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Book Review (reviewing James Conway Davies, Catalogue of the Manuscripts in the Library of the Honourable Society of the Inner Temple (1972))

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The second essay covers more traditional ground. Hurst records the now familiar story that antebellum discussions revolved around federalism: whether states or the federal government should have control of the banking system, giving the usual prominent space to the Second Bank of the United States. After the Civil War, this issue was replaced by the issue of whether the supply of money should be controlled by the federal government or a private banking system, although, as Hammond has told us, the issue in the formation of the National Banking System was the antebellum rather than the post-bellum issue. The public-private issue has been resolved, if that is not too strong a word, by a kind of compromise; the Federal Reserve System is somewhere between the government and the private economy. The story is told with an unusual breadth, but not with unusual clarity.

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J. Conway Davies, Editor, *Catalogue of Manuscripts in the Library of the Honourable Society of the Inner Temple*. 3 vols., New York, Oxford University Press, 1972 [1973]. xviii, 1577 pp. \$120.00.

Among the many reasons why the sixteenth century is so commonly taken as a dividing point in English history, legal and otherwise, is that the historical sources change character in a fundamental way. Medieval legal history is written mainly upon the basis of official and unpublished records. From about the middle of the sixteenth century, however, printed law reports, practice books and other sources begin to be sufficiently numerous that a good deal of history—too much in fact—has been written without resort to manuscript sources.

We have been given some telling illustrations lately of how costly it has been to place exclusive reliance upon the printed law reports. J. H. Baker has used unpublished reports to put in question the conventional understanding of *Slade's Case* (1603), the doctrinal watershed of the law of contract.¹ On the basis of another manuscript, Charles Gray has suggested that Lord Coke's famous assertion of judicial supremacy in *Bonham's Case* (1610) may have been an afterthought of *Coke's Reports*, not voiced in the judgment itself. Gray notes "that manuscript law reports from approxi-

1. Baker, "New Light on *Slade's Case*," 29 *Camb. L.J.* 51, 213 (1971); see also Baker, "Coke's Note-books and the Sources of His Reports," 30 *Camb. L.J.* 59 (1972).

mately 1580 to 1640' are available in great volume, in the British Museum and elsewhere. Many cases that never found their way to print are reported in manuscript, and many printed cases, including famous ones, appear in alternative manuscript versions, often clearer or more complete versions."² Unpublished law reports and yearbooks constitute only one slim genre of the surviving manuscript sources. The stock includes treatises, tracts, readings, commonplace books, diaries and correspondence, registers, form books, pleadings and other litigation documents, in addition to the whole range of official documents and records.

Until recently two factors combined to deter historians of early modern English law from making proper use of manuscript sources. First, manuscripts are unique. *Coke's Reports* can be read anywhere in the world, whereas only the British Museum has Gray's manuscript report of *Bonham's Case*. This obstacle has particularly disadvantaged American and other scholars distant from the principal British archives and collections. Fortunately, technological advances have been diminishing the practical difficulty of working with manuscripts. The Xerography installations at major universities and libraries can now produce a full-size print-out from microfilm at a cost of pennies per foot of paper. Consequently, manuscripts can be searched on film, then transformed into paper photocopies for close work. A project is now underway to put the principal legal collections on microfiche.³

The other drawback to work with manuscript sources has been the lack of adequate calendaring and indexing. This is especially troublesome for unofficial collections whose contents lack the regularity of many of the classes of official documents. The British Museum calendars were mostly prepared early last century and leave much to be desired. Entries are sometimes opaque ("A Law Treatise in 59 Chapters"⁴) and the indexing inconsistent. For the manuscript holdings of the Inns of Court, including the great collections of Lincoln's Inn and the Inner Temple, the calendars have been worse.⁵ Consequently, the Benchers of the Inner Temple have made an important contribution to legal historical scholarship in commissioning and publishing this calendar of their manuscripts.

Most of the Inner Temple's 772 volumes of manuscripts were acquired by bequest or gift in the eighteenth and early nineteenth centuries, which explains in part why the great strength of the collection is in seventeenth- and eighteenth-century material. The collection is divided into five nomi-

2. Gray, "Bonham's Case Reviewed," 116 *Proceedings of the Am. Philos. Soc.* 35 (1972).

3. "English Legal Manuscripts on Microfiche," prospectus distributed by Inter Documentation Company AG, Zug, Switzerland.

4. Harley MS 4560.

5. See Baker, "Unprinted Sources of English Legal History," 64 *Law Lib. J.* 302, 311 (1971).

nate classes — the Petyt, Barrington, and Mitford Collections, the Records of the Inner Temple, and the Miscellaneous Manuscripts.

The Petyt Collection comprises half the total. Of its 386 volumes, 252 were bequeathed by William Petyt (d. 1707); the remaining 134 were not derived from Petyt and were improperly grouped under the Petyt pressmark later in the eighteenth century. Petyt figured among the main practitioners in the constitutional debates of the quarter century from 1680.⁶ Of the 252 volumes of manuscripts derived from Petyt, 173 are primarily extracts from public, parliamentary and other records, mostly transcribed for Petyt in the course of his researches while he was Keeper of the Records in the Tower of London. Furthermore, 83 of the 134 so-called Petyt manuscripts acquired subsequently are also transcripts of no particular importance (from the House of Commons Journals). Since most of the original records survive and are housed a few blocks away from the Inner Temple, the decision to calendar this material for publication seems dubious. The *Catalogue* could have been shrunk by several hundred pages, and its steep price correspondingly reduced, if it had calendared transcripts only of lost originals.

The original manuscripts in the Petyt collection are diverse, extending back to medieval times, and including charters, correspondence, diplomatic and conciliar material, tracts and treatises, and law reports. The non-Petyt-derived manuscripts include 14 volumes of the judge's papers of Martin Wright, justice of King's Bench, dating from the years 1740-1754. The Barrington Collection of 57 volumes consists mainly of law reports, commonplace books and formularies predominantly of seventeenth-century provenance. The 79 volumes of the Mitford Collection, deriving from the manuscripts of Thomas Sewell, Master of the Rolls from 1764 to 1784, and John Mitford, author of the classic treatise on equity pleading, comprise an enormous fund of sources for the history of eighteenth-century equity: unpublished reports, abridgments and annotations of published reports, essays, commonplace books and litigation documents. The collection also contains Mitford's fee books for the years 1786-1800 and papers from his service as law officer of the crown and as Chancellor of Ireland.

The Records of the Inner Temple are documents concerning the affairs of the Inn,⁷ mostly in the seventeenth and eighteenth centuries. The Library's remaining holdings, 211 volumes of Miscellaneous Manuscripts, range beyond the law to literary, scientific, mathematical and devotional⁸

6. See J.G.A. Pocock, *The Ancient Constitution and the Feudal Law* 186 ff. (1967 ed.).

7. Surviving Inn records not in the Library are not calendared in this *Catalogue* (pp. 61, 68-70); the Miscellaneous Manuscripts group also contains some such material (e.g., pp. 1167-69, 1184-1201).

8. Including a grace book dating from 1505 to which the librarian attached the following memorandum in 1932 (p. 1169): "This book was in use in the Hall until Trinity term, 1932, [and] at that time its principal use was the banging of the table with it as a signal for Grace. The Rt. Hon. Sir Lancelot Sanderson, Treasurer in 1932,

material. Among the post-medieval⁹ legal items are sources bearing on American and Canadian colonial history and material which lies behind the influential published treatises of Francis Buller on *nisi prius* practice and Michael Dalton on the duties of justices of the peace and sheriffs.

The *Catalogue* was the work of an elderly compiler who did not live to see it through the press; perhaps his untimely death explains some of the unsatisfactory aspects of the work. The 167-page introduction seldom cites the calendar entries being discussed, making it awkward to correlate the two parts. Calendar entries are generally brief headings; marginalia on the manuscripts seem unduly to have interested the editor; the criteria by which some items were selected for more detailed description are not to be fathomed. Most seriously, the 227-page index—the critical part of any such work—is badly deficient, especially its subject headings. Omissions and mistaken entries abound.¹⁰ The user cannot rely on the index to lead him to all relevant entries. He should consult as many headings as might conceivably be germane, and he would be well advised to do some browsing as well.

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decided against its use for that purpose, and by his order a dummy book of blank leaves was made up, resembling it as nearly as possible in outward appearance, and it took the place of this book for the first time in Trinity term, 1932."

9. For medieval manuscripts in all the inns see I N. Ker, *Medieval Manuscripts in British Libraries* (1969).

10. I report only a few of the discrepancies which caught my eye. Such lists do not make good reading, but users need some indication of what they must guard against. There is no heading for "jury" or "grand jury." The heading "trial" omits the trial of Mitchell, calendared on page 652; the heading "commissions of oyer and terminer" omits two entries on page 698. Under "peace, breach of" an entry on page 726 is reported but not one on page 722. The heading "assizes" omits two items calendared on page 802, the heading for "sheriff" omits two on page 930, another on page 931. Under "pardon" is a mistaken reference to page 713, probably a misprint for page 715, on which there are two relevant entries.

Baker has compiled a remarkable list of mistakes and omissions concerning reports and readings; users of the *Catalogue* should consult his review in 89 *L.Q.R.* 424 (1973). One must wonder what has gone wrong when the author of a posthumous preface to the *Catalogue* can think to claim that "the whole of the printed proofs were checked with the typescript and references, and against a substantial portion of the manuscripts where required" (p. vii).