tw. **36** of] Omitted in Bt, Cg, Cn, Go, HD, Je, Ka, Li, Ma, Pt, Sm, St (text A), Sw, Tt, Tw, WH, Wi. **37** his] Omitted in Mo, Og. Rather "his own" in La. **38** amputation] Omitted in Pt. Omitted but a space left in Mo. Rather "by amputation" in Bw, Cg, Go. Rather "be amputation" in Tw. Rather "reputation" in WH. Originally rather "imputation" but corrected by a later hand in Bs. **39** or] Omitted in Bw, Go, Pt. **40** hurting of] Rather "hurting" in Cg, Cn, Da, Fa, Gr, HD, IA, Li, Mo, Og, Pg, WH. Rather "of" in Bw, Go. Rather "cutting away" in Bs, Je, Ka, Ma, Sw, Tt. Rather "cutting away of" in Sm. **41** any] Rather "his" in Go. **42** member] Rather "members" in Go. **43** by] Omitted in Bs, Fa, Gr, Hm, IA, Je, Ka, Ma, Pg, Sw, Tb, Tt. Rather "be" in Pm, Tw. Rather "of" in Bw, Cg, Cn, Da, HD, Li, Pt, WH. **44** or] Omitted in Og. Rather "as" in Ma. **45** by] Omitted in Mo, Og, Wi. **46** power] Rather "any power" in Go, Hm. **47** any other] Rather "another" in Bt, Hm, Sm, Tb. **48** any] Omitted in Go. **49** other] Rather "others" in Go. Rather "members" in Mo. **50** so to do] Rather "to do so" in Gr, Sm. Rather "to do the same" in Mo. **51** so] Rather "sua" in Li. **52** naturally] Originally rather "not naturally" but corrected, possibly by the copyist, in Og. **53** obliged] Rather "obleist" in HD. **54** to] Rather "before" in Pt. Rather "unto" in Pm. **55** his] Rather "in his" in Sm. **56** own] Omitted in Og, Tw. **57** so] Omitted in Bs, Je, Ka, Ma, Sm, Sw, Tt. Rather "so that" in Cg, Cn, Da, HD, Li, WH. **58** likewise] Rather "like as" in Tt. **59** men may] Rather "may man" in Go. **60** men] Omitted in St (text A). Rather "man" in Bt, Mg, Pm, Tw. **61** may] Omitted in Tr. **62** be] Rather "by" in Mg. Inserted interlinear in Pg. **63** restrained] Rather "restraint" in Mg. **64** or] Omitted in Bw, Cn. Rather "and" in Go. **65** constrained] Omitted in Bw, Cn. Rather "constrains" in Sm. Rather "constraint" in Mg. **66** by others] Omitted in Og. **67** encroachment] Rather "the encroachment" in Cn, Fa, Gr, IA, Li, Pg, Pt. Rather "incroachments" in Wi. **68** upon] Rather "on" in Bw, Fa, Hm, JH, Tb. Rather "one" in IA, Pg. **69** law] Originally omitted but added by a later hand in An. **70** of liberty] Omitted in Je, Ma. **71** in] Rather "upon" in Go. **72** the] Omitted in Bs, HD, Tr. **73** pursuance] Rather "performance" in Cn, Li, Mo, Og, WH. Rather "preservance" in Lo. Also originally "preservance" but amended by a later hand to "persuance" in An. **74** other] Rather "their" in Da, Hm, La, Mo, Og, Tb, Wi. Rather "the" in Bt, Tr. Rather "others" in Bs, Cg, Fa, Go, IA, Pg. **75** obediential] Original ("obediatial") obscured and rewritten by the copyist in Mo. **76** obligations] Rather "obligation" in Og. **77** As] Rather "and" in Mo, Og. Rather "as

as" in Pt. **78** a] Rather "ane" in Go, IA, St (text A). **79** to] Written interlinear by copyist in Lo. Rather "of" in Bw. **80** restrain] Rather "restraint" in Pg. Rather "restrict" in Cq. Rather "restraining" in Bw. **81** his] Rather "a" in Mo, Og. **82** wife] Rather originally two words but corrected to "wyffe" in HD. **83** from her liberty] Omitted in Bs, Bw, Cg, Cn, Da, Fa, HD, IA, Je, Ka, Li, Ma, Sm, Sw, Tt, WH. **84** from] Rather "of" in An, Hm, La, Lo, Mg, Tb, Tr. Rather "the" in St (text A). **85** her] Omitted in Gr, Hm, JH, Pg, Pt, Tb. Originally rather "this" but corrected, possibly by the copyist, in Og. **86** of] Rather "from" in Bw, Cg, Cn, Da, Fa, HD, IA, Je, Ka, Li, Ma, Og, Pt, Sm, Sw, Tt, WH. Rather "in" in Bs, Bt, Mg, Mo. **87** where] Rather "where and when" in Pt. Rather "whither soever" in Bs, Je, Ka, Ma, Sm, Sw, Tt. **88** will] Rather "would" in Bw. **89** may] Rather "my" in Pm. **90** within] Rather "without" IA. Rather "not in" in WH. **91** conjugal] Omitted in Mo, Og, Tr. Rather "his conjugal" in Hm, Tb. **92** parents] Rather "parents also" in Bt, Go, Sw, Tt. Originally "parents may also" but "may" deleted in St (text A). **93** also] Omitted in Go. Rather "likewise" in Sw, Tt. Rather "also may" in La. **94** constrain] Original obscured ("[?]strain") and "con" written interlinear in IA. **95** moral] Rather "more" in St (text A). Rather "any moral" in An, Lo. **96** duties] Rather "duty" in Da, Sw. **97** that] Rather "yet" in Og. Also possibly "that" in Mo. **98** without] Originally "with" but "out" added interlinear in Hm. **99** engagement] Rather "engagements" in Sm. **100** man] Rather "men" in Go, Hm, Mo, Og, Pt. Rather "manie" in IA. [Tb*] **101** We] Rather "he" in Cq. Original obscured and corrected to "we" in Je. **102** any] Omitted in Cg, Da, Fa, IA, Mg. Rather "all" in Bw. **103** restrain] Added interlinear in IA. **104** a] Rather "ane" in An, Go, IA, Li, Lo, Sm, St (text A). **105** one] Rather "any" in La, Mg, Mo, Og. Rather "ane" in Fr, IA. Rather "on" in Go, Cg, Ka, WH. **106** is] Rather "as" in IA. Rather "his in" in Tr. Rather "has" in Mg. **107** inferring] Rather "offering" in Bt, Fr, Go, La, Mo, Og, Tt. Rather "offered" in Mg. Originally probably correct but changed to "offering" by a later hand in An. **108** violence] Rather "to violence" in WH. **109** to] Rather "upon" in Cq. Rather "on" in Bw. **110** in] Omitted in Bs, Bw, Cg, Da, Fa, Gr, Hm, IA, Je, Ka, Ma, Pg, Pt, Sm, Sw, Tb, Tt, WH. **111** his] Omitted in JH. **112** life] Rather "wife" in WH. Also originally "wife" but corrected by a later hand in Pt. **113** or] Rather "and" in Bw, Gr, St (text A). **114** limbs] Rather "lands" in Je, Ka, Ma. Also originally "lands" but corrected by a later hand in Bs. Rather "limb" in Cg, Fa, IA. Rather "limes" in Da. Possibly rather "kine" in WH. Rather "limus" in Li. **115** this] Rather "his" in Og. Also originally probably "his" but amended to "this" in Ka. Rather "the" in Sm, St (text A), Sw, Tt. **116** restraint] Rather "constraint" in Wi. Rather "act" in Mg. **117** is] Rather originally "as" in St (text A). **118** any] Omitted in Og. **119** act] Rather "part" in Bw. Rather "acts" in Mo. **120** his] Rather "the" in Bt. **121** lawful] Rather "natural" in Bs, Je, Ka, Ma, Sm, Sw, Tt. Added interlinear in Wi. **122** liberty] Original spelling obscured in Wi. **123** and] Omitted in Mo, Og. Rather "as it" in Mg. **124** is] Omitted in Mo. Rather "as" in Og. Rather "are" in WH. **125** done as a duty in us of] Rather "done in us as a duty of" in Sm. Rather "done by us as a duty of" in Cg, Cn, HD. Rather "done by us as ane duty of" in Go. Rather "done by us as a duty of our" in Da. Rather "due by us as a duty of" in Li. Rather "done of us as ane act of" in Bw. **126** a] Omitted in An, Bs, Fa, Gr, Hm, IA, Je, Ka, Lo, Ma, Pg, Pt, Sw, Tb, Tt. Rather "ane" in Bt, Fr. Rather "and" in St (text A). Rather "an" in Mo, Og, Tr. **127** duty] Rather "duties" in Fa, IA, Pg. **128** in] Omitted in Mo, Og. Rather "by" in WH. Rather "of" in Fa, IA. **129** us] Omitted in Mo, Og. Rather "use" in Fr,

Hm, Wi. **130** of] Omitted in Hm. Rather “as of” in Wi. Rather “as[?] of” in Fr. Rather “as” in Tr. **131** love] Rather “law” in Bs, Fa, Hm, IA, Je, Ka, Ma, Pg, Pt, Sw, Tt, WH. **132** matters] Rather “matter” in Tb. **133** and] Rather “or” in Tr. Also originally “or” but corrected, possibly by the copyist, in Hm. **134** where the ... utility or profit] Omitted in Mo, Og. **135** natural] Rather “naturally” in Pg. **136** liberty is] Rather “liberties are” in IA. **137** liberty] Rather originally “liberties” but corrected by the later ink in An. **138** hemmed] Rather “bound” in Tr. Rather “hayned” in WH. Rather “hained” in Da. Rather “hammed” in Cg, Fr, Li. Rather “hembed” in IA, JH. Rather “restrained nor hemmed” in Bw. Rather “hemd” in Fa, Pg, Pt. **139** in] Omitted in Pm. **140** with] Rather “by” in Bs, Je, Ka, Ma, Pt, Sm, Sw, Tt. **141** a] Rather “an” in Tr. Rather “ane” in Fr, Go, IA, Sm, St (text A), Wi. Omitted in Da. **142** natural] Omitted in Fr, Wi. **143** there, unless ... or consent] In brackets in JH. **144** there, unless by his own delinquency] Omitted in Tr. **145** there] Rather “that” in Cq, Mg. Rather “then” in Bt, Gr, Hm, Je, Ma, Tb. **146** unless] Rather “no less” in Bw. **147** by] Omitted in IA. Rather “be” in Cn, Li, Tw, Wi. **148** own] Omitted in Fr. **149** delinquency] Rather “diligence” in Bw, Cg, Da, Fa, Gr, IA, Je, Ka, Ma, Pg, Pt, Sw, Tb, Tt. Originally rather “consent” but corrected by the copyist in Bt. Also originally “diligence” but corrected by a later hand in Hm. Also originally probably “diligence” but deleted and “willingness” written interlinear in Bs. **150** or] Rather “and” Da, Pt, Sw, Tt, WH. Original obscured but “or” added by a later hand in Hm. **151** man] Rather “a man” in Bt, Fr, Wi. Possibly originally “men” but corrected in Cq. **152** cannot] Originally “can” but “not” added interlinear by a later hand in Bs. **153** justly be] Rather “be justly” in Bs, Bt, Bw, Cg, Cn, Cq, Da, Fa, Fr, Go, Gr, HD, IA, Je, JH, Ka, Li, Ma, Mg, Pg, Pm, Pt, Sm, St (text A), Sw, Tb, Tt, Tw, WH, Wi. **154** restrained] Rather “hindered or restrained” in Sw, Tt. Rather “restraint” in Tw. Originally omitted but added interlinear by a contemporary hand in Cn. Original spelling obscured and amended to “restrained” in Go. **155** much less constrained] Omitted in Cg, Bw, HD. **156** much] Rather “and much” in St (text A). **157** constrained] Rather “constraint” in Da. **158** upon] Rather “on” in Sm. **159** pretence] Rather “the pretence” in La, Sw. Rather “a pretence” in Da. Rather “any pretence” in Sm. **160** or] Rather “and” in An, Bt, Bw, Cg, Cn, Cq, Da, Fa, Go, Gr, HD, IA, La, Li, Lo, Sm, St (text A), Sw, Tr, WH. Also originally “and” but corrected in Ma. **161** for] Originally omitted but added by a later hand in Go. Rather “and for” in Tr. **162** is] Omitted in Da. **163** in] Omitted in Tw. **164** left] Rather “best” in Hm. Original obscured in Pt and corrected to “left”. **165** to] Rather “unto” in Cn, Sw, Tt. **166** own] Omitted in Sm. **167** cannot] Rather “cannot not” in St (text A). **168** to] Rather “both to” in Cg. **169** and] Rather “or” in Bs, Gr, Hm, Je, JH, Ka, Ma, Pg, Tb. Rather “and man and” in Wi. **170** man] Rather “men” in Sm. **171** pleases] Rather “likes” in Pt. **172** or (be?) compelled to do what he pleases not] Omitted in Bw. **173** or (be?) compelled to do what he pleases] Omitted in Da. **174** (be?)] Omitted in An, Bs, Bt, Cg, Cn, Cq, Fa, Go, Gr, HD, Hm, IA, Je, JH, Ka, Li, Lo, Ma, Mg, Og, Pg, Pm, Pt, Sm, St (text A), Sw, Tb, Tt, Tw, WH. Originally rather “he is” but “he” obscured in Mo. **175** do] Originally omitted but added interlinear by the copyist in Cg. **176** in things wherein he is free] Omitted in Sm. **177** wherein] Rather “where” in Tr. **178** As] Omitted in Wi. Rather “as that glor[?]” in Pt. **179** says] Omitted in Sm, Tb. Rather “observeth” in Cg, Cn, HD, Li, WH. Rather “observed” in Da. **180** lib] Rather “L” in Bs, Cn, Gr, Je, Ka, Li, Ma, Sw, Tt, WH, Wi. **181** 2] Rather “2nd” in Tb. Rather “22” in Da, Li. Rather

“28” in Mo, Og. **182 cap. 22. para. 12**] Omitted in Da. **183 cap. 22.**] Originally rather “22. Chap. 23” but the “23” has been deleted in Og. **184 cap.**] Omitted in Mo, Tr. Rather “c” in Fr, Je, Ka, Ma, St (text A), Wi. Rather “ca” in Cn, HD. Rather “chap” in Sw. Rather “ch” in Tb. Originally rather “2” but amended to “C” in Bs. **185 parag.**] Omitted in Og. Rather “p” in Bs, Fr, Go, Gr, Je, Ka, Li, Ma, St (text A), Sw, Tt, Wi. Rather “pa” in Cn, Pt, Tr. Rather “pag” in An, Bw, Cg, Hm, La, Lo, Tb, WH. Rather “page” in Fa, IA, Pg. Rather “par” in Bt, Cq, HD, JH, Mg, Tw. Rather “part” in Pm. Rather “s” in Sm. Rather “cap” in Mo. **186 Non**] Rather “*Non inspiciendus est ipse Grotius*” in Je, Ma. Marginal annotation “*inspicienda est | ipse Grotius*” added beside “*Non*” to Ka. **187 enim**] Omitted in Tb. Rather “*onim*” in Bs. **188 quid alicui ... his qui**] Omitted in Je, Ka, Ma. **189 quid alicui**] Rather “*alicui quid*” in La. Rather “*aliem qd*” in Tr. **190 quid**] Originally rather “*quod*” but corrected in Wi. **191 alicui**] Rather “*alieni*” in Mo, Og. Originally probably “*aliqui*” but corrected by a later hand in Cn. **192 utile est**] Omitted in Je. **193 utile**] Original spelling obscured in Mo. Rather “*utili*” in Hm, Tb. Originally correct but amended to “*utili*” in Wi. Originally “*inutile*” but corrected, possibly by the copyist, in Mg. **194 est**] Originally omitted but added interlinear before “*utile*” by a later hand in Bt. **195 id statim mihi licet**] Omitted in Je. Rather “*ideo mihi statim licet*” in Mo, Og. **196 id**] Omitted in Cq, Wi. Also originally omitted but added by a later hand in Bt. Rather “*ut*” in Tr. Rather “*ad*” in St (text A). **197 statim**] Originally omitted but added by a contemporary hand in Mg. Rather “*statuim*” in IA. **198 mihi licet**] Rather “*licet mihi*” in Bw, Da, Gr. **199 mihi**] Omitted in Bt, St (text A). Rather “*mihill*” in Tb. **200 ei per vim**] Omitted in Je. Rather “*ripervum*” in Mo. Originally omitted with a space left then added by a contemporary hand in Pt. **201 ei**] Omitted in Wi. Rather “*et*” in Go. **202 per**] Omitted in Cq, Sm. **203 vim**] Rather “*unu*” in Da. **204 imponere**] Omitted in Je. Originally “*compellere*” in Bt but corrected by a later hand. **205 nam**] Omitted in Je. Rather “*manj*” in Hm. Rather “*et*” in Tr. **206 his**] Omitted in Je. Originally omitted then written interlinear in Go. Rather “*in his*” in Bw, Fa, Hm, IA, Pg. Rather “*iis*” in Tr. **207 qui**] Omitted in Bw, Fa, Hm, IA, Je, Pg, Pt. **208 rationis habent usum**] Rather “*habent usum rationis*” in Tr. **209 rationis**] Originals obscured and corrected in both An and Lo. Rather “*ratuis*” in Li. Rather “*ratione*” in Bs, Wi. **210 habent usum**] Rather “*usum habent*” in An, Bs, Bw, Fa, Fr, Gr, Hm, IA, JH, Lo, Mo, Og, Pg, Sm, Sw, Tb, Tt. Rather “*usum [space]*” in Je, Ka, Ma. Rather “*juseum habent*” in Wi. Rather “*usum honestus*” in Pt. **211 habent**] Originally rather “*haberif[?]*” but amended to “*habet*” by a later hand in Bt. **212 libera**] Original spelling obscured and corrected in Go. Rather “*libere*” in Da, Pt. **213 esse**] Rather probably “*eset*” but corrected by a later hand in Bs. Rather “*omne*” in Pt. **214 debet**] Rather “*debit*” in Mo. Rather “*debent*” in Bt, Go, Sw. Also originally “*debent*” but corrected, possibly by the copyist, in Fr. **215 utilium et inutilium**] Rather “*utilium inutiliumvœ*” in Lo. Originally “*utilium inutiliumvœ*” but amended by a later hand to “*utilium et inutilium*” in An. Originally rather “*utilium est inutilium*” but corrected by a later hand in JH. Rather “*in utilibus et inutilibus et volitionis et nolitionis*” in Tr. Rather “*utilioris et inutilioris*” in Mo. Rather “*utiliuris et inutiliuris*” in Og. Rather “*utilimus et inutilimus*” in Wi. **216 electio**] Rather “*elictio*” in Da. Rather “*electi*” in Tr. **217 alteri jus**] Rather “*jus alteri*” in Pm. **218 alteri**] Omitted in Tr. Rather “*alterum*” in Bw, Mo, Og. Rather “*alterius*” in Bs, Fa, Pg, Pt. Rather “*altere*” in Tb. Originally rather “*alterius usum habent libera*” but “*usum habent libera*” deleted in IA. **219 jus quoddam in eos**] Rather “*in eos jus quoddam*” but a later hand has

amended the final word to “*quoddam*” in Cn. 220 *jus*] Rewritten by a later hand in Go. 221 *quoddam in eos*] Rather “*in eos quod am*” in IA. 222 *quoddam*] Rather “*quodam*” in Bt, Fa, Go, HD, Mo, Og, Pg, Pt, Sw, Tr, WH. Rather “*qd am*” in Tb. 223 *eos*] Rather “*iis*” in Cq, Sm. Rather “*ijs*” in An, Bs, Je, Ka, Lo, Ma, Og. Rather “*dos*” in St (text A). Rather “*ejs*” in Tt. Originally correct but amended to “*ejs*” in Wi. Rather “*eis*” in Fr, Sw. Rather “*eas*” in Pt. 224 *quaesitum*] Rather “*quod sit tuum*” in St (text A). Rather “*quae situm*” in Cg. Rather “*quasitum*” in Cq, Fr, Lo. Rather “*quastitum*” in IA. Rather “*quesitum*” in Fa, Go, Je, Ka, Pg, Sw. Also originally “*quesitum*” but amended by a later hand to “*quesitim*” in Bs. Rather “*queisitum*” in Hm, JH, Ma, Mo, WH. Rather “*quistium*” in Pm, Tr. 225 *sit*] Rather “*est*” in An, Bs, Gr, Je, Ka, Lo, Ma, Pt, Sm, Sw, Tt. Also originally “*est*” but changed to “*sit*” by a contemporary hand in JH. The word “*est*” appears before “*sit*” in Mg but has been deleted by a contemporary hand; it is not clear whether “*est*” was written by the copyist or by an annotator.

A. The variation here between the 1681 edition (which gave “the”) and 1693 edition (which gave “a”) was first observed by the Scottish Law Commission (*Discussion Paper 156: Adults with Incapacity* (2012), p. 47 n. 76); my thanks to Professor Hector MacQueen for drawing this to my attention. Only manuscripts descended from manuscript ξ give the indefinite article. It is likely that this was an error in that ancestor manuscript which was received into most of its descendants but independently corrected in the McGachen and Tweeddale manuscripts. Thus, it seems likely that Stair’s authorial holograph gave “the”. The change for the 1693 edition had the effect of indicating that liberty is one important right among many equally or similarly important rights. This is not, however, the sense of the paragraph and title as a whole. Thus, the change for the 1693 edition might be assumed to be a printing error. The 1759 and 1832 editions gave “the” with reference to the first printed edition and the manuscripts generally; this wording was followed in the 1826 edition without comment. The 1981 edition followed the wording of the 1693 edition. **B.** If the proposed stemma are correct, then the change from plural to singular and singular to plural were parallelisms. It is thus unclear whether Stair’s authorial holograph gave “obligation” or “obligations”. **C.** The word “so” here indicates correctly that the sentence which follows is a corollary of the preceding sentence; it was omitted in the 1693 edition, presumably an error of the printer. The subsequent editions omitted this word without comment. **D.** Although the ancestor manuscripts ι, δ, υ and ζ seem to have given “not” (as do some of the other extant manuscripts), it would seem that this was a parallelism. **E.** The manuscripts indicate that Stair’s authorial holograph probably gave “of his”; this appears to have been the wording in the ancestor manuscripts, barring α which omitted the phrase. The word “of” was omitted in the 1681 edition; this wording was followed in the subsequent editions. **F.** Although there is variation in the manuscripts, it seems likely that Stair’s authorial holograph gave “of” and that this was omitted in certain extant and ancestor manuscripts independently. The 1681 edition gave “of”. The word was removed for the 1693 edition, which may have been a deliberate change by Stair but was more probably a printing error. The subsequent editions omitted “of” without comment. **G.** The phrase “hurting of” was changed to “disabling” in the 1693 edition. This was probably a deliberate change made by Stair to broaden the scope of the statement, as one could disable a member without actually hurting it. The 1759 edition curiously

gave “disabling of” and made reference to the 1681 edition and the James Hay manuscript; this wording was followed in the 1826 printed edition without comment, and in the 1832 edition with the same references as in the 1759 edition. The 1981 edition followed the wording of the 1693 edition. **H.** The word “either” was added here in the 1693 edition and was retained in the subsequent editions. **I.** The phrase “unless it be necessary for preserving the whole” was added here in the 1681 edition. The effect of this sentence was to provide a logical and necessary exception to the preceding rule, which had been very broadly stated in the manuscripts. The phrase was retained in the subsequent editions. **J.** The word “own” was certainly given in Stair’s authorial holograph but was omitted in the 1681 edition. This did not change the sense of the phrase, and could have been a printing error. The subsequent editions also omitted this word. **K.** This phrase was certainly “or law of man” in Stair’s authorial holograph. It was shortened to “or law” in the 1681 edition, which had the effect that the statement could then have included laws other than those written by men, such as natural or divine law. However, as the sense was that husbands and parents have this power under natural law, this change hampered rather than improved the clarity and so might have been a printing error. This may explain the total removal of the phrase in the 1693 edition. The subsequent editions also omitted the phrase. **L.** The word “restraint” was removed for the 1681 edition. This did not obscure or change the sense of the sentence, although the sentence was clearer with this word present. This amended wording was followed in the subsequent editions. **M.** The term “natural” was clearly in Stair’s authorial holograph but was omitted in the 1681 edition, possibly for eloquence or to broaden the range of obligations included. The subsequent editions followed this amended wording. **N.** Manuscripts α , ξ and ν probably gave “be justly”. The reversal of these words seems to have been a parallelism, so the wording of the authorial holograph is somewhat unclear. **O.** This was changed to “as” in the 1681 edition, which was almost certainly a printing error that was corrected for the 1693 edition. The subsequent editions followed the wording of the 1693 edition. **P.** It is clear that Stair’s authorial holograph gave “matters”. This was changed to “the matter” for the 1681 edition. This change did not alter the sense of the sentence, and could have been made either by Stair or by the printer. This amended wording was preserved in the subsequent editions. **Q.** The omission and addition of “be” (or, in the case of the Montrose manuscript, “is”) were parallelisms, so it is uncertain whether Stair’s authorial holograph included this word. The term was present in the printed editions. **R.** The 1632, 1642, 1646, 1650 and 1660 editions of Grotius, *De jure belli ac pacis*, 2.22.12 consistently read (discounting small changes in punctuation): “*Non enim siquid alicui est utile, id statim mihi licet ei per vim imponere. Nam his qui rationis habent usum libera esse debet utilium & inutilium electio, nisi alteri jus quoddam in eos quaesitum sit.*” The 1626 edition gave the same, but for it spelling “jus” as “ius”. **S.** It is unclear how Stair’s authorial holograph indicated the word “paragraph”, as the variations are numerous and seem to be very liable to parallelism. For example, the six descendants of manuscript ι give “p”, “pa”, “pag”, “par” and “parag”. The 1681 edition gave “pag”, which one would normally read as “page”. This was corrected for the 1693 edition. The 1759, 1826 and 1832 editions (in which the citation was removed from the text and relegated to a footnote after “Grotius saith”) gave “C. 22. § 12” without comment. The 1981 edition followed the wording of the 1693 edition. **T.** This word order was actually erroneous: Grotius said “*est utile*”. However, this error in the word

order appeared in the manuscripts and both the 1681 and 1693 editions; it was thus certainly an error by Stair. The 1759, 1826 and 1832 editions corrected the quotation without comment. The 1981 edition followed Stair's wording. U. Stair's authorial holograph seems to have read "*et inutilium*". The printer confused the Latin here in the 1681 edition, giving "*multilininimve*"; this was corrected to "*inutiliumve*" for the 1693 edition. The 1759 and 1981 editions gave "*inutiliumve*"; the 1826 and 1832 editions adjusted the Latin to read "*et inutilium*" without comment. V. These words were elided to "*alterijus*" in the 1681 edition – probably a printing error. This was corrected in the 1693 edition. The subsequent editions followed the 1693 edition. W. It seems probable that Stair's authorial holograph gave "*quoddam*". This was changed to "*quodam*" for the 1681 edition. This was merely orthographical fluctuation, probably introduced by the printer, but the spelling was changed back to that used by Grotius ("*quoddam*") for the 1693 and subsequent editions.

§ 6:

^{1, 2, A}Liberty may be ³diminished ⁴or taken away ⁵by our ⁶delinquency, in the way of punishment, ⁷for ⁸seeing ⁹it is ^{10, 11a}a right in our ¹²own power; ¹³as goods and ¹⁴debts may ^{15, 16}be ^Bforfaulted ¹⁷by ¹⁸our ¹⁹delinquency, so ²⁰may our liberty, ²¹in ²²whole or in part.

1 Liberty ... part] Omitted in Mo, Og. 2 Liberty] Rather "Secondly, liberty" in Cq, La, Pm, St (text A), Tw. Rather as "2o, liberty" in Cg, Da, HD, JH. Rather as "2dlie liberty" in Go. Rather as "2do, liberty" in WH. [Tb*] 3 diminished or taken away] Rather "taken away or diminished" in Bs, Je, Ka, La, Ma, Tr. 4 or] Originally rather "for" but corrected by a contemporary hand in Cg. 5 by] Rather "be" in Cq, Tw. 6 delinquency] Rather "delinquents" in Pt. 7 for] Rather "so" in Cg, Cn, Da, HD, Li, WH. 8 seeing] Rather "long" in Da. Paper of Li lost. 9 it is] Rather "its" in Tw. 10 a right] Omitted in Bs, Je, Ka, Ma. 11 a] Rather "ane" in Fr, IA, St (text A). Originally rather "of ane" but "of" deleted in Bt. 12 own] Omitted in Bt, Da, Fr, St (text A). 13 as] Rather "and" in WH. 14 debts] Rather "debts are in our power and as goods and debts" in Cq. 15 be forfaulted] Paper of Li lost. 16 be] Omitted in IA. 17 by] Rather "for" in Wi. Rather "be" in Tw. 18 our] Omitted in Bs, Cg, Cn, Da, HD, Je, Ka, Li, Ma, Sm, Sw, Tt, WH. Rather possibly "one" in St (text A). 19 delinquency] Rather "delinquents" in Pt. Originally "deliquencie" but spelling corrected in St (text A). 20 may] Rather "may be" in Cq, Mg, Pm. Also originally "may be" but "be" has been deleted in Tw. 21 in whole or] Paper of Li lost. 22 whole] Rather "the whole" in St (text A). Rather "haile" in Cg, Go, HD, WH. Rather "hail" Cn, Da, Sm.

A. On the addition of "Secondly" in some of the manuscripts, see below, § 8 comment A. B. The posthumous editions modernised this word to "forfeited".

§ 7:

¹Thirdly, our ²engagements ³do commonly ⁴import ^{5, 6a}a diminution of our personal ⁷liberty, ⁸but much more of ⁹that ^{10, A}native liberty of things without us; ^{11, B}hence ^{12, 13}it is ¹⁴that the law ¹⁵allows personal ¹⁶execution ^{17, 18}or restraint, ¹⁹and incarceration of ²⁰the ²¹debtor's person, ²²until he do all ²³the ²⁴deeds ²⁵that ²⁶are in ²⁷his power, for ²⁸the ²⁹satisfaction ³⁰of ³¹his ³²creditor.

1 Thirdly] Omitted in Bt, Fr, Gr, Hm, Mg, Sm, Sw, Tb, Tt, Wi. Written as “thirdly” in An, Bs, Bw, IA, JH, La, Lo, Mo, Og, Pm, St (text A), Tw. Written as “3o/” in Cg, Cn, HD. Written as “3io/” in Li. Written as “3lie” in Fa, Je, Ka, Ma, Pg. Written as “3dlie” in Cq, Go. Written as “3dly” in Tr. Written as “3tro” in Da. Written as “3tio” in WH. 2 engagements] Rather “engagement” in Cq, Da, Fr, Go, Mg, Pm, St (text A), Sw, Tt, Tw. 3 do] Rather an ampersand in St (text A). 4 import] Rather “impart” in Cn. Also originally “engage” but corrected by the copyist in Pt. 5 a diminution] Rather “admiratione” in St (text A). 6 a] Omitted in Bs, IA, Je, Ka, Ma, Mo. Rather “and” in Da. Rather “ane” in Li. 7 liberty] Rather “liberties” in Bw. Rather “right and liberty” in Sm. 8 but] Rather “thus” in Tw. 9 that] Omitted in Mo, Og, Wi. Rather “our” in Bs. Originally “our” but corrected by the copyist in Pg. 10 native] Rather “natural” in Bs, Da, Fr, St (text A). Rather possibly “nature” in Bt. Rather “perfect, native” in Bw. 11 hence] Rather “whence” in La. 12 it is] Rather “is it” in Fa, Gr, JH, Pg, Pt. Also originally “is it” but corrected by a contemporary hand in La. 13 it] Omitted in Bs, Ka. 14 that] Omitted in Cq. Rather “that which” in Bs. 15 allows] Rather “allowed” in Da. Spelling amended in St (text A). 16 execution] Omitted in Bw. Rather “action, execution” in Cg, Cn, Da, Fa, HD, IA, Li, WH. Also originally “action, execution” but “action” deleted by a contemporary hand in Pg. 17 or restraint] Omitted in Mo, Og. Rather “un restraint” in Pg. 18 or] Rather “and” in Bt. Rather “of” in Cq. 19 and] Rather “or” in Bw, Hm, Mo, Og, Tb, Tw, Wi. Rather “and the” in Pt. 20 the] Rather “of the” in Tr. 21 debtor’s person] Rather “person of the debtor” in Mo, Og. Rather “debtor with prisone” in St (text A). Rather “debtors’ persons” in Tr. 22 until] Rather “till” in Cn, Mo. Rather “while” in Cg, Li, WH. Rather “unless” in Go. 23 the] Omitted in Bt, Cq, Go, Mg, Pm, St (text A), Tr, Tw. 24 deeds] Rather “deed” in Bw. 25 that] Rather “which” in Bt, Cq, Go, Pm, St (text A), Tw. 26 are] Rather “is” in Bw. 27 his] Rather “his own” in An, Bt, Lo. 28 the] Omitted in Bs, Bt, Bw, Cq, Cn, Go, HD, Je, Ka, Li, Ma, Mg, Pm, Sm, St (text A), Sw, Tt, Tw. 29 satisfaction] Rather “satisfying” in Bt, Cq, Mg, Pm, St (text A), Tw. 30 of] Omitted in Cq, Tw. 31 his] Rather “the” in Cn, Go. 32 creditor] Rather “creditors” in Bt, Bw, St (text A). Rather “debtor” in Lo. Also originally “debtor” but corrected by a later hand in An.

A. It seems likely that this term was “native” in Stair’s authorial holograph: it is preserved as such in almost all of the manuscripts. Some manuscripts give “natural”, which is probably reflective of a scribal slip. The term was “natural” in the printed editions. B. This word was clearly “hence” in Stair’s authorial holograph, but was changed to “whence” in the 1681 edition; the latter wording was retained for the subsequent editions.

§ 8:

^{1, 2} Liberty ³is ⁴diminished ⁵by subjection ⁶unto authority; ⁷for ⁸ B, whereas ⁹ man ¹⁰by nature ^Cis ¹¹a free creature ^D in his own ¹²power, ^E he does then become in ¹³the power of ¹⁴others; whether ^Fit be in the power of ^{15, 16}a society, ¹⁷where ¹⁸the ¹⁹suffrage of ²⁰the plurality ²¹is preferred ²²to the ²³natural ²⁴and ^{25, 26}free choice of ²⁷particular persons, ^Gin things ²⁸profitable and ²⁹whereunto they ³⁰were naturally free or ³¹whether ³²men be in ³³the ³⁴power of ³⁵a society wherein ³⁶they ³⁷share ³⁸not ³⁹by ⁴⁰themselves ⁴¹or ⁴²their delegates, as ⁴³was ⁴⁴Rome ⁴⁵to the ⁴⁶provinces ⁴⁷or ⁴⁸Venice. ⁴⁹In both which

⁵⁰the authority ⁵¹is not delegated but devolved ⁵²or ⁵³whether ⁵⁴the ⁵⁵authority be ⁵⁶devolved ⁵⁷to ⁵⁸a ⁵⁹few ⁶⁰persons ⁶¹or ⁶²to ⁶³one.

1 Liberty ... persons] Omitted in IA. 2 Liberty] Rather "Fourthly, liberty" in Cq, La, Pm, St (text A), Tw. Rather "4o/, liberty" in Cn, Da, Go, HD. Rather "4to/, liberty" in Cg, Li, WH. 3 is] Originally rather "as", but corrected by a later hand in An. 4 diminished] Rather "wholly diminished" in Bw. Rather "dimished" in Cn. 5 by] Omitted then added interlinear by the copyist in Pt. 6 unto] Original ("[?]to all") obscured and amended to "unto all" in Mg. Rather "to" in Bs, Bw, Go, Je, Ka, Ma, Sm, Sw, Tt. 7 for] Omitted in Cn. 8 whereas] Rather "where a" in Bs, Fa, Gr, HD, Hm, Je, JH, Ka, Ma, Pg, Pt, Sw, Tb, Tt, WH. Rather "where" in Cg, Sm. Rather "a" in Mo, Og. 9 man by nature] Rather "by nature man" in Sm. 10 by nature] Omitted in Go. 11 a] Rather "ane" in St (text A). 12 power] Rather "person" in Cn. 13 the] Omitted in Cg, Pt. 14 others] Originally "anothers" but corrected, probably by the copyist, in La. Original obscured but corrected, possibly by the copyist, in Tt. 15 a society] Originally "authority" but the copyist deleted this and wrote "a society" in Pt. 16 a] Omitted in Sm, Sw, Tt. Rather "ane" in Cg, Go, St (text A). 17 where] Rather "is here" in Da. 18 the] Rather possibly "these" in Tw. 19 suffrage] Rather "suffrages" in Cn, Da, HD, Li. Originally spelled "sufferage", but corrected by a later hand in JH. 20 the] Omitted in Sm. Rather "a" in Wi. Originally rather "others", but corrected by the copyist in Ka. 21 is] Rather "are" in Da, Li. Rather "is to be" in Go. 22 to] Omitted in St (text A). 23 natural and free] Rather "particular" with "& free" added interlinear by the copyist in Cg. 24 and] Omitted in La. 25 free choice of particular] Rather "particular choice of free" in Wi. 26 free choice] Omitted then written interlinear in Cg. 27 particular persons] Rather "a particular person" in Cg, Cn, Fa, HD, WH. Rather "ane particular person" in Li. Rather "one particular person" in Da. Rather "a particular persons" in Pg. 28 profitable] Rather "positive" in Li. 29 whereunto] Rather "whereinto" in Bw, Tw. 30 were] Rather "are" in Ka, Mo. 31 whether] Rather originally "where", but amended to "whither" by a later hand in An. 32 men be] Written by the copyist after writing, then deleting, "it be" in Gr. 33 the] Omitted in Da. 34 power] Rather originally "society" but corrected by the copyist in Mo. 35 a] Omitted in Tb. Rather "an" in Og. Rather "ane" in Da, Go, St (text A). 36 they] Rather "the" in Ka, Pm. 37 share] Rather "are" in Mo. Rather originally "spare" but corrected by a later hand in An. 38 not] Omitted in An, Lo. Rather "out" in Bs, Je, Ka, Ma, Sm. Deleted in Tw. 39 by] Omitted in Pt. Rather "be" in Cn, Go, Mo, Og, Wi. 40 themselves] Rather "them" in Tb. 41 or] Rather "nor" in Bt. Rather "and" in Da. Rather "are" in Bs. 42 their] Omitted in Bw, Cq. Rather "by their" in Da, HD, Li, Pm, St (text A), Sw, WH. Rather "be their" in Cn. 43 was] Bs, Je, Ka, Ma end with this word. 44 Rome] Original obscured and "Rome" written interlinear in An. Rather "Roan" in Mo. 45 to] Rather "in" in Bt, Mo, Og, St (text A). 46 provinces] Rather "province" in Bt, La, Mo, Og, Sw. 47 or] Omitted in Pt, Sm, Tr. Rather "of" in Cq, Fr, La, Mo, Og, Sw, WH. Original obscured in Mg. 48 Venice] Omitted in Gr, Mg, Pt, Sm, Tr. Rather "Vines" in Mo. 49 In both which] Rather originally "which both" amended to possibly "in both" by a later hand in Mg. Rather "if or when" in Sm. Rather "in which" in Tr. Rather "when both with" in Bw, Fa, Gr, Hm, IA, JH, Pg, Sw, Tb, Tt. Rather "it when both" in Cq. Rather originally "[?] when both as both" but amended to "or when both or" in Tw. Rather originally

“its when both” but “with” added interlinear thereafter, probably by the copyist, in Pt. 50 the] Omitted in Bt. 51 is] Rather “us” in Li, Mg. 52 or] Omitted in HD, Sm, St (text A). 53 whether] Omitted in St (text A). Rather “neither” in Gr. 54 the] Omitted in Mg, Sm, St (text A). 55 authority be] Omitted in Sm, St (text A). 56 devolved] Omitted in Sm, St (text A). Rather “divested” in Li, Mg. 57 to] Rather “in” in St (text A). Rather “on” in Bw. 58 a] Originally omitted but added by a later hand in An. Rather “ane” in Sm. 59 few] Original obscured and corrected in Pg. 60 persons] Omitted in La. 61 or] Rather “as” in St (text A). 62 to] Rather “upon” in Bw. 63 one] Rather “one only” in Bw. Rather “on” in Go, WH.

A. The manuscripts from group ι , most of those from ξ group, and the Laing manuscript give “Fourthly, liberty”. These are largely the same manuscripts (plus the Lindesay and Constable manuscripts, minus the James Hay and Tarbat manuscripts) that give “secondly” in paragraph 6. The stemma suggests that the addition of these adverbs was a parallelism. Indeed, it might be indicative of a scribal inclination to deliberately add “secondly” and “fourthly” to a text that had (probably only) “thirdly” and “fifthly”. The omission of these terms appears to have been widespread enough among the early-generation ancestor manuscripts to indicate that Stair himself did not give “secondly” and “fourthly”. Neither were they present in the 1681 and 1693 editions. The 1759 edition gave “Secondly” with reference to the James Hay manuscript and “Manuscript G”, and gave “Fourthly” with reference to “Manuscript G” (but, oddly, not the William Hay manuscript); the 1832 edition followed this. This wording was followed in the 1826 printed edition without comment. The 1981 edition followed the wording of the first two printed editions. **B.** This was clearly “whereas” in Stair’s authorial holograph, indicating his intention to draw a contrast here with his previous statement. This term was misprinted in the 1681 edition as “as”, so instead indicated the opposite. Stair amended this to “tho” in the 1693 edition, restoring the implication that there should be such a contrast but not his original wording. The 1759 and 1832 editions favoured “whereas”, both referring to the now lost “Manuscript G”; two of the other manuscripts on which Gordon relied (the Tait and William Hay manuscripts) also gave “whereas”, and the fourth, the Kames manuscript, gave “where a”. The 1826 edition followed the wording of the 1759 edition without comment. The 1981 edition followed the wording of the 1693 edition. **C.** Stair’s authorial holograph and the 1681 edition gave “is”; it was changed to “be” in the 1693 edition for reasons which are unclear. The 1759 and 1832 editions gave “is” with reference to the 1681 edition and the manuscripts generally. The 1826 edition followed this wording without comment. The 1981 edition followed the wording of the 1693 edition. **D.** The 1693 edition added “and” here, which implies that being a free creature and being in one’s own power were distinct, and that by nature man is both a free creature and is also in his own power. Previously, the implication was that being a free creature and being in one’s own power were inherently linked. The 1759 and 1832 editions followed the wording of the 1681 edition and the manuscripts; this was followed in the 1826 edition without comment. The 1981 edition followed the wording of the 1693 edition. **E.** The word “yet” was added here in the 1693 edition, probably for clarity. The 1759 and 1832 editions removed “yet” with reference to the manuscripts and first printed edition; the 1826 and 1981 editions also did so without comment. **F.** Stair amended the

wording here in the 1693 edition, changing “it” to “the authority”, presumably for clarity. The 1759 and 1832 editions favoured “it” with reference to the manuscripts and 1681 edition, and the 1826 edition followed this without comment. The 1981 edition followed the wording of the 1693 edition. G. The rest of the text of this chapter was removed in the 1681 edition and replaced with the phrase “or whether the authority be stated in a few persons, or in one sovereign?” The punctuation was rather a full stop in the 1693 edition. The punctuation in the 1693 edition was followed in the subsequent editions.

§ 9:

¹Fifthly, liberty is ², ³wholly taken ⁴, ^A[away/off] by bondage, ⁵slavery, ⁶or servitude, which ⁷is ⁸diametrically ⁹opposite to liberty; ¹⁰for as liberty ¹¹is that power ^Bwhereby ¹²men are *sui juris*, ¹³so by ¹⁴servitude, they ^Cbecome ¹⁵*alieni juris*, ¹⁶in the power of ¹⁷another, ¹⁸unto ¹⁹whom ²⁰they ^Cbecome ²¹as the ²²rest of ²³, ^Dthe ²⁴goods ²⁵, ²⁶in ²⁷their patrimony, ²⁸and ^Eare possessed ²⁹, ³⁰by ³¹them, and ^Fmay ³²be gifted, ³³legated, ³⁴sold, ³⁵and ³⁶otherwise ³⁷disposed ³⁸of at ³⁹their pleasure ⁴⁰. *l. 3. ff. de statu hominis* [i.e. D.1.5.3ⁱ], *l. qui in servitute ff. de regulis juris* [i.e. D.50.17.118ⁱⁱ] so that ⁴¹, ^G[their?] masters ⁴²had ⁴³among ⁴⁴the Romans, and ⁴⁵almost every where, ⁴⁶, ⁴⁷, ^Hpower of ⁴⁸, ^Ilife and death ⁴⁹of ⁵⁰their slaves ^J. *l. 1. ff. de his qui sunt sui vel alieni juris* [i.e. D.1.6.1.1ⁱⁱⁱ], ⁵¹though the ⁵², ^Kconstitutions of the ⁵³emperors ⁵⁴did ⁵⁵restrain ⁵⁶that power to moderate ⁵⁷chastisement, as ⁵⁸appears ⁵⁹by the former ⁶⁰law, ^{iv} and ⁶¹, ^L, ^vnext ensuing ⁶²servants being wholly their masters, ^M ⁶³, ⁶⁴could have ⁶⁵nothing of their own, *l. adquiretur ff. de acquirendo rerum dominio* [i.e. D.41.1.10^{vi}]; so that ⁶⁶, ^Ntheir *peculium*, ⁶⁷which ⁶⁸their masters ⁶⁹committed to them, ⁷⁰, ⁷¹to negotiate ⁷²with, ⁷³was ⁷⁴wholly in ⁷⁵their ⁷⁶masters power, and ⁷⁷might be taken ⁷⁸away at ⁷⁹his ⁸⁰pleasure, *l. quam ff. de peculio* [i.e. D.15.1.7^{vii}], ⁸¹, ⁸², ⁸³neither ⁸⁴could they ⁸⁵be liable to ⁸⁶any ⁸⁷obligation, *l. nec servus ff. de peculio* [i.e. D.15.1.41^{viii}]; ⁸⁸, ⁸⁹neither could ⁹⁰there be ⁹¹any ⁹², ⁹³civil ⁹⁴action ⁹⁵for, ⁹⁶or against them *l. in personam ff. de regulis juris* [i.e. D.50.17.22^{ix}], ⁹⁷, ⁹⁸neither ⁹⁹could they be ¹⁰⁰, ¹⁰¹, ^Owitnesses, ¹⁰², ^Pprocurators, ¹⁰³or ¹⁰⁴arbiters, *l. cum serv. ff. de regulis juris* [i.e. D.50.17.107^x]; yea, ¹⁰⁵, ^Qand they ¹⁰⁶were ¹⁰⁷accounted as ¹⁰⁸, ¹⁰⁹no body, ^{xi}, ¹¹⁰, ¹¹¹ or ¹¹²as dead men, *l. nec servus ff. de peculio* [i.e. D.15.1.41^{xi}].

1 Fifthly] Omitted in Bt, Bw, Cg, Fr, Go, Gr, Hm, Pt, Sm, St (text A), Sw, Tb, Tt, Wi. Rather “the [obscured]” in IA. Written as “fifthly” in An, Bs, Cq, JH, La, Lo, Mg, Mo, Og, Pm, Tw. Written as “5o/” in Cn, Da, HD. Written as “5lie” in Fa, Je, Ka. Written as “5ly” in Pg. Written as “5tly” in Tr. Written as “5lie” in Ma. Written as “5toi/” in WH. Written as “5to/” in Li. **2** wholly taken] Rather “[deleted] taken wholly” in Gr. **3** wholly] Rather “totally” in Bw. **4** away/off] Omitted in Gr. Reads “off” in Bt, Cq, La, Mg, Og, Tr, Tw. Also originally rather “off” but amended to “away” by later hands in An, Wi. Rather “of” in Fr, Go, Lo, Pm, St (text A). Rather “away” in the other manuscripts. **5** slavery or servitude] Rather “servitude or slavery” in La. **6** or] Omitted in Go. Rather “and” in Bs, Je, Ka, Ma, Sm, Sw, Tt. **7** is] Rather “are” in Go. Written interlinear in Tw. **8** diametrically] Omitted in Mo. Rather “diamerlie” in Tt. Original obscured and amended to “diameterily” in Bs. Originally rather “diametrallie” but “ic” added by a later hand in JH. **9** opposite] Rather “opposed” in Cn. Spelling amended in Tw. **10** for as liberty is] Rather “for liberty as it is” in Cn. **11** is] Rather “hath” in Fr. **12** men] Rather “man” in IA. **13** so by servitude they

become *alieni juris*] Omitted in Og. **14** servitude] Rather “the servitude” in IA. **15** *alieni juris*] Rather “*juris alieni*” in Cg, Cn, Da, HD, Li, WH. **16** in] Rather “unto” in Tr. **17** another] Rather “a nother” in An, Lo. Rather “aneother” in Bt. Rather “ane other” in Da, Gr, HD, IA, Pt, St (text A), Tb, Tt, Tw. Rather “the other” in Pm. **18** unto] Rather “man to” in Bs, Je, Ka, Ma, Sm, Sw, Tt. Rather “to” in An, Cg, Cn, Da, Lo, Mo, Og, Pt. **19** whom] Rather “them” in St (text A). **20** they] Originally “as they” but “as” deleted in Ma. **21** as] Rather “subject, as” in Sm. Rather “subject and” in Cg, Cn, Da, HD, Li, WH. Rather “as they” but “they” deleted in Ma. **22** rest] Rather possibly “most” in Ma. **23** the] Rather “their” in An, Bs, Cg, Cn, Da, HD, Je, Ka, La, Li, Ma, Sw, Tb, Tt, WH. Rather “his” in Go, Sm. **24** goods] Rather “goodnes” in IA. **25** in their] Rather “and” in Cg, Cn, Da, HD, Li, WH. **26** in] Rather “of” in Cq, La, Mg, Tr. Rather “one” in St (text A). **27** their] Rather “the” in Tt. Rather “his” in Sm. Originally “their” but changed to “his” by a later hand in Go. **28** and] Omitted in Cg, Cn, Da, HD, Li, WH. **29** by them] Omitted in Pt. **30** by] Rather “be” in Bt, Cg, Go, Gr, IA, La, Li, Sm, Tb. **31** them] Rather “him” in Sm. Amended to “him” by a later hand in Go. **32** be] Omitted in Pt. **33** legated] Rather “and legated” in Bw. Originally “legated, legated” but corrected by the copyist in Cg. Rather “legate” in Bs. Rather “legat” in IA, Je, Ka, Ma, Sw. **34** sold] Omitted in Mo, Og. Rather “and sold” in Bt, Da, La. **35** and] Rather “or” in Cn, Bw, Da, Go, HD, Li, Mo, WH. **36** otherwise] Omitted in Cn, HD, Li. **37** disposed] Rather “disposit” in Da. Rather “disponed” in Cn, Cq, Go, HD, Li, Mo, Og. **38** of] Omitted in An, IA, Lo, Mo, Og. Rather “upon” in Cn, Cq, HD, Li. Rather “of by him” in Sm. **39** their] Rather “his” in Sm. Original obscured and amended to “his” by a later hand in Go. **40** D.1.5.3, D.50.17.118] Amended order in Bs: paragraph of citation i, then the Digest title of citation iii, then “though the constitution of the emperors”, then Digest title of citation i, then citation ii. **41** (their?) masters] As “their masters” in Bt, Bw, Cg, Cq, Da, Fa, Go, Gr, IA, Je, Ka, Ma, Mg, Pg, Pm, Pt, Tb, Tr, Tw, WH. Rather “their master” in Bs, St (text A), Sw, Tt. Rather “the masters” in Fr, Wi. Rather “the master” in Sm. Also originally “their masters” but “their” deleted by a later hand in Hm. Rather “masters” in An, Cn, HD, JH, La, Li, Lo, Mo, Og. **42** had] Omitted in Bw, Pt, Sm. **43** among] Rather “amongst” in Cg, Cq, Da, Fa, Fr, Go, Hm, IA, Je, JH, Ka, Ma, Mo, Pg, Pm, St (text A), Sw, Tr, Tw, WH, Wi. Rather “amongs” in Gr. **44** the Romans] Rather “them Ro:” in Fa, IA. Rather originally “them Ro:” but corrected to “the” in Pg. Rather “the Rom:” in Hm. **45** almost] Omitted in Da, Mo, Og, Pt. Rather “all most” in Hm. **46** power of] Rather “had” in Pt. **47** power] Rather “the power” in Bt, Cq, Go, Mg, Pm, St (text A), Tw. Rather “had power” in Bw, Sm. Originally omitted but added interlinear by a contemporary hand in Cn. **48** life] Rather “the life” in Bw, Mo, Og, Pt, Sm. **49** of] Rather “over” in Je, Ma. Originally omitted but “over” added by a later hand in Ka. **50** their] Omitted in Je, Ma. Rather “the” in Pt. **51** though] Omitted in Hm. **52** constitutions] Rather “constitution” in An, Bs, Cg, Cn, Da, Fa, Go, Gr, HD, Hm, IA, Li, Lo, Pg, Pt, Sm, St (text A), Sw, Tb, Tt, WH. **53** emperors] Rather “emperor” in Bs, Bt, Bw, Go, Pm, Sm, St (text A), Sw, Tt, Tw, Wi. Also originally “emperor” but corrected by a contemporary hand in Mg. Original obscured by a later hand in An. **54** did] Rather “and” in Da. **55** restrain] Originally “contrain” but corrected by a contemporary hand in Mo. **56** that] Rather “the” in Mo. **57** chastisement] Rather “chastisements” in La, Tb. **58** appears] Rather “appeared” in St (text A). Rather “appear” in Je, Ma. **59** by] Rather “in” in

Go. Rather “be” in Gr. **60** law] Rather “laws” in St (text A), Wi. Rather “title” in Bw. **61** next ensuing] Rather “next and next ensuing” in An. Rather “nixt susheneing” in Hm. **62** servants] Omitted in Tr. **63** could ... *peculium* which] Omitted in JH. **64** could] Rather “they could” in An, Lo, Tr. Rather “would” in Fa, Gr, Hm, IA, Pg, Tb. **65** nothing] Originally rather “thing” but corrected by a later hand in An. **66** their] Omitted in Cq. Rather “the” in Hm, La, Tb. Rather “their own” in Da. Rather “others” in St (text A). **67** which] Rather “which was” in Pm. Rather “that” in Go. **68** their] Rather “these” in Je. **69** committed] Rather “contained” in IA. Rather “delivered” in Bs. **70** to negotiate with] Omitted in Tb. **71** to] Rather “unto” in Da. **72** with] Omitted in Sm. Rather “with which” in Tr. Rather “which” in Mo, possibly Og, St (text A), Sw. Rather “what” in Pm. Rather “whuh” in Tt. **73** was] Rather “were” in Mg. Original obscured and changed to “is” in Da. **74** wholly] Rather “only” in Sw. Rather “fully” in Hm. **75** their] Rather “the” in Hm, IA, Tr. Rather “those” in Je. **76** masters] Omitted in Tr. **77** might] Rather “may” in Mo, Og. Also originally “may” but amended to “might” by a later hand in Go. Rather “might not” in Bw, Cg, Fa, Gr, IA, Pg, Pt, WH. Also originally rather “might not” but corrected by a later hand in Hm. **78** away] Rather “from them” in Bs. **79** his] Rather “wholly at his” in Pm. Rather “their” in Bs, Bw, Cg, Da, Fa, Gr, Hm, IA, Je, JH, Ka, Li, Ma, Pg, Pt, Sm, Sw, Tb, Tt, WH. **80** pleasure] Rather “pleasures” in Gr. **81** neither could they ... against them, D.50.17.22] Omitted in St (text A). **82** neither could they be liable to any obligation, D.15.1.41] Omitted in La, Lo, Mo. Appears after the following clause in Li. Also originally omitted, but added by a later hand after the following clause, in An. Also originally omitted but added by a later hand, without the citation, in Go. **83** neither could they be liable to any obligation] Omitted in Mg. **84** could] Rather “would” in IA. **85** be liable to ... be any civil] Omitted in Og. **86** any] Rather “ane” in HD. **87** obligation ... D50.17.107] Appears after citation xi in Pm. **88** neither ... D.50.17.22] Omitted in Sw, Tt. **89** neither] Rather “another” in Fr. **90** there] Omitted in Cn. **91** any] Rather “ane” in HD. **92** civil action] Rather “action civil” in Cn. **93** civil] Omitted in Mo. **94** action] Rather “actions” in Bs, Je, Ka, Ma. **95** for or] Omitted in Mo, Og. **96** or] Omitted in Mg, Tr. **97** neither could they ... or arbiters, D.50.17.107] Omitted in Cq, Tb. Also originally omitted but added interlinear in Mg. Copyist almost omitted, writing the first four words of the next clause, but deleted this and wrote out this clause, in Gr. Also originally omitted but added at the end of the paragraph by a later hand in Go. **98** neither could they] Rather “yea and” in Og. **99** could] Rather “might” in Bw. **100** witnesses, procurators, or arbiters] Rather “withnesses, arbiters, or prors” in Hm. **101** witnesses] Rather “witness” in Tt. **102** procurators] Rather “procurators” in La. Abbreviated to “prors” in An, Bt, Bw, Cn, Da, Gr, HD, Hm, Je, Ka, Li, Lo, Ma, Mg, Mo, Og, Pt, Sm, St (text A), Sw, Tr, Tt, WH, Wi. The annotator also gave “prors” in Go. **103** or] Rather “and” in Og. Rather “nor” in Cg, Cn, Fa, Gr, IA, Li, Mg, Pg, Tw, WH. **104** arbiters] Omitted in Sm. Rather “arbiters &c” in Sm. Rather “arbitrators” in An, Mo, Wi. **105** and] Omitted in Bt, Bw. **106** were] Rather “are” in Mg, Pt. Rather “ware” in Ka. Rather “war” in Mo. **107** accounted] Omitted in Mo. Rather “compted” in Pt. **108** no body] Rather “nobody” in HD, Lo. **109** no] Rather “one” in IA. **110** or as dead men] Omitted in Bt, St (text A). Also originally omitted but “or dead” added by a later hand in Go. **111** or] Omitted in Bs. Rather “and” in Bw, HD, IA, Tw. Rather “yea” in Fr, Wi. **112** as] Omitted in Mg.

A. It seems clear that the ancestor manuscripts ξ , π and ν gave “off”, as did the Ogilvie manuscript independently; manuscript α and the Montrose manuscript gave “away”. The change from “off” to “away” (or “away” to “off”) was thus a parallelism, so the wording of Stair’s authorial holograph cannot be identified with certainty. The word was “off” in the 1681 edition, but was changed to “away” in the 1693 edition. The posthumous editions followed the wording of the 1693 edition. **B.** This was changed to “by which”, presumably by Stair, in the 1681 edition. This wording was followed in the subsequent editions. **C.** Stair used the present tense in the authorial holograph. However, in the 1681 and 1693 editions, the past tense was used. This was presumably a deliberate change, which indicated to the reader that this kind of slavery was no longer practised. Thus, in the printed editions, this was made as a historical statement. The 1759 edition used “become” then “became”; the 1826 and 1832 editions did the same. The 1981 edition followed the wording of the first two printed editions. **D.** It seems likely that Stair’s authorial holograph gave “the” and that this became corrupted as “their” in many of the later-generation manuscripts. If so, this was changed to “their” in the 1681 edition for reasons unknown; this wording was followed in the subsequent editions. **E.** The word “are” was changed to “were” in the 1693 edition. This was in keeping with the change to the past tense discussed in comment C above; the continued appearance of “are” in the 1681 edition was presumably an editorial or printing error. The posthumous editions followed the wording of the 1693 edition. **F.** Stair’s authorial holograph gave “may be”; this was changed to “might be” in the 1681 edition for reasons which are unclear. The change to “might been” in the 1693 edition was a printing error. This error was corrected in the 1759, 1826 and 1832 editions, but was not identified as a deviation from the text of the 1693 edition. The 1981 edition followed the wording of the 1693 edition. **G.** It seems that the ancestor manuscripts ξ and β gave “their”, although the term was then omitted in the Constable, Home Drummond and Lindsay manuscripts independently. Manuscript ν gave “the”. The introduction or omission of these terms was a parallelism, so it is not clear whether Stair’s authorial holograph gave a word here. If it did, this was removed for the 1681 edition. The wording of the 1681 edition was preserved in the subsequent editions. **H.** Manuscript ξ gave the definite article before “power”, but it is likely that Stair’s authorial holograph did not. This was added for the 1693 edition but did not improve the elegance of the wording. The definite article was omitted from the 1759 and 1832 editions with reference to the first printed edition and the manuscripts generally, and from the 1826 edition without comment. The 1981 edition followed the wording of the 1693 edition. **I.** The definite article appeared here in some of the manuscripts as a parallelism. It was later added to the 1693 edition, but did not improve the sense or elegance of the wording. The 1759 edition omitted the definite article. It can be presumed that this was done under reference to the manuscripts and first printed edition, although the footnote to indicate this was put in the wrong place in the text. The 1832 edition also omitted “the”, and inserted the reference to the manuscripts and first printed edition in the same place as the 1759 edition. The 1826 edition also omitted the definite article without comment. The 1981 edition followed the wording of the 1693 edition. **J.** More’s fifth edition added here a marginal reference to J Taylor’s *Elements of the Civil Law*. More’s citation of this work in his list of “authorities referred to and quoted” gave the place of printing as Cambridge. This indicates that he used

the first edition of this work, printed in 1755. The later editions were printed in London: the second and third by Charles Bathurst of Fleet Street and the fourth for S Sweet of Chancery Lane. The page cited by More is number 407, which in the 1755 edition was the first page of Taylor's title on servitude. **K.** It seems likely that manuscripts ρ and β gave the singular, and that this was changed to the plural in the Brown and Kames manuscripts independently. It is possible that manuscript σ also gave the singular. As the change from singular to plural (or plural to singular) was a frequently occurring parallelism, the wording of Stair's authorial holograph cannot be determined with certainty. The plural is more logical, given that Stair referred to multiple emperors. "Constitution" was pluralised in the 1681 edition but was singular in the 1693 edition. The 1759 edition gave "constitutions" without comment; two of the extant manuscripts on which he relied gave the singular and two the plural. It seems probable that his deviation from the text of the second printed edition was an error rather than an editorial decision. This was followed in the 1826, 1832 and 1981 editions. **L.** The manuscripts and 1681 edition gave "and next ensuing"; this was changed to "consequently" in the 1693 edition. The 1759 edition omitted the phrase "as appears by the former law, and consequently", and moved the citation therein to after "emperors"; a reference to the first edition and manuscripts generally was inserted in place of this phrase. However, the omission of the full phrase was an editorial decision which cannot be attributed to the earlier versions of the text. The 1826 and 1832 editions followed the 1759 edition. The 1981 edition followed the wording of the 1693 edition. **M.** The word "they" appears only in the descendants of manuscript π , so was probably not present in Stair's authorial holograph. It was, however, present in the 1681 edition and was retained in the subsequent editions. **N.** The word "their" was present in Stair's authorial holograph as well as the 1681 edition. It was replaced with "that" in the 1693 edition. This change was presumably a printing error. The 1759 edition reinstated the word "their" under reference to the first edition as well as the Tait and Kames manuscripts and the lost "Manuscript G"; the other manuscripts which he consulted (the William Hay and James Hay manuscripts) also gave "their". The 1826 edition also gave "their" without comment; the 1832 edition did so, and provided the same references as the 1759 edition. The 1981 edition followed the wording of the 1693 edition. **O.** The 1981 edition gave "witness"; this is not found in the manuscripts or previous printed editions and so must be presumed to be a printing error. **P.** The change to "procuratoss" for the 1681 edition was clearly a printing error, and was corrected in the 1693 edition; it was spelled correctly in the subsequent editions. **Q.** The word "and" was omitted in the 1693 edition, plausibly an error by the printer; it made no difference to the sense of the sentence. The posthumous editions followed the wording of the 1693 edition without comment.

i. D.1.5.3. The Digest title is called "*De statu hominum*" (see, e.g., the copy of the *Corpus iuris civilis* printed by Samuel Chouet in Geneva in 1656). Many manuscripts abbreviated the title; it was given as "*de statu hominis liberi*" in Li; it was originally omitted and added in abbreviated form in Hm; the first occurrence of this citation was elided with the following citation, but the second occurrence gave "*hominis*" in Bs; only JH and La correctly gave "*hominum*". The siglum was omitted in Cg, Cn, Da, Fr, HD, Li, WH, Wi. The paragraph number was omitted in Bt. It was rather given:

as “2” in An, Lo; as “2 § 2” in HD, Li; as “2 §” in Cn; as “4 § 2” in Cg, WH; and as “25 § 2” in Da. In the 1681 edition, which gave “*bominis*”, the citation was of D.1.5.4; this was also the paragraph cited in the 1693 edition, which gave the title correctly as “*bominum*”. The 1759 edition cited D.1.5.4.1, thus citing the sub-paragraph for the first time; the 1826, 1832 and 1981 editions followed the 1759 edition.

ii. **D.50.17.118.** Originally omitted but added by a later hand in Hm. For the opening paragraph, rather “*qui servit*” in HD. For “*qui in*”, rather “*quim*” in Lo; also rather “*quim*” but “*-m*” obscured by a later hand in An. For “*servitute*”, rather “*servitude*” in Ma, Pt. Rather “*servitutum*” in Wi. Paragraph number included before the siglum in Cg, Cn, HD, Li, WH. Rather “*Lib: 16: qui in servitute ii and ...*” in Da; it is probable that the “8” was a result of the copyist misreading an ampersand and “16” was a corruption of “*lib*”. The siglum is omitted in Bs, Fr, Je, Ka, Ma, Mo, Og, Sm, Sw, Tr, Tt, Wi. For the Digest title, rather “*de rege juris*” in Cq. The paragraph number was added for the 1693 edition; this might indicate that Stair checked this text at that time, which would be consistent with his method in the titles on obligations. On which, see Wilson, “The sources and method of the *Institutions*”, especially pp. 71–74.

iii. **D.1.6.1.1.** Citation omitted in Bs. Also originally omitted in Hm, in which a later hand first added here the previous two citations, scored these out, then wrote in this citation correctly. For “*Lib*”, rather “*C*” in Fa, IA. Paragraph number omitted in La, Mo, Og, Tb, Wi. Rather “1: 1” in Sm. Given rather after the siglum in Mg. Siglum, and “*sunt*” from the Digest title, omitted in Tr. For the Digest title, originally rather “*de jus qui sunt sui ve alieni juris*” but corrected by a later hand in An. The sub-paragraph number was apparently added for the 1693 edition: “*§ 1. l. de his, qui sunt sui vel alieni juris*”. The omission of the paragraph number, and the order of the sub-paragraph and “*liber*”, were presumably printing errors. This change again probably indicates that Stair checked this text at that time. The 1981 edition interpreted the printing error in the 1693 edition as two different citations, one of Justinian’s *Institutes* and another of the larger paragraph of D.1.6.1. The 1759, 1826 and 1832 editions simply cited D.1.6.1.1.

iv. “§. 2.” was added here for the 1681 edition, then “*ibid*” added for clarity in the 1693 edition. The 1759 edition rather cited both D.1.6.1.2 and D.1.6.2, after “emperors”; neither the addition of another citation nor the repositioning of the citations within the text was acknowledged as an editorial change. The 1826 and 1832 editions gave both citations as they had appeared in the 1759 edition. The 1981 edition gave the citation in the original place, and cited D.1.6.2.

v. Some of the manuscripts had an additional and partial citation: “*D. lib. 1 par:* [space]” in Li; “*d L 1 §;*” in WH; “*D: lib: i:*” in Da; “*D. L. i par:*” in Go (added by a later hand); “*d: L: 1: p:*” in HD; “*d. L. I par:*” in Cn; and “*d. L. 1. §.*” in Cg. This citation appears to be peculiar to these manuscripts, and so was almost certainly not given by Stair.

vi. **D.41.1.10.** Several manuscripts abbreviated the term: see, e.g., Gr, Je, Ka, Ma, Pg, Pt, Sw, Tb, Tt; others gave somewhat corrupted versions: see, e.g., Bs (“*acquire*”), Fa (“*acquire*”), Fr (“*acquiriri*”), IA (“*quus r*”), Tr (“*acquiranda*”); the term was omitted

in St (text A), Wi; only “*lib*” was given of this citation in Mo, Og; the whole citation was omitted in JH; it was also originally omitted but added as “*l. acquir ff de acquire:*” by a later hand, and an even later hand scored out “*acquir*” and wrote interlinear “*si is qui*”, in Hm; the phrase is abbreviated to “*acquir*” and the wrong paragraph number (“1”) given in Bw; similarly “*l. acquiri*” in La. “*Acquiritur*” is the present passive indicative, third-person singular. However, the opening word of the paragraph in the Digest is now and was in the seventeenth century written “*adquiruntur*”, i.e. the present passive indicative, third-person plural. Stair’s error was a result of borrowing the citation blindly from Gudelinus’s *De jure novissimo*, which gives “*acquiritur*” (editions checked: 1620, 1644; on Stair’s use of Gudelinus, see Wilson, “The sources and method of the *Institutions*”, chapter 5). Several manuscripts correctly give the third-person plural and the paragraph number (Cg, Cn, Da, HD, Li, WH); the paragraph number and “*acquir:*” is also given in Sm. These descend from a common ancestor, which probably gave: “*Lib: L: acquirunt. 10: ff: de acquirendo rerum dominio*”, as HD and Li give “*Lib L*” and Da gives “*Lib 2*”; this second “2” is added by a later hand to Cn. The 1681 edition gave “*acquiritur*” and omitted the siglum. It seems that Stair himself checked the Digest when preparing the 1693 edition, in which he corrected the term to the plural and added the paragraph number.

vii. D.15.1.7. The opening phrase was abbreviated to “*qm*” in Cn, HD. The second and third words were correctly included in Fr as “*l. quam Tuberonis sent: ff: de peculio*”, and were corrupted in Wi as “*l. quam luberonis fiet ff de peculio*”. Some manuscripts erroneously shortened “*Tuberonis*” to “*l. quam tut ff de peculio*”, including Cq, Mg, Pm, St (text A); Tw gave “*quam tub*”. Similar corruptions of the opening phrase of the paragraph are found in: An (“*qui sunt*”), Go (“*l. quam detur*”), La (“*l. qui sunt*”), Lo (“*qui sunt*”), Mo (“*l. quam fact*”), Og (“*quam suit*”). Two manuscripts corrupt the opening phrase of the paragraph with numbers: Bt (“*62 nom tut*”), Tr (“*27 [space] si quis*”). Two manuscripts gave the wrong Digest title: Mg (“*obligatione*” i.e. D.44.7) and Og (“*de regulis juris*” i.e. D.50.17). The phrase was removed and the paragraph number “4” was added for the 1681 edition, resulting in a different text being cited in that edition; the 1693 edition also cited D.15.1.4. The 1759 edition made the citation more specific, referring to D.15.1.4.pr specifically; this was preserved in the 1826 and 1832 editions. The 1981 edition cited D.15.1.4 generally.

viii. D.15.1.41. The opening phrase was abbreviated in Bw, and corrupted in: Fr (probably “*nec servus quicquam*”), IA (“*nec servitutis*”), Fa and Pg (“*nec servitus*”), Pt (“*nec certus*”), Tr (“*nec servus L*”), Wi (“*nec servus quicquam*”); the citation was given only as “*ff: l: nec servus*” in Sm. The citation was omitted in Go, La, Lo, Mo, Og, St (text A); it was also originally omitted but added by a later hand in An. Several manuscripts give “*nec servitus*” and the paragraph number: e.g., Cg, Cn, Da, HD, Li, WH; JH gives the number and “*nec servus*”. The paragraph number was added for the 1681 edition, indicating that Stair checked the text at that time. The 1693 and 1981 editions preserved this citation as it was in the 1681 edition. The 1759, 1826 and 1832 editions omitted the opening phrase, as was typical of their style of citation.

ix. D.50.17.22. The opening phrase was sometimes abbreviated (e.g., in Bw, Fr, Pt, Tb) and sometimes corrupted, e.g., in An (“*qui sunt in personam*”), Gr (“*in*

personis”), Lo (“*qui sunt in personam*”), Pm (“*in ipso nam*”), Tr (“*in persone am*”). The correct paragraph number is given in JH. Several other manuscripts wrongly give the paragraph number as “12”, specifically Cn, Da, HD, Li, WH – it is interesting that Cg does not give a paragraph number. Je, Ka, Ma omitted the siglum, and Bs gave it as “L”. Citation omitted in Mg, Sm, St (text A), Sw, Tt. Stair checked the text for the 1681 edition, in which the paragraph number appeared after the siglum; the 1693 edition had the paragraph number before the siglum. The 1759 edition referred specifically to the *prooemium* and moved this citation to after the previous citation at “any obligation”; this is followed in the 1826 and 1832 editions without comment. The 1981 edition cited D.15.1.41 generally.

x. **D.50.17.107.** Some manuscripts extended the abbreviation incorrectly: e.g., as “*servi*” (Je, Ka, Ma), “*servis*” (An, Lo), “*servus*” (Gr), or “*cum servus ff cum servo*” (St (text A), but first occurrence amended to “*servo*”). It was correctly extended to “*servo*” in Fa, Fr, La, Mo, Pm, Tw, Wi and in Tr (which gave “[space] *servo*”), and by a later annotator in Mg. The correct, unabbreviated opening phrase and the paragraph number were given in Cg, Cn, Da, HD, JH, Li, WH. The siglum was given as “*fide*” in Bw. The citation was omitted in Cq, Go, Tb. This citation was moved to after that of D.50.17.22 for the 1693 edition, in which Stair also removed the opening phrase of the text from the citation but instead provided the paragraph number; he gave no citation after “arbiters”. These changes were followed in the 1981 edition. The 1759 edition preserved this citation in the later location and added the citation of C.3.1.7, given by Stair at the end of the paragraph. After “arbiters” it gave different citations, of D.22.5.7, D.50.17.2.pr, D.28.1.20.7 and D.4.8.7.pr. The first three of these citations had never been given by Stair; D.4.8.7 (although not the *prooemium*) was cited by Stair at the end of this paragraph. The 1759 edition’s citations were preserved in the 1826 and 1832 editions.

xi. **D.15.1.41.** The paragraph’s opening phrase was abbreviated to “*nec serv:*” in Bs, Bw, Je, Ka, Ma, Pt, Sm, Sw. The paragraph number “4”, which is not correct, was added to JH. The siglum was omitted in Og, St (text A) and came at the end of the citation in Sm. The full text of D.50.17.209 (“*Servitutem mortalitati fere comparamus*”) was quoted after this citation, with some variation in spelling, in Cg, Cn, Da, HD, Li, WH. Stair deleted the citation of D.15.1.41 and added to the 1681 edition four citations as “*l. 32. de Reg. Jur. l. 7. de testib. l. 6. Cod. de judiciis, l. 7. de recept. qui arb.*” (i.e. D.50.17.32, C.4.20.7, C.3.1.6, D.4.8.7); there was thus no indication as to whether the second and fourth citations were drawn from the Digest or the Codex. The 1693 edition gave “*ibid*” rather than “*de reg. jur.*” in the first citation, gave the siglum as “*Cod.*” in the second, cited the seventh rather than the sixth paragraph of C.3.1, and tweaked the abbreviations in the final citation. The 1759 edition cited only D.50.17.209 at the end of the sentence (i.e. that added to Cg, Cn, Da, HD, Li, WH, although no reference to the manuscripts is made). It moved the citation of D.50.17.32 to after “nobody”. It cited the Digest rather than the Codex of “*de testibus*”, cited the *prooemium* of D.4.8.7, and moved these two citations to after “arbiters”. It moved the citation of C.3.1.7 to after “against them”. These editorial decisions were followed in the 1826 and 1832 editions. The 1981 edition gave the citations as they had appeared in the 1693 edition.

§ 10:

Bondage ¹was introduced ²by ³the law of ⁴nations, ⁵, ⁶and ⁷, ⁸it is ⁹. ^Aamong ¹⁰the positive ¹¹laws ¹²of nations, ¹³settled ¹⁴by ¹⁵common ¹⁶consuetude, ¹⁷and it ¹⁸took ¹⁹first place ²⁰in ²¹, ^Bthese ²²who ²³were taken ²⁴in ²⁵war, ²⁶who being ²⁷under the ²⁸power of ²⁹their ³⁰enemies sword, ³¹did ³², ^Close ³³their liberty ³⁴in lieu of their ³⁵life; ³⁶such also ³⁷, ^Dwere these, who ³⁸sold ³⁹their liberty, ⁴⁰, ⁴¹and gave ⁴²it up, and ⁴³were content to be ⁴⁴perpetual slaves, as ⁴⁵were ⁴⁶the ⁴⁷, ⁴⁸, ^EJewish ⁴⁹bondmen, ⁵⁰, ⁵¹whose ⁵²ears ⁵³were pierced ⁵⁴with ⁵⁵ane ⁵⁶, ^Faul, ⁵⁷as ⁵⁸the ^Gsolemnity ⁵⁹of ⁶⁰their perpetual ⁶¹and ⁶²willing servitude^H, the ⁶³offspring of ¹ ⁶⁴servants ⁶⁵remained ⁶⁶in ⁶⁷their ⁶⁸, ⁶⁹servile ⁷⁰condition; and by the ⁷¹custom of ⁷²nations, ⁷³and ⁷⁴the Roman law, ⁷⁵it ⁷⁶followed the mother ⁷⁷and ⁷⁸not the father, ⁷⁹, ^Ipartus sequitur ⁸⁰ventrem, and ⁸¹in some ⁸²cases, ⁸³both ⁸⁴by ⁸⁵the Judicial ⁸⁶law, and ⁸⁷the Roman ⁸⁸law, ⁸⁹free ⁹⁰parents ⁹¹, ⁹², ⁹³might ⁹⁴sell and give their children ⁹⁵into ⁹⁶bondage.

1 was] Rather “was not” in Pm. Also originally “was not” but corrected by a contemporary hand in Mg. 2 by] Rather “be” in Mg. 3 the] Omitted in Bw. Also originally omitted but added interlinear in Ma. 4 nations] Originally “nature” but deleted and “nations” inserted by the copyist in Ka. 5 and it is among the positive laws of nations] Omitted in Cn, Tb. 6 and] Rather “as” in Pm. Originally rather “in” but corrected by a later hand in Sw. 7 it is] Rather “its” in Go, Fr. 8 it] Omitted in Bs, Je, Ka, Ma, Sm, Sw, Tt. 9 among] Rather “amongst” in Gr. Rather “amongst” in Cg, Cq, Da, Fa, Fr, Go, Hm, IA, JH, La, Li, Mg, Mo, Og, Pg, Pm, Tr, Tw, WH, Wi. 10 the] Rather “these” in Bt. 11 laws] Rather “law” in Hm, Je, JH, Ka, Ma, Mg, Mo, Og, Pm, Sm, Sw, Tr, Tt, Tw. 12 of nations] Omitted in Sm, Sw, Tt. 13 settled] Rather “set” in Bs, Je, Ka, Ma. Rather “selected” in Fr, Wi. 14 by] Rather “be” in Gr. 15 common] Omitted in Go. 16 consuetude] Rather “consulted” in IA. Rather “consuetnes” in St (text A). 17 and] Rather “as” in Pm. 18 took] Rather “too be” in Go, Sw. Also originally “to be” but corrected by a later hand in Pt. Rather “tacke” in IA, St (text A). Rather “is to be the” in Mo, Og. 19 first place] Rather “place first” in Bs, Je, Ka, Ma, Sm, Sw, Tt. Originally rather “in first” but “in” deleted by a later hand in Pt. 20 in] Rather “one” in Sw, Wi. Rather “on” in Tt. Originally rather “of” but corrected by a contemporary hand in Pg. 21 these] Rather “those” in Bs, Bt, Fa, Go, IA, Pg, Pt. 22 who] Rather “that” in Bs, Wi. 23 were] Rather “are” in Mo, Og. Rather “ware” in Ka. Originally “were we” but latter deleted in St (text A). 24 in] Rather “by” in Bt, Da. 25 war] Rather “their” in Tr. 26 who being] Rather “and were” in An, Lo. 27 under] Rather “in” in Mo, Og, Tt. 28 power of their] Originally omitted, but following word deleted and phrase rewritten by the copyist, in Da. 29 their] Omitted in IA. Rather “the” in Bs, Bw, Cg, Cn, Da, Fa, Go, Gr, HD, Hm, Je, JH, Ka, Li, Ma, Mg, Pg, Pm, Pt, Sm, Sw, Tb, Tt, WH. 30 enemies] Omitted in Go. Rather “conquerors” in Bs, Bw, Cg, Cn, Da, Fa, Gr, HD, Hm, IA, Je, JH, Ka, Li, Ma, Pg, Pt, Sm, Sw, Tb, Tt, WH. 31 did] Omitted in Bs, Je, Ka, Ma, Sm, Sw, Tt. 32 lose] Rather “lost” in Bs, Hm, Je, Ka, Ma, Sm, Sw, Tt. Rather “last” in St (text A). Rather “condescend to lose” in Cq. 33 their] Rather “the” in Pm. 34 in lieu] Rather “instead” in Go. 35 life] Rather “lifes” in Bs. 36 such] Rather “some” in Go. 37 were these, who] Omitted in Go. Rather “that” in Hm, Tb. Rather “as” in Bs, Bt, Bw, Cg, Cq, Fa, Fr, Gr, IA, Je, JH, Ka, Ma, Mg, Mo, Pg, Pm, Pt, Sm, St (text A), Sw, Tr, Tt, Tw, Wi. Originally rather “as ane” but “ane” deleted by a contemporary hand in

Og. 38 sold] Rather "sould" in IA. 39 their] Rather "that" in Hm. 40 and gave it up] Omitted in Sm. 41 and] Rather "or" in Bt, Bw, Cq, Pm, St (text A), Tw. Originally "and" but amended to "or" by a contemporary hand in Mg. 42 it up] Rather "it use" in Bs, Cg, Cn, Da, Gr, Hm, Je, Ka, Li, Sw, Tb, Tt, WH. Rather "its use" in Fa, IA, JH, Ma. Rather possibly "it up" in Pm. Rather "its use" in Pg, Pt. Rather "away its use" in Bw. 43 were] Rather "we" in Da. Rather "ware" in Ka. Rather "war" in Mo. 44 perpetual slaves] Rather "slaves perpetually" in Go. 45 were] Rather "was" in Gr, IA, Sw, Tt. Rather "ware" in Ka, Mo. 46 the] Rather "these" in Og. 47 Jewish bondmen] Rather "slaves of the Jewes men" in Bs. 48 Jewish] Rather "Jewes" in Bt, Je, Ka, Ma, Sm, Tr, Tt. Rather "Jews" in Pt, Sw. 49 bondmen] Rather "bondmen | Bondmen" in Fr. Rather "bondmen whose eares were pearced with ane aule (this great word taken) | Bondmen" in Wi. Rather "bond men" in Fa, Go, JH, Ka, Pg, Pm, St (text A), WH. Rather "bound men" in IA. 50 whose eares were] Rather "who had their eares" in Tw. 51 whose] Rather "who" in Mo. 52 ears were] Rather "ear was" in Bs, Je, Ka, Ma. 53 were] Rather "being" in Cq. Rather "ware" in Mo. 54 with] Rather "through with" in Bs, Cg, Cn, Da, Fa, HD, IA, Li, Pg, WH. 55 ane] Omitted in Gr, Og. Rather "an" in Bs, Cg, Mo, Tr. [Tb*] 56 aul] Omitted in Gr, Mo, Og. Rather "anvill" in Tr. Rather "nail" in Je, Ka, Ma, Sm. Rather "aulde" in Bt. 57 as] Rather "and" in Pm. 58 the] Rather "an" in Mo, Og. Rather "ane" in Bt. Rather "a" in Bs. 59 of] Rather "or" in Pt. 60 their] Omitted in Li. Rather "the" in Tr. 61 and] Omitted in IA. Rather "or" in Gr, Pt. Rather "bondage and" in Mo, Og. Rather "slavery and" in Bs. 62 willing] Omitted in IA. Rather possibly "unwilling" in Go. 63 offspring] Rather "of spring" in Hm, IA. Original obscured and changed to "offspring" in Go. 64 servants] Rather "servant" in Tr. Rather "the servants" in Go. 65 remained] Rather "remain" in Tr. 66 in] Rather "also in" in Bw. 67 their] Rather "that" in Tr. 68 servile condition] Rather "several conditions" in Cg, Da, Hm, JH, Tb. Rather "several condition" in Fa, Lo, Pg. Also originally "several condition" but corrected by a later hand in An. 69 servile] Rather "sweet" in Mo, Og. Rather "same" in Tr. 70 condition] Rather "conditions" in Cn, Bw, Li, WH. 71 custom] Rather "customs" in Bt, Cn, Cq, Fr, Go, JH, La, Tr. 72 nations] Originally rather "servants" but corrected by the copyist in Pg. 73 and the Roman law] Rather "and of the Romans and of the law" in Fr, Mo, Og, Wi. 74 the] Omitted in Cq, Tb. Rather "by the" in An, Bs, Go, Je, Ka, Lo, Ma, Sm, Sw, Tr, Tt, Tw. 75 it followed the mother ... the Roman law] Omitted in Bs, Je, Ka, Ma. 76 followed] Rather "follows" in Mg, Sm. 77 and] Omitted in An, Bw, Cn, Cq, Da, Fa, Gr, Hm, IA, Lo, Pg, Pm, Pt, Sm, St (text A), Sw, Tb, Tt, WH, Wi. 78 not] Omitted in Tw. 79 partus] Rather "nampartus" in Cn. Rather "nam partus" in Cg, Da, HD, Li, WH. Rather "parentibus" in Wi. Originally "par[?]us" but partially obscured in Pt. 80 ventrem] Omitted in Wi. Rather "uterum" in Bt, Bw, Cg, Cn, Cq, Fa, Fr, Go, Gr, HD, Li, Mg, Pm, St (text A), Tw, WH. Rather "wterum" in La. Rather "uterj" in Hm, IA, Tb. Rather originally "ter" but a later hand has corrected this to "uteri" in Pg. Rather "interum" in Da. Originally "interim" but amended to "uterum" by a later hand in JH. Originally possibly "veterum" but changed to "uterum" by a later hand in Pt. 81 in] Omitted in St (text A). 82 cases] Rather "case" in Tr. Rather "causes" in Pt. Rather "laws" in St (text A). 83 both] Omitted in Cg, Da, WH. 84 by] Originally omitted but "be" added interlinear by a contemporary hand in Mg. 85 the] Original obscured and corrected by a later hand in Pg. 86 law] Omitted in Cg, Cq, Da, HD, Li, Mg, WH. 87 the] Omitted in Bt, Cg, Cn, Cq, Da, HD, Li, Mg, Pm, Sm, St (text

A), Tb, Tw, WH. Also originally omitted but “by the” added by a later hand in Go. Rather “by the” in Mo, Og. **88** law] Rather “laws” in Cg, Cn, Cq, Da, HD, Li, WH. **89** free] Omitted in Bw, Sw. **90** parents] Originally rather “persones” but corrected by a contemporary hand in Mg. **91** might sell ... children] Rather “might sell their children or give them” in Bw. **92** might sell and give] Rather “in that [space] and” in Tr. **93** might] Rather “might might” in Og. Rather “may” in Go. Rather “master” in St (text A). **94** sell and give] Rather “give and sell” in Bs, Je, Ka, Ma. **95** into] Rather “in” in Da. Rather “unto” in Bt, Go, IA, Pm, Pt, St (text A), Tr. Rather “to” in Bs, Gr, Je, Ka, Ma, Sm, Sw, Tt, WH. **96** bondage] Rather “bodage” in HD.

A. Both the 1681 and 1693 editions gave “among”. The 1759 edition gave “amongst” without comment; this was followed in the 1826, 1832 and 1981 editions. **B.** The 1681 edition gave “the” before “these”. This was clearly a printing error and was corrected in the 1693 edition. The 1759 edition gave “those” without explanation; this was followed in the 1826 and 1832 editions without comment. The 1981 edition followed the 1693 edition. **C.** This was changed to “loss” for the 1681 edition. This was clearly a printing error and was corrected in the 1693 and subsequent editions. **D.** The wording of Stair’s authorial holograph is unclear. It seems that manuscripts α , ξ , τ and υ gave “as”; this was corrupted as “that” in manuscript δ but was rather “were these who” in five of the six descendants of manuscript ι ; the latter phrase was also used in three of the four descendants of manuscript π . The latter wording was also used in the 1681 and 1693 editions, but at least some of the relevant manuscripts were copied too early to have received the wording from the printed edition rather than a model manuscript. It is thus plausible that Stair’s authorial holograph gave this longer phrase, and that it was soon contracted to “as” and that this phrasing became perpetuated through the manuscripts. Perhaps the copyist of manuscript ι actively contaminated his text here. The 1759 edition gave “were those who” without comment; this was followed in the 1826 and 1832 editions without comment. The 1981 edition followed the wording of the 1693 edition. **E.** This word appears to have been “Jewish” in Stair’s authorial holograph as well as in the 1681 edition. It was changed to “Jews” in the 1693 edition, for reasons that are unclear. The 1759 edition gave “Jewish” without comment. Although this word was printed in italics, this was typical of the style of that edition’s printing of words signifying nationalities, so did not therefore effectively highlight to the reader an editorial change to the text. This editorial choice was followed in the 1826 and 1832 editions without acknowledgement. The 1981 edition followed the wording of the 1693 edition. **F.** The 1826, 1832 and 1981 editions amended the spelling here to “awl”. **G.** The 1693 edition changed this word to “symbol”; this was followed in the posthumous editions. **H.** There are references to this practice of ear-piercing in Exodus 21:1–6 (where there is also a reference to babies taking the status of their mothers, at verse 4) and Deuteronomy 15:12–17. **I.** The word “which” was added here in the 1693 edition, presumably for clarity. The 1759 and 1832 editions omitted “which” with reference to the manuscripts and the 1681 edition; this editorial choice was followed in the 1826 edition without comment. The 1981 edition followed the wording of the 1693 edition. **J.** This maxim can also be found in other seventeenth-century legal writing, including Sir Edward Coke’s *First Part of the Institutes of the Lawes of England, or A Commentary upon Littleton* (1628), 2.11. §.187 and Samuel van Pufendorf’s *De jure*

naturae et gentium (1672), 6.3.9. However, the common use of this phrase should not be the basis for an assumption of Stair's use of either work.

§ 11:

¹Bondage, ²though contrary ³to ⁴the ⁵A nature of liberty, yet ⁶, ⁷it is ⁸lawful; ⁹liberty being ¹⁰a ¹¹right alienable, and in our disposal, ^Bso that the ¹²natural ¹³law ¹⁴constitutes ¹⁵us free, ¹⁶but ¹⁷puts no ¹⁸necessity ¹⁹on us, ²⁰so to ²¹continue; and therefore ^Cit is ²², ²³both approven ²⁴in the Old ²⁵Testament and ²⁶, ²⁷in ²⁸the ²⁹New, ^Dit is ³⁰cleared against ³¹that obvious objection, that being made free ³²by Christ, ³³we should ³⁴not ³⁵become ³⁶the servants ³⁷of men, ⁱ, ³⁸to ³⁹which the Apostle ⁴⁰answers, ⁴¹, ii, E⁴²Art ⁴³thou ⁴⁴called, ⁴⁴, ⁴⁵a servant ⁴⁶, ⁴⁷or ⁴⁸slave continue ⁴⁹so, ⁵⁰for nevertheless ⁵¹thou ⁵²art Christ's ⁵³free man". ⁵⁴But ⁵⁵yet ⁵⁶Christian ⁵⁷, ⁵⁸lenity ⁵⁹and mercy, has ⁶⁰almost ⁶¹. ^Fwholly taken away ⁶²bondage, except ⁶³, ^Gamong the ⁶⁴Spaniards, ^HPortugals, ⁶⁵and ⁶⁶other ⁶⁷, ⁶⁸Christian nations, bordering ⁶⁹upon the ⁷⁰Turks, ⁷¹, ⁷²where, because ⁷³the ⁷⁴Turks ⁷⁵do ⁷⁶extremely ⁷⁷exercise ⁷⁸slavery, ⁷⁹especially ⁸⁰upon ⁸¹Christians, ⁸²their ⁸³neighbours ⁸⁴do the like, ⁸⁵that they ⁸⁶may ⁸⁷have slaves ⁸⁸to exchange ⁸⁹, ⁹⁰with slaves. ⁹¹, ^ILittle ⁹²of ⁹³slavery ⁹⁴, ^Jremains ⁹⁵elsewhere ⁹⁶among ⁹⁷Christians, ⁹⁸except ⁹⁹the ¹⁰⁰. ^K*adscriptitii*, ¹⁰¹who are ¹⁰²not ¹⁰³absolutely slaves, but they ¹⁰⁴and their posterity are ¹⁰⁵bound to several ¹⁰⁶services, ¹⁰⁷, ^Land ¹⁰⁸, ¹⁰⁹works ¹¹⁰to ¹¹¹farms and villages, to which, ¹¹²by reason ¹¹³thereof ¹¹⁴only, they are in bondage, ¹¹⁵and ¹¹⁶, ¹¹⁷their ¹¹⁸masters cannot apply ¹¹⁹them ¹²⁰to ¹²¹other ¹²², ¹²³, ¹²⁴farms, ¹²⁵, ¹²⁶, ¹²⁷or ¹²⁸to other services, ¹²⁹but ¹³⁰. ^M[they/these/those] are ¹³¹fixed ¹³²to, ¹³³and follow ¹³⁴, ^Nthese ¹³⁵farms, and ¹³⁶. ^O[they?] ¹³⁷are ¹³⁸conveyed therewith; ¹³⁹such are ¹⁴⁰the ¹⁴¹English ¹⁴²villains, but in Scotland ¹⁴³there is ¹⁴⁴no such ¹⁴⁵thing.^P

1 Bondage] Omitted in St (text A). 2 though] Original obscured and "tho" added to the margin in Ka. 3 to] Omitted in Bw. 4 the] Omitted in Bs, Je, Ka, Ma, Sm, Sw, Tt. 5 nature of liberty] Rather "natural law of liberty" in Bt, Cq, Go, Mg, Pm, St (text A), Tw. Rather "liberty" in Sm, Sw, Tt. Rather "natural liberty" in Bs, Je, Ka, Ma, Pt. Rather "law of liberty" in Fr, Wi. Rather "law of nature" in Mo. 6 it is] Rather "its" in Bw, Pt. 7 it] Omitted in Pm, Sm, Tt. 8 lawful] Omitted in Ma. 9 liberty] Omitted in Mg, Mo, Og. 10 a] Rather "and" in Cg. Rather "ane" in Cn, Go, IA, Li, St (text A), WH. Rather "an" in Tr. 11 right] Rather "thing" in Bw. 12 natural law] Rather "nature of law" in Cn, Da, HD, Li. Rather "nature of all law" in Mo, Og. 13 law] Omitted in St (text A), Tr. 14 constitutes] Rather "made" in Bs, Je, Ka, Ma, Sm, Sw, Tt. Rather "constituted" Bt, Go, Mg, Pm, St (text A), Tw. Rather "constitut" in Fr, Wi. Rather "constitute" in Pt. 15 us] Rather "no" in Tb. 16 but] Rather "and" in Cg, Cn, Da, HD, Li, Mg, Mo, Og, WH. 17 puts no] Rather "put no" in Bs, Fr, Je, Ka, Ma, Sw, Tr, Tt, Wi. Rather "puts not a" in Bw. Rather "does not put a" in Cg, Cn, Da, HD, Li, WH. Rather "did not put a" in Bt, Fa, Gr, Hm, JH, Mg, Pg, Pm, Pt, St (text A), Tb, Tw. Rather "did not put ane" in Go, IA. Rather "doth not put a" in Cq. Rather "did put no" in Sm. 18 necessity] Rather "ty" in Bw. Original spelling obscured and corrected to "necessity" in Je. 19 on] Rather "upon" in Bw, Fr, Gr, Li, Sm. Rather "one" in Bs, Cq, Fa, IA, Mg, Wi. Rather "in" in Lo, Mo. Originally "to", but "on" written interlinear by the copyist, then "to" deleted by a later hand, in Pg. 20 so] Omitted in Cq, Mo, Og. Rather originally "so that" but corrected by a later hand in An. Original spelling obscured and changed to "soe" in Ma. 21 continue]

Original spelling amended to “contenat” in Da. 22 both approven] Rather “approven both” in Cg, Da, WH. 23 both] Omitted in Mo, Og. 24 in] Rather “of” in Da. Rather “of in” in La. 25 Testament] Omitted in Bs, Cg, Cn, Da, HD, Li, Sm, WH. 26 in the] Omitted in Bs, Cg, Cn, Da, HD, Li, Sm, WH. 27 in] Omitted in Fa, IA, La, Tr, Wi. 28 the] Omitted in Tb. 29 New] Rather “New Testament” in Bs, HD, JH. Rather “New Testaments” in Cg, Cn, Da, Li, Sm, WH. 30 cleared] Rather “also cleared” in Cg. 31 that] Rather “the” in Mg, Pm, Tr. 32 by] Originally “thy by” but “thy” obscured in Pm. 33 we] Rather “who” in Hm. Also originally “who” but corrected by a later hand in Pg. 34 not] Omitted in Lo. Originally omitted but added by a later hand in An. Rather “who” in Pt. 35 become] Rather “be” in Bt, Cq, Mg, Pm, St (text A), Tw. Originally rather “come”, but “be” added interlinear, probably by the copyist, in Cn. 36 the] Omitted in Mo, Og. 37 of] Rather “to” in Mo. 38 to] Omitted in Bt. 39 which] Rather “whom” in Go. 40 answers] Rather “answered” in An, Bw, Mo. 41 Art] Rather “are” in Fa, IA, JH, Pg, St (text A). 42 thou] Rather “you” in Fa, Pg and possibly JH. Rather “now” IA. 43 called] Originally rather “being called” but “being” deleted by a later hand in An. Rather “called being” in Cn, HD, Li, Lo. 44 a servant] Omitted in St (text A). 45 a] Rather “ane” in Go, IA, Sm. 46 or slave] Omitted in Bs, Cn, Je, Ka, Ma, Sm, Sw, Tt. In parenthesis in Bt, Bw. 47 or] Omitted in Mg, St (text A). 48 slave] Rather “a slave” in An, Lo, Mg, Mo, Tw. Rather “ane slave” in Go, St (text A). Rather possibly “sell” in Gr. 49 so] Omitted in IA. 50 for] Omitted in Li, Mg. Rather “yet” in Go. 51 thou] Rather “you” in Og and possibly Mo. Rather “ye” in IA. 52 art] Rather “are” in HD. 53 free man] Rather “freeman” in Cn, Lo, Mg, Mo, Og, Pt. Originally “free servant” but corrected to “man” interlinear in Gr. 54 But] Rather “by” in Mo. 55 yet] Rather “the” in Bw, Mo, Og. Rather “yit” in An, St (text A), Tt. Originally possibly omitted but added in a lighter ink in Mg. Originally omitted and “Chri” written then deleted and “yet” inserted in Ma. [Tb*] 56 Christian] Rather “Christ’s” in WH. Rather “Christians” in JH, Tr, Wi. 57 lenity and] Rather “in” in Tr. Rather “limits in” in Og. Also originally “limits in” but corrected interlinear in Mo. 58 lenity] Rather “liberty” in St (text A). Also originally “liberty” but corrected by the copyist in Tt. Originally correct but changed to “liberty” by a later hand in An. Rather “levity” in Tb. Also originally “levity” but corrected by a later hand in Bs. Rather “charity” in Pt. 59 and] Rather “or” in Cq. 60 almost] Omitted in Mo, Og, Tb. Rather “somewhere” in Tw. 61 wholly taken] Rather “taken wholly” in Da. Rather “totally taken” in Bw. A later hand has added “wholly” interlinear before “taken” in Mg. 62 bondage] Rather “bondage wholly” in Pt. Rather “all bondage almost” in Og. Rather “almost wholly bondage” in Mo. Rather “this slavery” in Go. 63 among] Rather “amongst” in Cn, Cq, Da, Fr, Go, HD, Hm, IA, Je, Li, Ma, Mg, Mo, Og, Sw, Tb, Tr, Tt, Tw, WH, Wi. Rather “amongs” in Gr. Rather “amonge” in Bt, Pm. 64 Spaniards, Portugals] Rather singular in Tw. 65 and] Rather “or” in Je, Ka, Ma. Rather “Turks and” in Bw. 66 other] Rather “others” in An, Go. Rather “some other” in Bw. 67 Christian nations] Omitted in Go. 68 Christian] Rather “Christians” in IA, Je, Ka, Ma. Deleted by a contemporary hand in Mg. Originally “curts” but corrected by the copyist in Bs. 69 upon] Rather “with” in Cq, Go, Sm. 70 Turks] Rather “Turk” in Tr. 71 where, because the Turks] Omitted in Pt, St (text A). 72 where] Rather “where the” in Lo. 73 the Turks] Originally rather “the” but amended to “they” by a later hand in Sw. 74 Turks] Rather “Turk” in Go. 75 do] Omitted in Bs, Bw, Cg, Cn, Da, Fa, Gr, HD, Hm, IA, Je, JH, Ka, Li, Ma,

Pg, Pt, Sm, Sw, Tb, Tt, WH. **76** extremely] Rather “exceedingly” in Bs, Je, Ka, Ma, Sm, Sw, Tt. Rather “extremity” in Pt. **77** exercise] Rather “use” in Bw, Wi. **78** slavery] Rather “bondage” in Bw. **79** especially] Omitted in Bt, Go, Mo, Og, St (text A). Rather “specially” in Bw, Fr, Pm, Sm, Wi. **80** upon] Rather “upon the” in Go, Mo, Og. Rather “on” in Cg, Cn, Da, Hm, JH, Li, Pt, Tb, WH. Rather “one” in Fa, IA, Pg. **81** Christians] Rather originally “Turks” but deleted and “Christians” added interlinear in Go. **82** their] Omitted in Gr. Rather “where their” in Bw. Rather “and their” in Pt. Rather “yet” in Pm. Originally rather “there there” but a later hand has changed the first occurrence to “therefore” in Bs. **83** neighbours] Omitted in Gr. Rather possibly “night boures” in HD. **84** do the like that] Rather “and” St (text A). **85** that they] Rather “to” in Bw. **86** may] Omitted in Bw. **87** have] Omitted in IA. Originally omitted but added interlinear by the copyist in An. **88** to exchange] Rather “exchanged” in St (text A). **89** with slaves] Originally “slaves” but the copyist deleted “slaves” and wrote “with slaves” in Fr. **90** with] Rather “for” in Bw, Cq, Pm, Tb, Tw. **91** Little of ... absolutely slaves] Omitted in Bw. **92** of] Omitted in Og. **93** slavery] Rather “slaves” in Bs, Je, Ka, Ma. **94** remains] Rather “abides” in Mo, Og. **95** elsewhere] Rather “else and” in St (text A). **96** among] Rather “amongst” in Cq, Da, Fr, IA, Je, JH, La, Li, Mg, Mo, Og, Pg, Pm, WH, Wi. **97** Christians] Rather “the Christians” in Go, Gr, Pt, Tr. **98** except] Omitted in Mo, Og. **99** the] Omitted in Tb. **100** *adscriptitii*] Rather “*adscriptity*” in Cn, HD. Rather “*adscriptitij*” in Li, Og. Rather probably “*adscriptitie*” in Mo. Originally rather “*ad criptitie*” but amended to “*as-criptitii*” by the later hand in An. Rather “*aescriptitij*” in Sm. Rather “*ascriptitii*” in Bs, Pg. Rather “*ascriptitij*” in Cg, Cq, Fa, Fr, Go, Gr, Hm, IA, Je, Ka, La, Lo, Ma, Pm, Tw. Rather “*ascriptitie*” in JH. Rather “*ascriptij*” in Bt, St (text A), Tt, WH. Rather “*ascripti*” in Tb, Tr, Wi. Also originally “*ascripti*” but amended by a later hand to “*ascriptitij*” in Sw. Rather “*adscriptij*” in Da. Rather “*asurptii*” in Pt. The spelling has been altered by a contemporary hand to “*ascriptity*” in Mg. **101** who] Rather “which” in Cg, Cn, Da, HD, Li, WH. **102** not] Omitted in Sm. **103** absolutely] Rather “absolute” in Da, Mo, St (text A), Wi. **104** and] Originally rather “are” but corrected by a contemporary hand in Og. **105** bound] Rather “absolutely bound” in Cg, Cn, Da, HD, Li. Rather “absolutely bund” in WH. Rather “bond” in Bs, Ka, Pg, Pt. Rather “bund” in Gr, La. **106** services] Originally omitted but added interlinear by a contemporary hand in Tr. Rather “societies” in Sm. **107** and works to] Omitted in Gr. Originally “and works to” but a later hand has added “as” in Go. **108** works to] Rather “and to [space]” in Tt. **109** works] Omitted but a space left in Bs, Fa, Hm, IA, Je, Ka, Ma, Pg, Tb. Omitted but no space left in An, JH, Lo, Og, Pt, Tr, Wi. Rather “to [space]” in Sw. Rather “works anb [sic]” in Sm. Rather “employments” in Bw. **110** to] Rather “as to” in Mo. Rather “in” in La. Rather “as” in Bw. Rather “to certain” in JH. **111** farms] Rather “farmers” in Cg, Cn, Fa, HD, IA, WH. **112** by] Omitted in Ma. Rather “be” in Go. **113** thereof] Rather “whereof” in Pm. Rather “heirof” in Cq. **114** only, they are] Rather “they are only” in Bs, Bw, Go, Je, Ka, Ma, Mo, Og, Sm, Sw, Tt, Tw, WH. Rather “they only are” in An, La, Lo. Rather “they are” in Cq. **115** and] Omitted in Cq. **116** their masters cannot apply them] Rather “cannot be applied by their masters” in Mo, Sm. **117** their] Omitted in Bs, Bw, Cg, Fa, Gr, Hm, IA, Je, Ka, Ma, Pg, Pt, Sw, Tb, Tt, WH. **118** masters] Rather “master” in Cn, La. **119** them] Omitted in Pm, WH. **120** to] Originally omitted but added interlinear in Pm. **121** other] Rather “any other” in Bt, Go. Rather “others” in IA.

Rather “their” in WH. **122** farms or to other services] Rather “services and to other farms” in An, Lo. Rather “services or other farms” in Mg. **123** farms or to other] Omitted in Bw. **124** farms] Rather “formes” in Mo. Rather “farmers” in Cg, Cn, Da, Fa, IA, Li, WH. **125** or to other services] Omitted in Wi. Rather “and duties” in Og. Rather “and villages to which” in Pt. Originally rather “but” but a later hand added “and services” in the margin in Ka. **126** or to other] Rather “and” in Cg, Cn, Da, Fa, HD, Hm, IA, JH, Li, Pg, Tb, WH. Rather “or” in Bs, Je, Ma, Mo, Pm, Sm, Sw, Tt. **127** or] Rather “and” in Fr, Gr, La, Tr. **128** to] Omitted in Bt, Cq, Fr, Go, Gr, La, St (text A), Tr, Tw. **129** but they are . . . follow those farms] Omitted in Wi. **130** they/these/those] Omitted in Mo, Sm. Reads “those” in Da, Je, Pg, Sw, Tr. Reads “these” in An, Bs, Bw, Cg, Cn, Fa, Fr, Gr, HD, Hm, IA, JH, Ka, Li, Lo, Ma, Pt, Tb, Tt, WH. Reads “they” in Bt, Cq, Go, Mg, Pm, St (text A), Tw. Rather “but to those they” in Og. **131** fixed] Rather “affixed” in Bt, Hm. **132** to] Omitted in Cg, Cn, Da, HD, Li, WH. **133** and] Omitted in Bw. **134** these] Rather “their” in Mg. Rather “the” in Cg, Cn, Da, HD, Li, WH. Rather “those” in Je, Og. **135** farms] Rather “farms and services” in Cq, Sm. Rather “services” in Bw. Rather “formes” in Mo. **136** (they?)] Omitted in in Bs, Bw, Cg, Cn, Cq, Da, Fa, Gr, HD, Hm, IA, Je, JH, Ka, Li, Ma, Mg, Mo, Pg, Pm, Pt, Sm, Sw, Tb, Tr, Tt, Tw, WH. **137** are] Originally omitted but written interlinear in WH. **138** conveyed] Rather “contended” in Bw. Original obscured and corrected by a contemporary hand in Mg. **139** such] Rather “such as” in IA. **140** the] Omitted in IA. **141** Start of St (text B). **142** villains] Rather “villainrie” in Og. Rather “villinie” in Lo. Rather “villaini” in Tr. Rather “villances” in Je, Ka, Ma. Rather “villainies” in Pm. **143** there] Omitted in Bw. **144** no such thing] Rather “no thing such” in Mg. Rather “nothing such” in Cq, Pm, Sm, St (text B). Rather “none such” in Tw. **145** thing] Rather “things” in Og. Originally possibly “thins” but corrected by a contemporary hand in Mo.

A. The word “natural” appears in the descendants of manuscripts ξ and λ and in the Pitcairn manuscript. It is thus unlikely that it was present in Stair’s authorial holograph; and it did not appear in the 1681 and 1693 editions. The 1981 edition followed the wording of the 1693 edition. The 1759 and 1832 editions gave “natural liberty” with reference to the Kames manuscript; this wording was followed in the 1826 edition without comment. **B.** The 1759 edition explicitly changed this word to “for”, and recognised that it was “Formerly, ‘so’”; the 1832 edition also did so. The 1826 and 1981 editions followed the wording of the 1693 edition. **C.** This word was changed to “servitude” for the 1681 edition, presumably for clarity. The latter wording was preserved in the subsequent editions. **D.** The word “where” was added here in the 1693 edition by Stair, presumably for clarity. The posthumous editions preserved the wording of the 1693 edition. **E.** The King James Version (1611) gave: “Art thou called being a servant: care not for it: but if thou maist be made free, use it rather. For he that is called in the Lord, being a servant, is the Lords free man: likewise also hee that is called, being free, is Christs servant.” The wording in the Geneva Bible (1560) differed slightly: “Art thou called being a servant? Care not for it: but if yet thou maist be fre, vse it rather. For he that is called in the Lord being a seruant, is the Lords freman: likewise also he that is called being fre, is Christs seruāt”. Stair did not quote from the sections of the passage which differ between the KJV and Geneva Bibles, so it is not possible to tell which edition he used here.

Stair's authorial holograph probably omitted "being"; it may have been added for the 1681 edition and was preserved in the 1693 edition. The 1681 and 1693 editions gave "or slave" in parenthesis. That "free man" was printed "freeman" in the 1681 edition can be dismissed as a printing error. The 1759, 1826 and 1981 editions also cited 1 Corinthians 7:21–22 (although none cited verse 23, i.e. citation i). Both the 1759 and 1826 editions gave "or slave" as "(or slave?)"; the 1832 and 1981 editions followed the 1693 edition. **F.** Most of the manuscripts include here the word "wholly" (or a corruption of it), indicating that it was probably present in Stair's authorial holograph. The omission of the term in seven of the manuscripts can be considered to be a parallelism; its omission from manuscript o and the McGachen and Colquhoun manuscripts (but not from the Primrose and Tweeddale manuscripts) might indicate that the term was present but nearly illegible in manuscript ξ. Stair removed the word "wholly" when preparing the 1681 edition. This had the effect of removing some of the emphasis from this sentence. The wording of the 1681 edition was preserved in the subsequent editions. **G.** The 1681 edition gave "amongst"; the 1693 edition gave "among". The 1759 edition restored "among" without comment; the 1826, 1832 and 1981 editions gave "amongst". **H.** The 1759, 1826 and 1832 editions gave "Portuguese"; the 1981 edition gave "Portugals". **I.** The word "but" was added for the 1693 edition. It was omitted in the 1759 and 1832 editions, with reference to the first printed edition and manuscripts generally. It was also omitted in the 1826 edition without comment. The 1981 edition followed the wording of the 1693 edition. **J.** The 1759 edition gave rather "elsewhere remains"; this was presumably an error. The word order of the 1759 edition was followed in the 1826 and 1832 editions without comment. The 1981 edition gave the original word order. **K.** The change between the 1681 edition ("*ascriptitii*") and 1693 edition ("*adscriptitii*") was orthographical fluctuation. The posthumous editions followed the later spelling without comment. **L.** It seems very likely that Stair's authorial holograph gave "and works to". The words "and works" were omitted in the 1681 edition, possibly because they were largely superfluous. The wording of the 1681 edition was followed in the subsequent editions. **M.** The ancestor manuscripts α and ρ probably gave "those" or "these"; the Taylor and Fragment manuscripts also did so, probably independently. However, there is also significant support for the reading "they". The wording of Stair's authorial holograph is thus unclear. The 1681 edition gave "those", but Stair changed this to "they" in the 1693 edition. The posthumous editions followed the wording of the 1693 edition. **N.** This was "these" in most of the manuscripts, and so was plausibly "these" in Stair's authorial holograph (although it is likely a change liable to parallelism). It read "those" in the printed editions. **O.** It is plausible that Stair's authorial holograph gave "they" here, as it appears in manuscripts from the π, τ and υ groups. However, its appearance in the o-group manuscripts but not in the other ξ-group manuscripts indicates that its insertion was liable to parallelism. The word was present in the 1681, 1693, 1759, 1832 and 1981 editions, but was omitted from the 1826 edition without comment. **P.** The 1759 edition added here the following footnoted comment: "To this place pertains *parl.* 1606 c. 11. anent coaliers and salters." In the errata was inserted, immediately after the first citation: "and Parl. 1661. c. 56". The Acts cited are the Colliers and Salters Act 1605 and the Colliers Act 1661. Both were passed before Stair finished his first version and so could have been cited by him. Gordon's footnoted comment (without the addition

in the errata) was incorporated verbatim into the 1826 edition. Brodie then added: “Colliers and salters are now completely freed from servitude” and gave references to The Colliers etc. (Scotland) Act 1775 and The Colliers etc. (Scotland) Act 1799. In the same place, Brodie noted that “I am satisfied that in the author’s time there were no villains in England. Sir Thomas Smith informs us that they were almost unknown in his age, and that was at least a century earlier. Commonwealth, b. iii.ch. x.” Smith’s *De Republica Anglorum: The maner of Gouvernement or policie of the Realme of England* was published posthumously in 1583 in English; in the first edition, the relevant passage is found at chapter 8 of book 3. Later editors expanded this work, often translated it into Latin, and printed it under the name *De Republica Anglorum: A Discourse on the Commonwealth of England*. Brodie cited the work as rearranged and expanded (see, e.g., the 1625 and 1635 editions). For Maitland’s comments on the confusion caused by the work being expanded and translated, see L. Alston, ed., *Sir Thomas Smith’s De Republica Anglorum: a discourse on the Commonwealth of England* (1906 rept 2013), p. vii. The wording (if not the spelling) of the relevant phrase was the same in both editions of Smith consulted: “so fewe there be, that it is not almost worth the speaking” (spelling correct to the 1583 edition). More’s 1832 edition received both the 1759 edition’s comment and the addition in the errata. More then added to this the comment that “The servitude of colliers and salters was abolished by” the same two Acts of George III that were cited by Brodie. He also gave a second note on this section of the text: “See the argument in the case of *Sommersett*, a negro, 1. *Hargrave*, I. See also *Lofft*, I; 20. *Howell’s State Trials*, I. See *Sheddan v. A Negro*, 4. July 1757, (14545), and *Knight v. Wedderburn*, 15. July 1778, (14545); in which last case it was decided, that ‘perpetual service, without wages, is slavery,’ and that a negro, or other slave, becomes free on arriving in this country, and cannot be sent out of it without his own consent.” The 1981 edition did not include any of these comments.

i. 1 Corinthians 7:23.

ii. 1 Corinthians 7:21–22.

§ 12:

¹There ²was ³formerly ⁴a ⁵kind of ⁶bondage ^A called manrent, whereby ⁷, ⁸free persons ⁹became ¹⁰, ¹¹the ¹², ^Bmen ¹³, ^C[or/and] followers of ¹⁴, ¹⁵, ^Dthese ¹⁶who were ¹⁷their ¹⁸patrons ¹⁹and defenders, ^Eand ²⁰therefore ²¹these ²²were ²³rather ^F ²⁴, ^Gclientall, ²⁵, ^Hthan ^F ²⁶bondage, but ²⁷it is ²⁸utterly ^I abolished, ²⁹, ^Jboth ³⁰by ³¹Act ³²of Parliament, ³³and ³⁴by ³⁵custom, ³⁶parl. ³⁷1457. ³⁸cap. ³⁹78ⁱ.

1 There was formerly] Rather “but in former times there was” in Bw. 2 was] Rather “there is” in Tr. Rather “were” in Mg, Og. 3 formerly] Omitted in Tr. Rather “also formerly” in Cg, Cn, Da, HD, Li. Also “also formerly” (although the copyist initially omitted “formerly”) in WH. Rather “formerly here” in Bt, Cq, Go, La, Mg, Pm, St (text A), St (text B). 4 a] Rather “ane” in Cg, Cn, Da, Go, HD, IA, Li, Mg, St (text A), WH. 5 kind of] Omitted in HD, St (text A). 6 bondage] Originally rather “slavery” but corrected by the copyist in Mo. 7 free persons] Rather “free men” in Bs, Bt, Go, Je, Ka, Ma, Sm, St (text A), Sw, Tt, WH. Rather “freemen” in Mo, St (text B). 8 free] Omitted in IA. Rather “the free” in Tr. 9 became] Rather “become” in Bt. 10 the men]

Rather “yeamen” in Da. **11** the] Rather “their” in Og. **12** men] Rather “servants” in Je, Ka, Ma, Mo, Sm, Sw, Tt. Rather “servants of” in Bs. **13** and/or] Rather “and” in Bs, Bt, Bw, Cg, Cn, Da, Fa, Go, HD, Hm, IA, Je, JH, Ka, La, Li, Ma, Mg, Mo, Og, Pg, Sm, St (text A), St (text B), Sw, Tb, Tt, Tw, WH. Rather “or” in An, Cq, Fr, Gr, Lo, Pm, Pt, Tr, Wi. **14** these who were] Omitted in Je, Ka, Ma, Mo, Sm, Sw, Tt. **15** these] Rather “those” in Da, Fa, Hm, IA, JH, Og, Pg, Pt, Tb. Rather “others” in Bt, Cq, Go, Mg, Pm, St (text A), St (text B), Tw. Rather “them” in Wi. **16** who were] Omitted in Bs. **17** their] Omitted in Bs. Rather “the” in Fa, IA. **18** patrons] Original obscured and corrected to “patrons” in Mg. **19** and] Rather “or” in Cq. **20** therefore] Omitted in Gr. **21** these] Rather “this” in Cq, Go, Mg, Pm, St (text A), St (text B), Tw. Rather “such” in Bw. **22** were] Rather “was” in Bt, Cq, Go, Mg, Pm, St (text A), St (text B), Tw. Rather “ware” in Ka. Rather “war” in Mo. **23** rather] Rather “either” in IA. Rather “more” in Go. **24** clientall] Original spelling obscured but amended to “clientall” by a later hand in An. Originally “clientell” but amended to “clientela” by a later hand in Li. Rather “clientalla” in HD. Rather “clientell” in Lo, St (text A), St (text B). Rather “clientel” in Gr. Rather “clientela” in Cn, Da. [Tb*] **25** than] Rather “yn” in Ka, St (text A), Sw, Tr, Wi. Originally rather “the” amended to “then” by a later hand in Go. Rather “then” in the other manuscripts. [Tb*] **26** bondage] Rather “in bondage” in An, JH, Lo. Paper lost for Li. **27** it] Rather “now it” in Bw. Rather “that” in Pt. Originally correct but amended by a contemporary hand to “is” in Tr. **28** utterly] Rather “now utterly” in La. Rather “now” in Go. **29** both] Omitted in St (text A), St (text B). **30** by] Rather “be” in Cg, Da, Go, Mg, Pm, Pt, Tw, WH. **31** Act] Rather “the act” in An, Cg, Cn, Da, HD, Lo, Mg, Pm, St (text A), WH. Rather “acts” in Og. **32** of Parliament] Paper lost in Li. **33** and] Omitted in An, Cn, HD, Lo, Mg, Tr. Paper lost in Li. **34** by] Omitted in Bs, Bw, Da, Fa, Fr, Go, Gr, Hm, IA, Je, JH, Ka, La, Ma, Mo, Og, Pg, Pt, Sm, Tb, Tr, Wi. Rather “be” in Cg, Pm, St (text B), Tw, WH. **35** custom] Rather “customs” in Bt. **36** parl] Omitted in Pt. Rather “see parl” in Bw. **37** 1457] Omitted in Bw. Rather “1474” in Sm. Rather “78: 1457” in Hm. Rather “1479” in Mo, Sw, Tt. Rather “1475” in Wi. Rather originally “1553” but corrected by a later hand in Tw. **38** cap] Rather “C” in Fa, Gr, Hm, IA, Pg, Sm, St (text A), St (text B), Tr. Rather “Ccap” in Pm. **39** 78] Rather “76” in Bw. Rather “678” in Mg. Rather “685” in Og. Rather “72” in Wi. Rather “68” in Cn, Da, HD, Li. Rather “78. K. J: 2:” in JH.

A. The phrase “in Scotland” was added here in the 1693 edition, presumably for clarity. The posthumous editions followed this wording. **B.** The word “men” was changed to “bondmen” for the 1693 edition, presumably for clarity. The 1759 and 1832 editions restored the earlier wording with reference to the first printed edition, the James Hay manuscript and the lost “Manuscript G”. The 1826 edition followed this wording without comment. The 1981 edition followed the wording of the 1693 edition. **C.** There is significant support for both readings, and the change from one to another is a variant very liable to parallelism. Thus, the wording of Stair’s authorial holograph is unclear. The word was “or” in the printed editions. **D.** The 1759 edition gave “those” without comment; the 1826 and 1832 editions followed this wording without comment. The 1981 edition followed the wording of the first two printed editions. **E.** Stair’s authorial holograph gave “and therefore these”. The word “therefore” was removed for the 1681 edition. It is not clear whether the word’s

removal was by Stair or an accident of printing. The 1759 edition reintroduced the word “therefore” with reference to the manuscripts generally. It also put the entire phrase “and therefore these were rather ... in bondage” in brackets; the 1832 edition followed the 1759 edition. The 1826 edition also followed this wording (but not the parenthesis) without comment. The 1981 edition followed the wording of the first two printed editions. **F.** In both these places, “in” seems to have been added for the 1681 edition. This revision may have been for clarity. The subsequent editions followed this amended wording. **G.** It is plausible that Stair’s authorial holograph gave “clientall”, but this term is liable to orthographical fluctuation, so this cannot be certain. The 1759, 1832 and 1981 editions followed the 1693 edition’s spelling, “*clientela*”. The 1826 edition, however, restored the wording of the 1681 edition, “*clientele*”. **H.** Most of the extant manuscripts gave “then”. This was a variant spelling of “than”; there are numerous examples of this fluctuation in the entry for “Than” in the *Dictionary of the Older Scottish Tongue* as digitised in the online *Dictionary of the Scots Language* (<http://www.dsl.ac.uk/>, accessed 6 August 2014). The printed editions gave “than”. **I.** The word “now” was added here in the 1693 edition, possibly for clarity or emphasis. The 1759 and 1832 editions omitted “now” with reference to the manuscripts and the first printed edition; the 1826 edition did so without comment. The 1981 edition followed the wording of the 1693 edition. **J.** It seems that Stair’s authorial holograph gave “both by Act of Parliament and by custom” followed by a citation of the act later given the short title of the Leagues in Burghs Act 1458. Stair probably overstated that this act “utterly abolished” manrent: it said only that “no man dwelling within burgh be found in manrent” on penalty of confiscation. Later annotators made changes to two manuscripts. The citation “155 [*sic*] c. 43” was added to the Swinton manuscript; this is the same citation that was added for the 1693 edition (i.e. Bonds of Manrent Act 1555, *APS* ii 495, c.17, *RPS*, A1555/6/18), and may have been written on the manuscript after that time. Three citations were added to the Hamilton manuscript: “& 1555 C 43 & 1585 C 12 against which avand for a coal heugh most allege [?] was not found to state nor against Christian literature 29 March 1632 Caproiton v Geddes”. The case cited is *L. Capringtoun v Geddie*, 24 March 1632, which was recorded in Durie’s practicks (Alexander Gibson of Durie, *The Decisions of the Lords of Council and Session, in most cases of importance, debated, and brought before them; from July 1621, to July 1642* (1690), p. 632); the two statutes cited in this annotation were also given in Durie’s report. When preparing the 1681 edition, Stair rearranged the sentence, putting the citation directly after the general reference to the statute rather than at the end of the sentence. In the 1693 edition, he changed the citation to be of “cap. 77”. This is in keeping with the renumbering of this act to cap. 77 in Sir Thomas Murray of Glendook’s *Laws and Acts of Parliament* (1681) (p. 47); it was numbered rather as cap. 78 in Sir John Skene of Curriehill’s *Laws and Actes* (1597) (fo. 43v), the numbering of which was used in this citation in his manuscript and the 1681 edition. (My thanks to John Ford for informing me of this difference.) Stair also, when preparing the 1693 edition, added the citation of the Bonds of Manrent Act 1555 and added “our” before “custom”. The posthumous editions preserved the wording of the 1693 edition, although they abbreviated “Parliament” to “Parl”.

i. Leagues in Burghs Act 1458, *APS* ii 50, c.24, *RPS*, 1458/3/25.

§ 13:

¹From ²servitude ^A ³ariseth manumission, ⁴and the right of ⁵patronage; ⁶manumission is ⁷the ⁸dimission of ⁹, ^Bservants, and ¹⁰, ^Cmaking ¹¹of them ¹²libertines, whereby ¹³they ¹⁴, ^Dbecome free, ¹⁵but ¹⁶with ¹⁷remaining ¹⁸thankfulness, reverence, and ¹⁹obsequiousness, ^E ²⁰to ²¹their former masters, ²²then ²³become ²⁴their patrons, ^F, ²⁵. ²⁶by ²⁷which ²⁸they ²⁹were ³⁰also ³¹necessitate to ³²leave ³³a ³⁴part of their goods to their ³⁵patrons, formerly the ³⁶half, ³⁷afterwards the ³⁸third, and if ^G, ³⁹in ⁴⁰these ⁴¹they ⁴²failed, ⁴³, ⁴⁴they ^Hforfaulted their new acquired ⁴⁵liberty, ⁴⁶and ⁴⁷returned ⁴⁸to ⁴⁹their ⁵⁰former ⁵¹condition of servitude.

1 From] Rather “From bondage or” in Cg, Cn, Da, HD, WH. Paper lost of Li, but “-dage or servitude” legible, so presumably “From bondage or”. **2** servitude] Rather “servitudes” in Bt. **3** ariseth] Rather “arise the” in Li. Rather “arises” in Cq, Mg, Og, Pt, Tw. **4** and the right of patronage] Paper lost of Li. **5** patronage] Rather “patrons” in La. **6** manumission] Rather “as manumission” in Sm. **7** the] Rather “in” in St (text A). **8** dimission] Rather “emissione” in Mo, Sm. Rather “dimissione is the dimissione” in Da. **9** servants] Rather “the servants” in Je, Ka, Ma, Mo, Sw, Tt. **10** making] Rather “the making” in Bt, La, Mg, Pm, Tw. **11** of] Omitted in Bs, Bw, Go, Gr, Je, Ka, La, Ma, Mg, Mo, Og, Sm, Sw, Tt. **12** libertines] Rather “liberty” in Og. Rather “free libertines” in Sw. **13** they] Originally “the they” but former deleted in WH. **14** become] Rather “became” in Sm. **15** but] Rather “both” in Mg, Og, Tr, Tw. Also originally “both” but amended to “but” in Cq. Originally “and” but corrected by the copyist in Ma. **16** with remaining] Omitted in Tr. **17** remaining] Rather “the remaining” in An. **18** thankfulness, reverence] Rather “reverence, thankfulness” in Bt, Cq, Go, Mg, St (text A), St (text B), Tw. Rather “thankfulness” in La, Tr. Rather “reverence” in Pm. Rather “thankfulness of reverence” in Og. **19** obsequiousness] Rather “obsequence” in Mo, Og. **20** to] Rather “though their former masters remaining” in Tr. **21** their] Rather “the” in Pt. **22** then] Rather “they” in Tr. Rather “who then” in Bs, Fr, Gr, HD, Je, Ka, La, Ma, Mo, Og, Sm, Sw, Tt, Wi. Originally “then” but “who” added by a contemporary hand in Mg. Rather “who” in Pt. Originally “then” but “who” added by a later hand in An. Rather “they” in Bt, Tb, Tr. **23** become] Rather “became” in Fr, Gr, Mo, Sm, St (text A), Tt. **24** their] Rather “the” in Hm. **25** by which ... patrons] Rather originally omitted, but added by a later hand as “by which they were also obliged to give ane part of their goods to their masters who” before “then become” above, in Go. **26** by which] Rather “which By which” in An. Rather “by which also they were” in Tb. **27** which] Rather “whom” in Mo, Og. **28** they were also] Rather “also they were” in Mg. **29** were] Rather “are” in Bs. Rather “ware” in Ka. **30** also] Omitted in Bs, Pm. **31** necessitate] Rather “necessitated” in St (text A), St (text B). **32** leave] Rather “live” in Lo, Pm. Rather “give” in Bw, Cg, Cn, Da, Fa, HD, Hm, IA, Li, WH. Originally “leave” but amended to “give” in Pg. Originally rather “have” but amended to “leave” by a later hand in An. **33** a] Omitted in Bt. Rather “ane” in Cg, HD, Li, Mg, WH. **34** part] Omitted in Mg. **35** patrons] Rather “masters” in Cq. Rather “portions” in IA. Originally “parents” but corrected in St (text A). **36** half] Originally rather “half of their goods”, but latter three words deleted by a contemporary hand, in Og. **37** afterwards] Rather “afterward” in An, Bs, Bt, Bw, Cq, Fa, Fr, Hm, IA, Je, JH, Ka, La, Lo, Ma, Mg, Mo, Og, Pg, Pm, Pt, St (text A), St (text B), Sw, Tr, Tw,

Wi. 38 third] Rather “3d” in Hm, St (text B), Sw. Rather “third part” in Og. 39 in] Originally omitted but added by a later hand in Cn. 40 these] Rather “this” in Bt, IA, Og. 41 they] Rather “the” in Da, Fr. 42 failed] Originally rather “forfaulted” but changed to “failed” by the copyist in Tw. 43 they forefaulted] Omitted in Bs. 44 they] Rather “the” in Wi. 45 liberty] Originally rather “right” but corrected by the copyist in Ma. 46 and] Omitted in Bs. 47 returned to] Rather “return” in Cn, Mo, Og, Sm. 48 to] Rather “into” in Li. Rather “unto” in Cn. Originally omitted but added interlinear in Go. 49 their] Rather “that” in Pm, St (text B), Tw. Rather “the” in Bs, Da, Je, Ka, Ma. 50 former] Rather “old” in Bs, Je, Ka, Ma, Sw, Tt. 51 condition of] Omitted in Bw.

A. The phrase “amongst the Romans did” was added for the 1693 edition. The posthumous editions gave “among” rather than “amongst”. **B.** The word “slaves” replaced “servants” in the 1693 edition, presumably to avoid confusion between the Roman concept of slavery and the Scottish concept of servitude, which Stair discusses in chapter 15. The posthumous editions preserved the wording of the 1693 edition. **C.** It is likely that (despite its appearance in five of the manuscripts) the word “the” was not present in Stair’s authorial holograph but was added by him for the 1681 edition. The subsequent editions preserved this amended wording. **D.** This was changed to “became” in the 1693 edition, which is in keeping with the confining of the previous point to the Romans; the word “is” earlier in this sentence was left in the present tense, presumably in error. The posthumous editions gave “became”. **E.** The phrase “and some other duties and offices” was added here for the 1681 edition. This expanded upon the point that Stair had made previously regarding the proprietary rights of patrons (see next comment). **F.** The phrase “by which ... the third” was removed in the 1681 edition, presumably because it was then superfluous given the amendment just discussed. **G.** The phrase “in these they failed” was changed to “they failed therein” for the 1693 edition, presumably for conciseness or elegance of expression. This wording was followed in the posthumous editions. **H.** The posthumous editions modernised this word to “forfeited”.

§ 14:

In ¹these therefore, stood the right of patronage, ²and from ³this ⁴condition of libertines, ⁵arose ⁷that ⁸distinction of men, ⁹into ^{10, 11,} ^Athese ¹²who ¹³were always free, ^{14, 15,} ^Bwho ¹⁶were called ¹⁷*ingenui*, and ^{C, 18}these ^{19, 20,} ^{who} ^{21, 22,} ^{were} ²³bound, ^{24,} ²⁵who were ²⁶called *servi*, and ²⁷in ²⁸these ²⁹of ³⁰a ³¹middle condition, who ³²having ³³been slaves, ³⁴became free, and so ^{35, 36,} ^{were} ³⁷neither fully ^{38, 39}free, but ⁴⁰had some ⁴¹duties ⁴²lying ⁴³upon ⁴⁴them ^{45, 46,} ^{to} ⁴⁷their patrons, ^{48, 49}neither ⁵⁰were ⁵¹fully ⁵²bound as ⁵³servants.

1 these] Rather “this” in Cg, Cn, Da, HD, Li, Og, Pt, WH. Rather “those” in Bt, Hm, Pg, Tb. Rather possibly “thirs” in IA. 2 and from] Rather “and from and from” in Li. 3 this] Rather “the” in Je, Ka, Ma, St (text A), St (text B), Tr. Rather “these” in Li. 4 condition of libertines] Rather “conditional libertins” in HD. Rather “conditional liberties” in Li. Rather “conditional liberty” in Cn. Rather “condition of liberty” in Og. Rather “condition of libertine” in Tr. Rather “conditione of liberties” in Da. Also originally “condition of libertins” but “-ns” deleted by a contemporary

hand in Cg. Originally “distinction of libertines” but corrected by the copyist in Go. 5 arose that distinction ... always free] Omitted in Mo. 6 arose] Rather “arise” in Bt, Mg. Rather “arise” in Da, Og, Tr. Rather “arises” in Sm. 7 that] Rather “the” in Bt, Bw, Cq, Go, Mg, Og, Pm, Sm, St (text A), St (text B), Tr, Tw. Rather “this” in Da. 8 distinction] Originally “condition” but corrected by the copyist in Go. 9 into] Omitted in St (text A). Rather “unto” in Fa, HD, Hm, IA, JH, Pg, Tb, Tr, WH, Wi. Rather “in” in Bs, Bt, Cq, Fr, Je, Ka, Ma, Mg, Pm, St (text B), Sw, Tt. Rather “from” in Go. 10 these who were ... and] Appears after “*serui*, and in these ...”, with “and unto” added immediately before, in La, Tr. 11 these] Omitted in St (text A). Rather “those” in Bt, Fa, Hm, Je, Pg, Pm, Pt, St (text B), Tb. Rather “this” in IA. 12 who] Rather “that” in Cq, St (text A), St (text B), Tw. 13 were] Rather “wes” in Cg. Rather “are” in Bs. Rather “ware” in Ka. 14 who were] Omitted in An, Cn, HD, Lo. 15 who] Rather “which” in Cq, Mg, Pm, Tw. 16 were] Rather “wes” in Wi. 17 *ingenui*] Omitted but a space left in St (text A). Rather possibly “*fugeino*” in IA. Rather “*ingeni*” in Da. 18 these] Rather “those” in Bt, Da, Fa, IA, Je, JH, Pg, St (text A), Tb. Rather “of these” in Mo, Sm. Rather “in these” in An, Lo. 19 who were bound ... middle condition] Omitted in Bt. 20 who] Rather “which” in Cq, St (text A), St (text B). End of St (text A). 21 were bound who were called] Rather “were called bound as the” in Bw. 22 were] Rather “are” in Mg. Rather “ware” in Ka, Mo. 23 bound] Rather “always bound” in Go. Rather “bond” in Bs, Je, Ka, Ma, St (text B). Rather “bund” in Fa, Gr, WH. 24 who were] Omitted in Bs, Cg, Cn, Da, Fa, Gr, HD, IA, Je, JH, Ka, Li, Ma, Mg, Mo, Pg, Pm, Pt, Sm, St (text B), Sw, Tt, Tw, WH. 25 who] Omitted in Cq, Fr, Go, Hm, Tb, Wi. Rather “and” in La, Tr. 26 called] Omitted in Bs. 27 in] Omitted in Bw, Cq, La, St (text B), Sw, Tt, WH. Rather “of” in An, Cg, Cn, Fa, Fr, HD, IA, JH, Li, Lo, Mo, Og, Pg, Sm, Tr, Wi. Rather “if” in Da. 28 these] Rather “those” in Fa, Hm, IA, JH, Pg, Pt, St (text B), Tb. 29 of] Rather “in” in An, Cn, Fr, HD, La, Li, Lo, Mo, Og, Sm, Tr, Wi. 30 a] Omitted in Da, Fa, Hm, IA, Mg, WH. Rather “the” Cn, HD, Li. 31 middle] Rather “mid” in Bw, Wi. 32 having been] Rather “being” in Mo, Og, Sm. 33 been] Rather “become” in Tr, Wi. 34 became] Rather “become” in Je, JH, Ka, Ma, Pt. 35 were neither] Rather “neither were” in Tw. 36 were] Rather “ware” in Ka. Rather “war” in Mo. 37 neither] Omitted in Mo. Rather “never” in La. 38 free but had ... were fully] Originally omitted but inserted by a later hand in Pg. 39 free] Omitted in IA. Rather “free nor fully bound as servants” in Cq. 40 had] Rather “that” in Mg. 41 duties] Rather “duty” in Bt, Go. 42 laying] Rather “lay” in Mg. 43 upon] Rather “on” in Cg, Cn, Da, Go, Hm, IA, Je, JH, Li, Ma, Pm, Pt, St (text B), Sw, Tb, Tt, Tw, WH. Rather “one” in Bs, Fa, Ka. 44 them to] Omitted in Mo, Og, Sm. 45 to ... fully bound] Omitted in Tr. 46 to] Rather “as to” in Cg, Cn, Da, Fa, HD, IA, Li. Rather “as n” in WH. The annotation gives “as to” but former deleted in Pg. 47 their] Rather “the” in Cq. 48 neither were fully bound as servants] Appears above, after “fully free”, in Cq. 49 neither] Rather “and yet” in Bw. 50 were] Omitted in Bt, Mo. Rather “was” in Sw, Tt. Rather “ware” in Ka. Original spelling obscured and changed to “wer” in Ma. Originally “will” but corrected by the copyist in Go. Rather “were not” in Bw. 51 fully] Omitted in IA. Rather “they fully” in Cg. 52 bound] Rather “bond” in Bs, Je, Ka, Ma, Og, Pm. Rather “bund” in Fa, Gr, IA, La, Pt, St (text B), WH. 53 servants] Rather “*serui*” in La. Rather “servants who were called *libertini*” in Tb.

A. The 1759 edition gave “those” rather than “these”. Although there is limited authority for this reading in the manuscripts, none of the manuscripts was cited by Gordon in connection with this change. Rather it seems to have been an error. This wording was followed in the subsequent editions without comment. **B.** The 1759 edition put the phrase “who were called ingenui” into parenthesis. This was followed in the 1826 and 1832 editions without comment, but was not followed in the 1981 edition. **C.** The word “in” was added here for the 1681 edition, and was retained in the 1693 edition. The 1759 and 1832 editions read: “and those who were bound (called servi,) and those”. They thus omitted “in”, gave “those” rather than “these”, omitted the second instance of “who were”, put “called servi” in parenthesis, omitted the second instance of “in”, and again gave “those” rather than “these” at the end of the phrase quoted. These changes were made in both editions with reference to the manuscripts generally. This wording was followed in the 1826 edition without comment. The 1981 edition also omitted “in” but did not preserve these other changes.

§ 15:

^{1, 2, A}The ³servants ^{4, 5}which ⁶now ⁷retain ⁸that name are ^{9, 10, B}judged free ¹¹persons, and ^{12, 13}have ^{14, C}but at most ¹⁵hired ¹⁶their ^{17, 18}labour ^{19, D}[and/or] ²⁰work to their ²¹masters for ²²a time, ²³which ²⁴is ^{25, E}a contract betwixt ²⁶them; ²⁷of which ²⁸afterward.

1 The servants ... afterward] Appears between “the customs of this nation” and “the Romans” in the next paragraph in Mo. 2 the] Rather “these” in Cq. 3 servants] Rather “servant” in Bs, Hm, Je, Ka, Ma. 4 which now] Rather “now which” in Mg. Rather “now that” in Tb. 5 which] Rather “who” in Cn, Da, HD, La, Li, WH. Rather “who do” in Bw. Rather “that” in Hm, Sm. 6 now] Omitted in Gr. 7 retain] Rather “retaineth” in WH. 8 that] Rather “this” in Cn, HD, Li. 9 judged free persons] Rather “privileged” in Mo, Og, Sm. 10 judged] Rather “adjudged” in Da. Rather “compted” in Wi. Rather “indeed” in Bs, Bt, Cq, Go, Je, Ka, La, Ma, Mg, Pm, St (text B), Tw. 11 persons] Rather “servants” in Mg. 12 have at most but] Rather “at most have” in Mo, Og, Sm. 13 have] Rather “hath” in Go. Rather “do” in Bw. 14 but at most] Also “but at most”, but “but” added interlinear by the copyist, in Pg. Rather “but almost” in Bt, Cq. Rather “at most but” in An, La, Lo, Sw, Tt. 15 hired] Originally rather “reserved” but corrected by a later hand in Go. Rather “hire” in Bw. 16 their] Rather “the” in Pm. 17 labour and work] Rather “work and labour” in An, Lo. Rather “service, work or labour” in Cq. 18 labour] Rather “labours” in Bs, Je, Ka, Tr. 19 and/or] Reads “or” in Bs, Bw, Cg, Cn, Da, Fa, Go, Gr, HD, Hm, IA, Je, JH, Ka, Li, Ma, Mg, Pg, Pm, Pt, St (text B), Sw, Tb, Tt, Tw, WH. Reads “and” in Bt, Fr, La, Mo, Og, Sm, Tr. Rather “to” in Wi. 20 work] Rather “works” in Tw. 21 masters] Rather “master” in An, Lo, Tr. 22 a] Rather “ane” in IA. 23 which] Originally correct but deleted and “with” inserted interlinear by a later hand in JH. 24 is] Omitted in JH. 25 a] Omitted in Pm. Rather “ane” in IA. 26 them] A contemporary hand has written “or” above “them” in Cg. 27 of] Originally omitted but added by the later hand in An. 28 afterward] Rather “afterwards” in Cg, Cn, Fr, Gr, HD, Li, Mo, Og, Pm, WH, Wi.

A. This phrase probably read “The servants which now” in Stair’s authorial holograph, as it did in the 1681 edition. This was changed to “Servants with us which now” in

the 1693 edition, probably for clarity. The 1759 and 1832 editions reinstated the definite article at the beginning of this sentence with reference to the 1681 edition and the manuscripts generally, but also gave “with us” as found in the 1693 edition; the 1826 edition did so without comment. The 1981 edition followed the wording of the 1693 edition. **B.** The 1759 and 1832 editions gave “indeed” with reference to the Kames manuscript; the 1826 edition also gave “indeed” without comment. However, this variant was certainly a parallelism that occurred in manuscripts λ and ξ and should not be regarded as representative of Stair’s original wording. Rather, it seems probable that Stair’s authorial holograph read “judged”, and that this was preserved in the 1681 and 1693 editions. The 1981 edition also gave “judged”. **C.** The majority of the extant manuscripts give “but at most”, which was probably the word order of Stair’s authorial holograph. This was rearranged to “at most but” in manuscripts μ, τ and (probably) π; this rearrangement was a parallelism. The 1681 and 1693 editions also gave “at most but”, as did the posthumous editions. **D.** There is support for both readings here, so the wording of Stair’s authorial holograph is unclear. The printed editions gave “and”. **E.** Stair added the words “kind of” here for the 1693 edition, presumably for clarity and elegance. The posthumous editions preserved this wording.

§ 16:

^A 1 The ²customs ³of this ⁴nation ⁵have ⁶little peculiar ⁷in relation ⁸to liberty ⁹directly, but the ¹⁰injuries done against ¹¹the same, ¹²especially ¹³in ¹⁴constraint, ¹⁵fall under the consideration of ¹⁶delinquency and crimes, ¹⁷and ¹⁸are ¹⁹so ²⁰punishable. ²¹The ²²Romans ²³had express laws, *de* ²⁴libero ²⁵homine exhibendo, ²⁶and *de* ²⁷privatis carceribus ²⁸inhibendis, ²⁹the ³⁰English have ³¹their ³²action ³³of false ³⁴imprisonment, ³⁵determining ³⁶with much exactness, ³⁷in ³⁸what ³⁹cases ⁴⁰imprisonment ⁴¹is ⁴²lawful, ⁴³and ⁴⁴what not, and ⁴⁵how ⁴⁶remediable. ⁴⁷It ⁴⁸is also provided ⁴⁹in the Judicial law, ⁵⁰against ⁵¹stealers of men, ⁵²but ⁵³amongst us, ⁵⁴as ⁵⁵the crime is ⁵⁶very rare; ⁵⁷so, ⁵⁸if ⁵⁹any ⁶⁰unlawful ⁶¹restraint, ⁶²or unjust imprisonment ⁶³should fall out, ⁶⁴it remains ⁶⁵among ⁶⁶the ⁶⁷delinquencies ⁶⁸to be punished ⁶⁹according to ⁷⁰the ⁷¹circumstances ⁷²and ⁷³atrocities, ⁷⁴and ⁷⁵according to ⁷⁶equity, ⁷⁷and ⁷⁸thence ⁷⁹also ⁸⁰a civil ⁸¹action for damage and interest ⁸²ariseth.

1 The customs ... are so punishable] Omitted in Lo. Also originally omitted but added by the later hand in An. 2 customs] Rather “custom” in Da, Go, La, Tr, Wi. 3 of this nation] Omitted in Sw, Tt. 4 nation] Rather “nations” in Cq, IA. 5 have] Rather “has” in Go. Rather “hath” in Fr, La, Mo, Og, Tr, Tw, Wi. 6 little] Rather “been” in Mg. Rather “been little” in Pm. Possibly rather “title” in Cq. 7 in] Omitted in Mo, Og, Sm. 8 directly] Omitted in Og. 9 injuries] Rather “injury” in Bs, Bt, Je, Ka, Ma, Og. 10 the same, especially] Rather “them” in Bw. 11 especially] Rather “specially” in Gr. 12 in] Omitted in Fr, La. Rather “of” in Cn, Da, HD, Li. Rather “if” in WH. 13 constraint] Rather “constrained” in Mo, Og, Sm. 14 fall] Rather “law” in Og, Sm. Rather “law and” in Mo. Rather “falls” in Pm. Rather “falling” in An. Rather “for” in IA. Rather possibly “faur” in Tb. Rather “far” in Bw, Fa, Hm, Pg. 15 delinquency] Rather “delinquencies” in Cg. Rather “delinquency” in Pm, Tr, Tw. [Tb*] 16 and are] Omitted in Cq, Sm. 17 are so] Rather “so are” in Bw, Wi. 18 so] Rather “sorely” in Go. Rather “sore” in Sm. 19 punishable] Rather “punished”

in Fr, Mo, Og, Sm, Tr, Wi. 20 Chapter 14 inserted here in Mo. 21 Romans] Rather "Rom:" in Bw, Hm, Ka. 22 had] Rather "&" in Bt. 23 *libero*] Rather "*libw*" in Tb. Originally rather "*Lib*" but corrected by a later hand in Sw. 24 *homine*] Omitted in Tr. Rather "*homme*" in Sw. Rather "[obscured] *or*" in Mo. Rather "*ore*" in Og. 25 and] Rather "*et*" in Bs, Cq, Fr, Go, Je, Ka, Ma, Mo, Pt, Sm, Tr, Wi. Rather an ampersand in Bw, Cn, Mg, Og, Sw. 26 *privatis*] Original spelling obscured and corrected by later hands in An, Lo. Rather "*pravatis*" in Mo. 27 *inhibendis*] Rather "*exhibendis*" in An, Bs, Bw, Cg, Cn, Fa, Gr, IA, Je, JH, Ka, Lo, Ma, Pg, Pt, Sw, Tt, WH. Also originally "*exhibendis*" but corrected by a later hand in Hm. 28 English] Rather "English men" in Mg. 29 their] Rather "the" in Bw, Da, Og. 30 action] Rather "actions" in Bt, Fa, Fr. 31 of false] Rather "first of" in WH. Rather "of first" in Bs, Cg, Cn, Da, Fa, Gr, HD, IA, Ka, Li, Ma, Pg, Pt, Sw, Tb, Tt. Also originally "of first" but corrected by a contemporary hand in Hm. Also originally "of first" but corrected by a later hand in Je. Original obscured and corrected in Tr. Rather "of wrong" in Og, Sm. Rather "of wrongous" in Mo. 32 imprisonment] Originally rather "imployment" but corrected by the copyist in An. Rather "imprisonments" in St (text B). 33 determining] Rather "decerning" in Bs. 34 with much exactness] Rather "most exactly" in Bs, Je, Ka, Ma, Sw, Tt. Rather "with most exactness" in Da. Rather "with how much exactness" in Mg. Originally rather "with which exactness" but changed to "with much exactness" by a contemporary hand in Og. 35 in] Rather "if" in IA. 36 what] Rather "which" in Fa. 37 cases] Rather "lawes" in St (text B). Rather "case" in Go, Og, Tr. Original spelling amended in Fa. 38 imprisonment] Rather "imprisoning" in Tr. Rather "imprisonments" in Go. 39 is] Rather "was" in Bt. Rather "were" in Go. 40 lawful] Originally rather "unlawful" but corrected by the copyist in Tt. 41 and (in?) what not] Omitted in Tb. 42 (in?)] Omitted in Bs, Fa, Go, Gr, Hm, IA, Je, JH, Ka, Ma, Mg, Mo, Og, Pg, Pm, Pt, Sm, Sw, Tt, Tw, Wi. 43 how] Original spelling obscured and amended to "hou" in Pm. 44 remeidable] Rather "redeemable" in Cq, Da, Fr, Go, JH, Tr, Wi. 45 It is also provided in the Judicial law] Rather "In the Judicial law it is also provided" in Cg. 46 It is] Rather "Its" in Wi. 47 is] Rather "was" in Go. 48 in] Rather "by" in Tb. 49 against] Rather "at" in Mg. Rather "amongst" in Tr. Originally rather "that" but corrected by a later hand in Go. 50 stealers of men] Rather "men stealers" in Bw, Tw. 51 stealers] Rather "the stealers" in Bs, Cg, Cn, Cq, Da, Fa, Gr, HD, Hm, IA, Je, JH, Ka, Li, Ma, Mg, Pg, Pt, Sw, Tb, Tt, WH. Rather "sellers of" in Bt. Originally "that stealers" but corrected by a later hand in Go. 52 amongst] Rather "amongs" in Gr. Rather "among" in An, Bw, La, Lo, Sm, Tr. 53 as] Omitted in Mo, Og, Sm. 54 the crime is] Rather "this crime is" in Og. Rather "the crimes is" in Fr, Ma. Originally rather "the crimes is" but amended to "the crime is" by a contemporary hand in Je. 55 very] Rather "very very" in IA. 56 rare] After "rare" a contemporary hand has added "and so is unlawful" interlinear in Mg. 57 if] Rather "is" in Tr. 58 any] Omitted in La, Lo, Mo, Og, Sm, Tr. Originally omitted but "any" added by later hand in An. 59 unlawful] Rather "lawful" in St (text B). Also originally "lawful" but corrected by a later hand in Pg. Rather "outlawful" in Hm. Rather "unlawful and" in Tr. 60 restraint or unjust imprisonment] Rather "imprisonment or unjust restraint" in La. 61 or] Rather "and" in Cg, Fa, HD, IA, Li, WH. Omitted in Tb. Also originally omitted but added by a contemporary hand in Hm. Also originally omitted but "and" added by a later hand in Pg. 62 should] Omitted in Cq, Tr. Rather "sall" in Fa, WH. Rather "shall" in Bw, Cg, Cn, Da, HD, Hm, Li, Pg, Tb. 63 fall out] Rather

“falling out” in Tr. Rather “follow” in Bs, Bw, Cg, Cn, Da, Fa, Gr, HD, IA, Je, Ka, Li, Ma, Pt, Sw, Tb Tt, WH. Also originally “follow” but corrected by a contemporary hand in Hm. Originally rather “follow out” but “out” deleted in Pg. 64 it] Omitted in Og, Tr. 65 among (the/these/those) delinquencies to be punished] Rather “to be punished among delinquencies” in Cn. 66 among] Rather “amongst” in Bs, Cq, Fa, Fr, Go, IA, Je, JH, Ka, La, Ma, Mo, Og, Pm, St (text B), Sw, Tr, Tw, WH, Wi. Rather “amongs” in Gr, Hm. Originally omitted but corrected by the copyist in Pg. 67 the/these/those] Omitted in Lo. Originally omitted but “these” added by a later hand in An. Reads “the” in Bw, Cg, Cn, Da, Fr, HD, Li, Mo, Og, Sm, Tr, WH, Wi. Reads “these” in Bs, Bt, Cq, Go, Gr, Hm, Je, Ka, La, Ma, Pm, Pt, St (text B), Sw, Tb, Tt, Tw. Reads “those” in Fa, IA, JH, Mg, Pg. 68 delinquencies] Rather “delinquents” in Fa, IA. Also originally “delinquents” but changed to “delinquencies” by a later hand in Pg. 69 to be punished] Omitted in Tr. 70 according to the circumstances] Omitted in Tr. 71 according] Rather “accordingly” in Bs. 72 the] Rather “their” in Og. 73 circumstances] Originally rather “delinquencies” but corrected by the copyist in Mg. 74 and atrocity] Omitted and a space left in Bt. 75 and] Omitted in IA. 76 and] Omitted in Da. 77 equity] Rather “justice” in Cq. 78 thence] Rather “hence” in Bs, Bt, Bw, Fa, Gr, Hm, IA, Je, JH, Ka, Pg, Sm, Sw, Tt. Rather “there” in Go, St (text B). Rather “hein” in Tb. Rather “whence” in Da, Ma. Rather “licence” in Pt. Possibly originally omitted but “thence” added by a contemporary hand in Mg. 79 also] Omitted in JH. Rather “it is also” in Cq, Pm, Tw. Also originally “it is also” but “it is” deleted by a contemporary hand in Mg. Rather “it is” in Bs, Fa, Gr, Hm, IA, Je, Ka, Ma, Pg, Pt, Sw, Tb, Tt. Rather “is also” in Bt, Go, St (text B). Rather “is” in Bw. 80 a] Rather “ane” in Go, IA. Rather “the” in Bw. 81 action] Rather “nation” in Cn. 82 ariseth] Omitted in Bs, Bt, Bw, Fa, Gr, IA, Je, Ka, Ma, Pg, Pm, Pt, St (text B), Sw, Tb, Tt, Tw. Also originally omitted but “arising from this” added by a later hand in Go. Also originally omitted but “ariseth” added by a later hand in Hm and probably also in Mg. Rather “does arise” in HD. Rather “doth arise” in Cn, Li. Rather *“ffinis tituli secundi de libertate ejus que contrario”* in Cq. Rather “ariseth. This much of the first kind of rights to wit personal libertie. Of obligations (which is the 2nd kind) we shall speak 1o// in general” in Cg.

A. The 1693 edition gave this as paragraph 17; this was certainly a printing error. **B.** It is highly likely that Stair gave “in constraint” here, and that this term became corrupted to “of” in manuscript ι and was omitted independently in the Fragment, Laing and Loudoun manuscripts. “In” was omitted in the 1681 edition (possibly a printing error) and was not reintroduced in the 1693 edition. The 1759 and 1832 editions gave “of constraint” with reference to the lost “Manuscript G”. The 1826 and 1981 editions gave “of constraint” without comment. **C.** Stair’s authorial holograph clearly read “delinquency and crimes”. The words “and crimes” were omitted in the 1681 edition; it is not clear whether this was a deliberate change or a printing error. It was not reintroduced in the subsequent editions. **D.** This word was probably “punishable” in Stair’s authorial holograph, but was rather “punished” in the descendants of manuscripts τ and υ and in the Taylor manuscript. The 1681 and 1693 editions also gave “punished”. The (possible) change makes the statement more forceful; it is plausible that it was a deliberate change by Stair. The 1759 and 1832 editions gave “punishable” with reference to the manuscripts generally;

the 1826 edition gave “punishable” without comment. The 1981 edition gave “punished”. **E.** The word “so” was added here for the 1693 edition, presumably to better demonstrate that the following is a comparative example of the proposition of Scots law set out immediately before. The 1759 edition omitted the word “so”. It would probably be overly generous to assume that the preceding reference to the manuscripts given after “punishable” in these manuscripts was also intended to apply to this omission, not least because here the omission of “so” would also be correct to the first printed edition. Rather, it is probable that this was an error. “So” was omitted from the subsequent editions without comment. **F.** The word “and” was added for the 1693 edition, and was retained for the posthumous editions. **G.** This phrase was certainly “with much exactness” in Stair’s authorial holograph as well as the 1681 edition. The change to “with great exactness” was made for the 1693 edition, presumably for emphasis. The posthumous editions followed the wording of the 1693 edition. **H.** The omission and addition of “in” here appears to have been a parallelism. Stair’s original wording is thus unclear. The printed editions gave “in”. **I.** This was almost certainly “the crime is” in Stair’s authorial holograph, but was pluralised in the 1681 and 1693 editions. The posthumous editions followed this later wording. **J.** This phrase appears as “if any” in the descendants of manuscripts α, ξ and υ, but not in the descendants of manuscripts τ and π. It is plausible that Stair’s authorial holograph included “any”. If so, it was omitted for the 1681 edition, either deliberately by Stair or accidentally by the printer. The subsequent editions preserved this amended wording. **K.** The 1681 edition gave “among”; the 1693 and subsequent editions gave “amongst”. **L.** The phrase “to be punished” was moved to before “among delinquencies” for the 1693 edition. This was followed in the posthumous editions. **M.** Stair’s authorial holograph seems to have given a word here, plausibly “these” but also possibly “the” or “those”. This word was removed for the 1681 edition, for reasons that are unclear. It was not reintroduced in the subsequent editions. **N.** The word “thereof” was added here for the 1693 edition. This wording was preserved in the posthumous editions. **O.** It seems likely that Stair’s authorial holograph gave “and thence”, as did the 1681 edition. This was changed to simply “whence” in the 1693 edition. The 1759 and 1832 editions gave “and thence” with reference to the first printed edition and the lost “Manuscript G”, but this was also the wording in the William Hay manuscript. The 1826 and 1981 editions gave “and thence” without comment. **P.** The final phrase of this passage was almost certainly “also a civil action for damage and interest ariseth” in Stair’s authorial holograph. This was corrupted to “it is also a civil action for damage and interest” in manuscripts ξ and β; the copyist of manuscript ι reinstated the original wording, possibly by actively contaminating his text. Stair pluralised the end of this sentence for the 1693 edition, indicating for the first time that multiple actions could result from such an act. He also added emphasis with “frequently”. These changes were almost certainly deliberate. The 1759 and 1832 editions restored the singular and omitted “frequently” with reference to the 1681 edition and the lost “Manuscript G”, but the singular was also used in the other manuscripts that Gordon consulted, and “ariseth” also appeared in the James Hay and William Hay manuscripts. Gordon then added a footnoted comment: “We have now an excellent statute for the security of personal liberty, *parl.* 1700, c. 6.” This citation refers to the Criminal Procedure Act 1700 and so is an example of the editor’s updating the text. The 1832 edition expanded upon Gordon’s footnote: “The statute

1700 applies only to imprisonment upon a criminal warrant, or for an alleged crime. Where unjust imprisonment takes place, for an alleged civil debt or cause, the remedy is by an ordinary action of damages. See *Lesly v. Pringle*, 18. Nov. 1769, (11749); *Bell v. Maxwell*, 2. Nov. 1744, (13951). See also *Dict. v. Wrongous Imprisonment*." These references are to Morison's *Dictionary*. The 1826 and 1981 editions also followed the wording of the manuscript versions without explanation. The 1826 edition received Gordon's footnoted comment, although Brodie erred in copying the citation. He then commented further: "It is one, however, which has given rise to much difference of opinion. See the case of Andrew against Murdoch, 20th June, 1806, in Buchanan's Reports, Fac. Col. or Mor. Append. wrongous imprisonment. See the report of the same case in the House of Lords, Dow, vol. ii. p. 401, et seq. The cause was remitted back, but as yet there has been no proper report of the proceedings. See, however, Shaw's Reports, vol. ii. p. 399. See also the case of Duncan, 21st Jan. 1823, now under appeal." The case of *Andrew v Murdoch* (1806) can be found at Buchanan, *Reports of certain remarkable cases in the Court of Session and trials in the High Court of Justiciary* (1813), 1–59. The appeal to the House of Lords (heard in 1814) can be found at II Dow 401, 3 ER 909. The "case of Duncan" refers to *Duncan v HMA*, which was heard by the House of Lords on 28 June 1825 (J Wilson and P Shaw, *Cases decided in the House of Lords on appeal from the courts of Scotland, 1825* (1829), pp. 608–20; II Dow 401; 3 ER 909).

- i. D.43.29. (Cf. 1826 edition, which cites D.43.39. The 1759, 1832 and 1981 editions correctly cite this as D.43.29.)
- ii. C.9.5. (The 1759, 1826, 1832 and 1981 editions also cite C.9.5.)
- iii. The 1981 edition helpfully adds here (in squared brackets) a citation of Exodus 21:16.

APPENDIX II

List of the manuscripts of Stair, with the library, shelfmark, name used in this article, and abbreviation used in the article and Appendix I

Library or Archive	Shelfmark	Name used in this article	Abbreviation
Advocates' Library	Adv MS 24.2.10	Innominate Advocates' MS	IA
	Adv MS 25.1.5	Swinton MS	Sw
	Adv MS 25.1.7	Tait MS	Tt
	Adv MS 25.1.8	Kames MS	Ka
	Adv MS 25.1.9	Brousterland MS	Bt
	Adv MS 25.1.10	Primrose MS	Pm
	Adv MS 25.1.11	Strachan MS	St
	Adv MS 25.1.12	Colquhoun MS	Cq
	Adv MS 25.1.13	William Hay MS	WH
	Adv MS 25.1.14	Falconer MS	Fa
	Adv MS 25.3.2	Gordon MS	Go
	Adv MS 25.3.3	James Hay MS	JH
	Adv MS 25.4.17	Marchmont MS	Ma
National Library of Scotland	MS 3172	Hamilton MS	Hm
	MS 3721	Williamson MS	Wi
	MS 5058	Gray MS	Gr
	MS 5434	Jedburgh MS	Je
	MS 7116	Tweeddale MS	Tw
Aberdeen University Library	MS 559	Ogilvie MS	Og
	MS 592	McGachen MS	Mg
	MS 2097	Taylor MS	Tr
	MS 3066/7	Lindesay MS	Li
Angus Archives	M/1/13/1	Montrose MS	Mo
Edinburgh University Library	Dc.1.10	Home Drummond MS	HD
	Dc.4.24	Carnegy MS	Cg
	Gen 1427	Loudoun MS	Lo
	La.III.416	Pringle MS	Pg

Library or Archive	Shelfmark	Name used in this article	Abbreviation
Edinburgh University Library	La.III.417	Brown MS	Bw
	La.III.418	Laing MS	La
Glasgow University Library	MS Gen 1495	Pitcairn MS	Pt
Mitchell Library	SR 175/124141	Constable MS	Cn
National Records of Scotland	GD45/26/62	Dalhousie MS	Da
	GD135/171	Tarbat MS	Tb
	RH13/58	Fragment MS	Fr
Signet Library	MS 16	Smyth MS	Sm
	MS 32	Anderson MS	An
	MS 33	Burnside MS	Bs