

Famous English Canonists: III
JOHN AYTON (or ACTON) U.J.D. († 1349)

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Another well known name from the golden age of the Cambridge law school was that of John 'of Aton'. The name, however, requires some comment before proceeding to the man. In the printed edition of his work he is 'de Athon:' or 'de Aton', which Stubbs rendered as Ayton, on the assumption that it derived from the place in Yorkshire. Maitland said it was convenient to follow this spelling, though he pointed out that the papal chancery addressed him as 'Johannes Johannis de Acton'.¹ 'Acton' was used in the *Dictionary of National Biography*, and is now the preferred spelling, though more cautious writers have adopted the neutral 'Athon'. In view of the strong East Anglian bias of the Cambridge law school in the time of Bishop Bateman, it is possible that the name derived from Acton in Suffolk. But that is only so if the papal chancery may be trusted; Athon is not itself a variant of Acton. If, on the other hand, the spelling in the treatise is preferred – and it certainly seems more common in all the manuscripts – Ayton (formerly Aton²) remains a more likely identification than any other. Certainly the doctor's connections in his professional career seem to have been with the north rather than with East Anglia.

Ayton read Canon law at Cambridge and was a doctor of both laws by 1335.³ It is possible that he had also attended Oxford University, since he was a pupil of John Stratford (d. 1348), sometime Vice-Chancellor of Oxford, a distinguished lawyer who served as Dean of Arches before becoming Lord Chancellor (1330) and Archbishop of Canterbury (1333). Ayton calls Stratford *doctor meus*, and apparently wrote his gloss soon after Stratford became archbishop.⁴ But it is clear that he went on to study at Cambridge: one of the few surviving reports of a law disputation (*quaestio*) at Cambridge contains a debate between 'Johannes de Aton, doctor in decretis' and Walter Elveden in about 1330.⁵ It was probably around the time of his doctorate in Canon law that Ayton began his celebrated commentary on the provincial constitutions of the legates Otto and Ottobuono: indeed, he recalled twelve years later his days at Cambridge, 'lecturing, disputing, writing my gloss on the legatine constitutions, speaking with all the assurance of a man with a professorial chair at his back'.⁶ In between stints at Cambridge he

1. F. W. Maitland, *Roman Canon Law in the Church of England* (1898), p. 6.
2. See E. Ekwall, *The Concise Oxford Dictionary of English Place-names* (4th ed., 1960), p. 21. A less likely possibility is Eaton.
3. For biographical details, see A. B. Emden, *Biographical Register of the University of Oxford to 1500* (1957), vol. I, p. 11; *Biographical Register of the University of Cambridge to 1500* (1963), p. 2. He became a canon of Lincoln in 1329, apparently before ordination, and was Rector of Willingham by Stow, Lincs., from 1330 until his death.
4. Maitland, *Roman Canon Law in the Church of England*, p. 6.
5. Gonville and Caius College MS. 483, fo. 275; cited by Boyle, *op. cit.* in next note, p. 417; 105 Selden Soc. xvii-xviii. The MS. was left to the college, with a number of other books, by Elveden himself.
6. From his MS. tract *Septuplum*, quoted by L. E. Boyle, 'The "Summa Summarum" and some other English Works of Canon Law' (1965), *Proceedings of the 2nd International Congress of Medieval Canon Law* (Vatican City, 1965), 415-456, at p. 418.

served as Official of the Court of York, and he was in the service of the Bishop of Durham in the 1340s. The several references to York in his gloss suggest that he had lived there before completing it. He refers to a custom of York as to procedure, which 'seems to be confounded' by the text;⁷ discusses certain canons of York who receive distributions from Beverley,⁸ and refers to St Leonard's Hospital in York.⁹

Ayton is credited with a few unpublished works: *Septuplum* (written in 1346), a treatise on the seven deadly sins and on penance,¹⁰ and perhaps a *Summa Justitiae*.¹¹ But his fame rests on the substantial gloss which he compiled upon the legatine constitutions, the first major treatise on Anglican Canon law – not meaning, of course, the law of a separate Church, but legislation peculiar to the Church in England.¹² His text was the legislation promulgated at the councils held in London by the papal legates Otto (1237) and Ottobuono (1268).¹³ The second of these series in particular, comprising 53 canons, 'became the most important single collection of local law for the English Church'.¹⁴ The gloss likewise became a standard work, as is evident from the number of surviving manuscript copies. There can be no doubt about its authorship. Besides a prologue, in which 'I, John of Ayton, canon of Lincoln' refers to himself deprecatingly as 'among doctors of both laws hardly worthy to use up sheets of parchment' (*inter utriusque juris doctores vix dignus occupare membranas*), many of the individual notes are signed at the end with his name.

The glosses were first printed in Paris in 1504, in a beautiful edition which might well claim to be one of the most visually attractive lawbooks ever published for use in England.¹⁵ The main title-page has a large woodcut of St George and the Dragon, and bears the title *Constitutiones legitime seu legatine regionis anglicane cum subtilissima interpretatione domini Johannis de Athon*:. On the verso is a letter of dedication to William Warham, Archbishop of Canterbury, dated on the ides of September 1504. The letter is sent from the Parisian shop of Josse Bade (Jodocus Badius Ascensius), and refers to editorial work by Jean

7. C. Otto, c.26, *Tanto*, gl. Rescribere [fo. 52v in 1504 ed.].

8. C. Ottobuono, c.29, *Christiane*, gl. Pluralitatem [fo. 99v in 1504 ed.].

9. C. Ottobuono, c.48, *Volentes*, gl. Custodes hospitalium [fo. 106v in 1504 ed.].

10. Boyle, op. cit., at p. 418. There are two MSS. in Cambridge attributed to 'Aton': Gonville and Caius College MS. 282 ('Johannis de Atona septuplum cum commento', copy dated 1355); Trinity College MS. B. 14. 4 ('Septuplum Johannis de Aton cum glossa eiusdem'). (Cf. University College Oxford MS. 71; Eton College MS. 30; Lincoln Cathedral MS. A. 2. 1, which seem to be related.) See M. W. Bloomfield and others, *Incipits of Latin Works on the Virtues and Vices* (1979), p. 503, no. 5826, and p. 509, no. 5892.

11. An early note in Peterhouse MS. 255, ad fin., says he wrote *Septuplum*, a *Summa justitiae*, and also a treatise called *Qui bene praesunt*: M. R. James, *Catalogue of the MSS. in Peterhouse* (1899), p. 321. The *Dictionary of National Biography* says there is a MS. of the *Summa* in Corpus Christi College, but it is not to be found in James's catalogue. There are at least three medieval treatises found in England beginning *Qui bene praesunt*: see A. G. Little, *Initia Operum Latinorum* (1904), p. 195. In All Souls' College MS. 42, fo. 203v, are *Quaestiones et notabilia Johannis Athonis*, beginning with a typical Ayton pun, 'Abbas est nomen oneris et non honoris'; this seems to be an alphabetical digest from the gloss.

12. There is a discussion in Ayton's gloss as to whether England for this purpose included Scotland: C. Otto, pr., gl. Anglie [fo. 4 in 1504 ed.]; C. Ottobuono, pr., gl. Scotie [fo. 61v in 1504 ed.].

13. For this legislation, see F. M. Powicke and C. R. Cheney, *Councils and Synods relating to the English Church. II. 1205-1313* (1964), pp. 238-240, 738-743.

14. *Ibid.*, p. 739. The Latin text occupies pp. 747-792.

15. Description based on the Cambridge University Library copy (Sel. 3. 126²). In these descriptions the punctuation and capitalisation have been modernised.

Chapuis (Johannes Chapusus); the printers are identified in the letter and in the colophon as Wolfgang Hopyl and Johannes Confluentius. After this leaf there follow, on fifteen unnumbered leaves, a *triplex tabella* comprising: (i) a table of the subjects in Ayton's gloss, (ii) a table to Chapuis' notes, and (iii) a table of the incipits of the constitutions. There is then a half-title, printed within two chained circles supported by hawks: *Constitutiones legitime ecclesie totiusque regionis Anglicane ab legatis a latere summorum pontificum collecte et a domino Johanne de Aton diligenter explanate. Divinum opus omnibus iis qui sacris iniciati sunt: utile ac necessarium*. The text of the work occupies 120 numbered folios, printed with the gloss set around the text in black-letter type, with rubrics, paragraph-marks and headlines in red; it is followed (ff. 121-155) by the un glossed text of some constitutions of the archbishops of Canterbury from Langton to Islip. Another edition was produced by Hopyl in 1506, for sale in London by the publisher William Bretton and by booksellers in St Paul's Churchyard at the signs of the Holy Trinity (Henry Jacobi) and St Anne (Joyce Pelgrim).¹⁶This has a different title-page, with a coat of arms supported by unicorns, a woodcut also used for Lyndwood,¹⁷ and the date of the letter of dedication is altered to 1506.¹⁸ The half-title is also different, with woodcuts of the Trinity and the fathers; it is inscribed, *Legatine seu constitutiones legitime cum summaris atque justis annotationibus politissimis characteribus summaque accuratione rursus revise atque impressa . . . Venales habentur London' apud bibliopolas in cimiterio Sancti Pauli in signo sanctissime Trinitatis et Sancte Anne matris Marie*. These editions, though bibliographically distinct, were uniform with editions of Lyndwood's *Provinciale*, and Ayton was subsequently printed only as an addendum to that work. The latest edition (of both Lyndwood and Ayton) was printed at Oxford in 1679, and reprinted in facsimile in 1968.

Ayton cites a great many texts of the Canon and Civil laws, in the usual manner of the time. He is up to date, with frequent references to the Extravagantes of Pope John XXII (d. 1334), and to Johannes Andreae (d. 1348). He makes little use of case-law, though he does refer to a decision of the Rota against the prior and canons of St Bartholomew's, Smithfield.¹⁹ The legal authors most frequently cited are Andreae, Guy[do de Baysio] (d. 1313), occasionally cited as 'Archidiaconus', Hostiensis (d. 1271), Innocentius [Innocent IV] (d. 1254), and W. (probably William Durand, d. 1296); there are also multiple references to Accursius (d. 1263), Barth[olomeus] Brix[iensis] (d. c. 1258), Ber[nardus de Parma] (d. 1266),²⁰ [Bernardus] Compostellanus (fl. 1200), Goffredus [de Trano] (d. 1245), Johannes Monachus [Jean le Moigne] (d. 1313), also cited as Cardinalis, and Raymundus [de Pennafort] (d. 1275). There are in addition references to the Bible, the fathers, and to various classical and medieval authors. Thus, in a discussion of sexual misbehaviour, Ayton prays in aid such diverse authorities as Horace, Ovid, St Jerome and Giraldus Cambrensis.²¹ And in discussing whether it is good to make vows, he assembles the opinions of Aquinas,

16. Description from the copy in St Catharine's College Library, Cambridge (H. II. 27²). This has the ownership inscription 'Ricardus Cowall Anno Domini 1527'. The foliation in this edition is very irregular, and renders the tables nearly useless.

17. According to E. G. Duff, *A Century of the English Book Trade* (1905), p. 18, these are Bretton's arms. But they appear to have been originally Lyndwood's: 1 and 4, *Argent a fess crenelly between three fleurs de lys sable* (Lyndwood); 2 and 3, *Crusilly a unicorn rampant* (? Donne).

18. The text of this version is printed in P. Renouard, *Bibliographie des impressions et des oeuvres de Josse Badius Ascensius* (1908), II, pp. 52-53.

19. C. Otto, c.6, *Sacer ordo*, gl. Titulo [fo. 9 in 1504 ed.]: 'Et sic fertur determinatum per omnes auditores palatii contra religiosos sancti Bartholomei London'.

20. Some citations are 'secundum beatum Bernardum'.

21. C. Otto, c.16 *Licet ad profugandum*, gl. Contagium [fo. 34 in 1504 ed.]. The citation to Giraldus Cambrensis is 'Geraldus Menevensis archidiaconus li. de salubri exhortatione ad continentiam'.

Isidore, Anselm and Augustine.²² However, as Maitland warned,²³ there are in the received text a number of obvious interpolations from later authors; some caution is therefore necessary in distinguishing Ayton from later accretions. Ayton seems to have had little awareness of the secular law of England, or of English history, for he identifies a reference to English legislation in the Constitutions of Ottobuono (1268) as the Statute of Gloucester (1278) or Westminster II (1285).²⁴ There is, however, an interesting interpretation of the words *salvo domini regis privilegiis* as exempting the clerks of the Chancery from ecclesiastical sanctions for issuing writs for prohibition.²⁵

Maitland was not very impressed by Ayton's work: 'I should suppose that John of Ayton was very much Lyndwood's inferior in all those qualities and acquirements that make a great lawyer. He is a little too human to be strictly scientific. His gloss often becomes a growl . . .' He gives as an example Ayton's impish derivation of the word 'official' from the Latin *officio* (to obstruct).²⁶ Mgr Boyle, on the other hand, describes the gloss as 'magnificent'.²⁷ The middle way is to see Ayton as first and foremost a teacher. Although it is unlikely that the work originated in lectures, it is written in the idiom of the classroom; as a law teacher, Ayton knew the truth of the aphorism, *Longum sit per precepta, breve tamen et efficax per exempla*.²⁸ The teacher indulges his humour, and his fondness for apposite classical aphorisms,²⁹ and tries to inculcate legal logic without losing the student's attention by putting forward the occasional provocative conclusion. For instance, a constitution of Otto ordered that clergy should not keep concubines publicly in their houses, but should discard them within a month. Dr Ayton points out that this does not extend to clergy who keep concubines privately (*secrete*), whether in their own houses or elsewhere; that being seen a few times in public with a concubine is not enough to constitute 'keeping'; and also that the penalty is avoided if a clerk keeps a concubine off and on for a year or more, provided he never keeps her for a whole month at once.³⁰ Here we might accuse our glossator of being too 'strictly scientific' in his literal approach to legislative meaning; but more likely we see a professor deriving some amusement from the timeless problem of bad draftsmanship. Elsewhere, he favours an equitable construction: for instance, where clergy are forbidden to wear (*portare*) coifs, *portare* should not be construed to include carrying them in a purse for use at night.³¹

In addition to his legal learning, Ayton provides some sidelights on contemporary English usages and manners: for instance, that a penitent was not required to kneel at confession but could doff his hat and bow his head.³² He indicates that although priests were supposed to have a larger tonsure than deacons, this was not the current practice;³³ but he does suggest that *tonsura honesta*

22. C. Ottobuono, c.8, *Quam indecorum*, gl. Professionis vinculo [fo. 72v in 1504 ed.].

23. Maitland, *Roman Canon Law in the Church of England*, p.7.

24. C. Ottobuono, c.22, *Cum mortis*, gl. Cum approbatione regis [fo. 95 in 1504 ed.].

25. C. Ottobuono, c.6, *Cum honestatis*, gl. Privilegiis [fo. 70v in 1504 ed.].

26. Maitland, *Roman Canon Law in the Church of England*, pp. 9-10.

27. Op. cit., p. 418.

28. Quoted from Seneca (Ep. Lucil. VI, 5) by Ayton at C. Otto, c.22, *Quid ad venerabiles*, gl. In exemplum.

29. He is fond in particular of Seneca, and cites his letters to Lucilius in several places: e.g. last note.

30. C. Otto, c.16, *Licet ad profugandum*, gl. Detinent, Concupinum [ff. 35-35v in 1504 ed.].

31. C. Ottobuono, c.5, *Cum sancti*, gl. Portare [fo. 68v in 1504 ed.].

32. Unless this is another instance of literal construction: C. Ottobuono, c.2, *Quoniam ceca*, gl. Cum reverentia.

33. C. Otto, c.14, *Quoniam de habitu*, gl. Decentes [fo. 30v in 1504 ed.].

implicitly includes shaving the beard, 'which certain modern clerks eagerly cultivate with abominable freedom, contrary to law.'³⁴ Whatever the older opinions, we are told that nowadays baptism must be performed in the name of the Father, the Son, and the Holy Ghost, and not merely in the name of the Trinity or in the name of Christ.³⁵ In speaking of the excessive shortness of clothes, Ayton gives as an example the fashions worn by the present-day gentry, barely down to the knees.³⁶ And of 'ridiculous' clothing, he opines that this refers to the dress of actors, comics and fools, which was especially designed to make men smile or laugh;³⁷ and then tells the story of someone 'inordinately disguised' at a great joust, who was asked in reproachful terms, 'Sir, whose fool are you,' and replied, 'I am the fool of the abbot of the monastery of the Blessed Mary of York'.³⁸ Yet, if Ayton was not much impressed by changing fashions, he was no ascetic either. He valued companionship; 'nothing is worth having without friends to share it'.³⁹

Although Ayton's style of exposition might be characterised as 'legalistic' in the least attractive sense of that term, the whole book is designed to stimulate the mind, even to entertain. Indeed, the book ends with a riddle, which no one has yet solved: 'Hoc itaque presens meum opusculum in significatione triplici istarum figurarum 9, 2, 9, 5, 4, laboriose descriptum tam scolares quam practici benigne si placet acceptent'.⁴⁰ It must be centuries since Ayton's efforts were accessible to *practici*. Unlikely to find a modern editor, it is sad that its almost impenetrable abbreviated Latin should now protect it so inviolably from being read by more than a tiny and dwindling body of *scolares*.

34. C. Otto, c.14, *Quoniam de habitu*, gl. Tonsuram [fo. 30v in 1504 ed.].

35. C. Otto, c. 3, *Ad baptismum*, gl. Exponent [fo. 9 in 1504 ed.].

36. C. Ottobuono, c. 5, *Cum sancti*, gl. Brevitate nimia [fo. 68v in 1504 ed.]: 'ad modum forte armigerorum nostri temporis diversimode pompantium vix usque ad poplices.'

37. C. Ottobuono, c. 48, *Volentes*, gl. Ridiculosas: 'exemplo histrionis jocularis vel fatui quales proprie ad hominis risum et derisum parantur.'

38. *Ibid.*: 'Unde ad immensam burdam astantium fertur quendam fatuum uni magnati inordiante degysato sic anglice impropersasse domine cujus stolidus estis vos. ego ci. sum stolidus abbatis monasterii beati Marie Eborum.'

39. 'Nullius boni sine socio quasi omnimoda est possessio', borrowing from Seneca (Ep. Lucil. VI, 4), at C. Ottobuono, c. 41, *Monachos*, gl. Periculosum.

40. Peroratio domini Joannis Athonensis [fo. 120v in 1504 ed.].