

# *Matthew Hale on Judges and Judging*

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Aside from what stands as 'the first book with any pretense to be a comprehensive account of the growth of English law',<sup>1</sup> Sir Matthew Hale left an impressive collection of manuscript texts on various aspects of common law, sheriffs accounts, parliamentary jurisdiction, etc., some of which were published after his death, during the late seventeenth and early eighteenth centuries. In addition he wrote several tracts on natural science as well as a small number of religious and moral contemplations, including a lengthy letter of spiritual advice to his grandchildren, whom he and his wife raised after the death of the children's parents.<sup>2</sup> Now a brief diary written while he was riding circuit in 1668 can be added to Sir Matthew Hale's bibliography. The holograph diary, Osborn file, Hale, was acquired in 1972 by the Osborn collection in the Beinecke Rare Book and Manuscript Library, Yale University, as part of the papers of Sir Charles Blagden (1748–1820, Secretary of the Royal Society, 1784), a descendant of Sir Matthew Hale.<sup>3</sup> It is a small (7½" x 5¼"), unfoliated paper book of sixteen leaves written in ink. There are in the same collection, among other pieces too numerous to list here, several unpublished letters relating to Hale's standing for a seat from Oxford in the parliamentary election, April 1660.

That Sir Matthew Hale emerged unscathed from the mid-century political upheavals is not surprising but nevertheless a tribute to his neutrality and to the endurance and flexibility of the English legal system. Perhaps because of his experiences in the 1640s and 1650s Hale believed that 'legal continuity was vital for civic identity'.<sup>4</sup> And for him, too, the strength of the system necessarily depended on the impartiality of its judges.

Sometime after his elevation to the bench in 1654 Hale formulated eighteen Rules to be observed in his conduct as judge. The Rules, individually and collectively, prescribe action that if taken will assure impartiality coupled with compassion – honesty, and lack of prejudice and bias.<sup>5</sup> By Hale's Rules God was the only arbiter and Hale would rest on God's direction, not his own. In the diary, also, Hale discusses conduct requisite for the office of judge, claiming (from a biblical base) that the paramount consideration is that judges 'judge not for man but

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for God, and therefore the heart that does most entirely fear God and love justice is under the greatest and most solicitous care lest he should injure the God he fears as well as man whom he loves by any oversight or mistake in his act of judicature'. Hale's reliance on God for guidance in writing decisions does not appear to be a euphemism for self-reliance, but it raises the question of what views he brought to his reading of the biblical texts. He was a deeply devout man, more concerned with the spirit of religion than with the structure of the Church, but a man who drew his beliefs from more than one body of theology. His world-view was an amalgam of the religious currents of the early seventeenth century, embracing the theology of mainstream movements in the Church of England and the Presbyterian groups, as well as elements of Quakerism and the Puritan movement. A close friend in later life, the Presbyterian divine, Richard Baxter, described Hale's behaviour in church as 'conformable but prudent'.<sup>6</sup>

Hale attributed the principles on which he based his judicial opinions and the precepts that guided his decisions to the tradition of Judeo-Christian law revealed in Scripture. He writes repeatedly of the immediate and practical guidance available in the biblical texts but nevertheless fails to reveal the criteria for his selection of scriptural quotation. Was he a literalist? His handling of the trial of the witches in 1664 smacks of a fundamentalist interpretation of the Bible – or an evasion of responsibility in confronting the term 'witch'. There is little modern scholarship on Hale's religious views and little, too, on the relationship of those views to his politics. Could it have been opportunism that enabled him to move easily from serving monarchy to commonwealth – and back again; or was Hale attractive to both Cromwell and Charles II because he in fact came close to that ideal of impartiality he held so dear? Whatever the reality of restoration politics, Hale, in the employment of his judicial office saw himself accountable to God; in turn he knew he received from God the direction, assistance, and guidance necessary for wise and impartial judgments. And as he judged others, so Hale knew he too would himself one day be judged.

Matthew Hale, 1609–1676, lost his parents at an early age and was subsequently educated by the vicar of Wotton-under-Edge, a teacher selected by his Puritan guardian, Anthony Kingscot.<sup>7</sup> Expecting that he would become a clergyman Hale was sent to Oxford in 1626. After three years at university he went to London where he fell under the influence of John Glanville, later Serjeant Glanville. In November 1628 Hale was admitted to Lincoln's Inn and in May 1636 was called to the bar, embarking on what was to become a most distinguished career in English law.<sup>8</sup> He was active during the Long Parliament period,

counsel for the Crown side more often than not (he later defended the minister, Christian Love, tried in 1651 for plotting to raise forces against the government). He may have been an advisor to Thomas Wentworth, Earl of Strafford, in the impeachment proceedings against him in 1640–41, and certainly was counsel for Sir John Bramston in 1641.<sup>9</sup> In November 1643 the Upper House assigned Hale to counsel for Archbishop Laud. Six years later he subscribed to the ordinance of 11 October 1649 required of all lawyers. In 1654 Hale was created Serjeant at Law and shortly thereafter a justice of the Court of Common Pleas. He held a seat in Parliament in the 1650s for Gloucester and in 1659 was returned for Oxford University. Active in the legal side of the negotiations for the restoration, Hale's interest in government was clear and he was again returned for Gloucestershire in the Convention Parliament, April, 1660.<sup>10</sup> On 7 November the same year he was knighted and appointed Chief Baron of the Exchequer, a post in which he continued to serve until May 1671, when he was created Chief Justice of the King's Bench. His health failed in late 1675, and in February 1676 he left office and died on Christmas day that year.

The diary printed below reveals the clarity of Hale's thought as well as the depth of his religious convictions, and his faith in the practical application of biblical injunctions. The influence of puritanism on Hale is evident not only in his prescripts for moderation in this diary, but also in the admonitions to his grandchildren. Not a strict Calvinist – 'Grace is never denied to them that ask it' – Hale supported the Presbyterian movement to the extent of twice introducing a bill in Parliament for comprehensive presbyterianism; the first was cast out at the second reading in 1660,<sup>11</sup> and the second, drafted by Lord Keeper Orlando Bridgman and Hale in 1668 after the fall of Clarendon, was defeated at the outset.<sup>12</sup>

There is no mention in the diary of justices deputed by and responsible to the King as God's viceregent, James I's theory delivered to the judges of Star Chamber in 1616.<sup>13</sup> The Civil War and Interregnum had for the time freed the judiciary from the image of judges under the throne and ameliorated the dictum of primary and absolute accountability to the crown. The only mention of the king in Hale's diary, namely 'the prince' is with regard to Hale's commission to hear cases of injuries committed against the prince's law and subjects.

Sir Matthew Hale had a reputation as a good circuit judge. In 1656, when he was a younger man of less experience, it was said of Hale by Major General Edward Whalley: 'I am persuaded that never was any judge on this circuit got more applause, more of the affection of honest

men than judge Hale who as he is unquestionably able, so upon good grounds I judge him a godly man . . . ' The circuit in 1668 afforded Hale the opportunity to re-examine his thought on capital punishment. In St. Edmundsbury he found 'A jail filled with malefactors of the greatest kind'. And from his experience with these cases he concluded 'that although the temper of my nature inclines me much to compassion and lenity, yet I find there is a necessity of severity, especially when enormities abound, and towards those especially who are guilty of blood'. The diary is printed below in full. I have kept the biblical language of Hale's prefatory scriptural quotations but in the text generally have modernized spelling and, in a very minimal way, punctuation.

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### SIR MATTHEW HALE'S DIARY

#### [f.2] *Circuitus Autumnalis 1668*

Exod. 23:2, 3, 6, 7, 8<sup>14</sup>

[2] Thou shalt not follow a multitude to do evil; neither shalt thou speak in a cause to decline after many to wrest judgment.

[3] Neither shalt thou countenance a poor man in his cause.

[6] Thou shalt not wrest the judgment of the poor in his cause.

[7] Keep thee far from a false matter; the innocent and righteous slay thou not, for I will not justify the wicked.

[8] And thou shalt take no gift, for the gift blindeth the wise and perverteth the words of the righteous.

Deut. 16:18, 19, 20

[18] Judges and officers shalt thou make thee in all thy gates which the Lord thy God giveth thee throughout thy tribes, and they shall judge the people with just judgment.

[19] Thou shalt not wrest judgment, thou shalt not respect persons neither take a gift, for a gift doth blind the eyes of the wise and perverteth the words of the righteous.

[20] But that which is altogether just shalt thou follow, that thou mayest live and inherit the land which the Lord thy God giveth thee.

[f.2v] 2 Chron. 19:5, 6, 7, etc.

[5] And he set judges in the land throughout all the fenced cities of Judah, city by city.

[6] And he said to the judges, take heed what ye do; for ye judge not for man but for the Lord, who is with you in the judgment.

[7] Wherefore now let the fear of the Lord be upon you, take heed and do it for there is no iniquity in the Lord, nor respect of persons, nor taking of gifts.

[9] And he charged them, this shall ye do in the fear of the Lord, faithfully, and with a perfect heart.

[11] Deal courageously and the Lord shall be with the good.

Exod. 18:21, [22]

[21] Moreover thou shalt provide out of all the people able men such as fear God, men of truth hating covetousness.

[22] And let them judge the people, etc.

Levit. 19:15

[15] Ye shall do no unrighteousness in judgment, thou shalt not respect the person<sup>15</sup> of the poor nor honor the person of the mighty, but in righteousness shalt thou judge thy neighbor.

[f.3] Deut. 13:14

[14] Then shalt thou inquire and make search and ask and behold if it be truth and the thing be certain, that such abomination is wrought among you.

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The office of a judge, it is true, is a necessary office and employment, for without it common justice cannot be administered; and without the administration of justice a people would soon become a heap of confusion and disorder, a forest of wild beasts.

But most certainly it is a careful and a difficult employment so that it is a wonder that any prudent man will accept it, and a greater wonder that any man in his right judgment should desire it or not desire to decline and be delivered from it. For 1, it is business that is full of labor and pains; 2, it is a business that requires an incessant attention and animadversion. Any little inadvertence or want of attention endangers the justice of a cause. 3, it is a business that requires an entire absence of affection and passion which will easily occasion a wresting of judgment. 4, it is a business that requires a firm and a steadfast resolution and courage to do what is just. 5, it is a business that requires a mind steadily [f.3v] and constantly possessed with a love of justice. 6, it requires a mind constantly awed with the fear of almighty God and sense of His presence; the want or any intermission of the very exercise of this fear will endanger a treading awry sometime or other in judgment. 7, it is a business that requires knowledge, memory, and judgment of the laws

whereby he is to judge, without which a man otherwise habitually just, and fearing God also, will be but a very unfit judge. 8, it is a business wherein a man shall be sure to displease some and many times all parties, and let him judge never so justly yet he shall never escape the imputation of partiality and injustice from some party. 9, it is a business wherein a man is easily, and it may be irreconvertably, traducible notwithstanding his greatest integrity and innocence; and against such traducings he has rarely any remedy but patience, the witness of his own conscience, and an appeal thereof to the righteous judge of [f.4] heaven and earth who is not bound to vindicate the innocence even of a righteous man at all times but at such a distance of season as in his wisdom he shall judge fittest. 10, but which is yet greater than all the rest: many businesses that come in judgment are so difficult to discover, so palliated with circumstances, so hidden and disguised under various junctures that the truth is scarcely investigable or may be so disguised with circumstances that it many times exceeds the industry or deceives the judgment of a good, a wise, a discerning or just man to give a sentence exactly proportionable to the true native justice of the cause.

11, and yet possibly even the matter may be such as the error is irreconvertible and irreversible in this world; upon this account many an innocent man has suffered even death itself and many a guilty man escaped it even by the sentence of those men that from their heart abhorred injustice, the causes being clothed with such proofs, circumstances, and junctures that many times may [f.4v] deceive a most upright and judicious heart.

And yet further, 12, the great consideration of all is that which Jehoshaphat puts his judges in mind of:<sup>16</sup> that they judge not for man but for God, and therefore the heart that does most entirely fear God and love justice is under the greatest and most solicitous care lest he should injure the God he fears, as well as man whom he loves, by any oversight or mistake in his act of judicature. And if he at any times finds or discovers any error of that kind committed by him, it is most grievous and troublesome to him though he never intended the least injustice in what he does. And certainly if an invincible mistake be so full of trouble to an honest mind, how much ought a man to be incomparably solicitous that he do not either willfully or by any gross neglect pervert that judgment wherein he does or should act as almighty God's substitute and [f.5] consequently should, with all imaginable care and industry, endeavor that his judgment be conformable to the justice of him whose person he sustains in that office so that he may reasonably persuade himself that his judgment and sentence is such as would be approved by the God of righteousness, wisdom, and justice.

Since, therefore, it is so careful a business these things become a man of such employment:

1. To see that his call be good and that he climb not up to that office by his own seeking but is brought to it by a due call, even against his will, rather than by a forwardly aspiring after it.

2. To see that his abilities be in a good measure proportionable to the weight of the employment before he undertake it.

3. In the exercise of it to be careful to set almighty God before him to have the fear of his great name and presence actually sitting upon the seat.

4. To call upon the name of that great God whom he thus fears, imploring [f.5v] His direction, guidance, assistance, wisdom, strength in the exercise of that employment that is of so great difficulty and yet wherein the honor of God and the good of mankind is so immediately concerned. That since it is a trust delegated by Him, and the execution thereof under so strict an<sup>17</sup> inspection of that God for whom I ought to judge, I may obtain His guidance and assistance therein that I may perform the duty I owe herein to him by the strength and direction I receive from Him and with approbation by Him.

5. That since it is a business of that importance and yet difficulty a man may be careful to keep a temperate body, with great abstinence and moderation in eating and drinking, and a temperate mind totally abandoning all manner of passion, affection, and perturbation that so he may come to the business with clearness of understanding and judgment.

[f.6] 6. That a man avoid all such temptations as may be an occasion of perverting his judgment, as solicitations, prepossessions, gifts, kindnesses, addresses for or against any cause or person.

7. That he avoid all precipitancy and haste in examining, censuring, judging, [that he] pause and consider, turn every stone, weigh every question, every answer, every circumstance, follow the wise direction of Moses in a case of importance to inquire, ask, diligently inquire, behold if it be true and the thing be certain;<sup>18</sup> all the senses, all the methods of disquisition are little enough in cases of great moment or difficulty, especially where a man can err but once.

8. If upon the best inquisition a man can make, the scales are very near even or it stands near a measuring case the sentence or direction of absolution is fitter to be given than the sentence of condemnation *tutius probate in mise[re]cordia quam in severitate* especially where the sentence is *ultimum supplicium*, [f.6v] for though to condemn the innocent and to acquit the guilty are both abomination unto God, yet that is where a sufficient evidence of guilt appears, but *in obscuris et in*

*evidentibus praesumitur pro innocentia* and I had rather through ignorance of the truth of the fact or the unevidence of it acquit ten guilty persons than condemn one innocent. For the hand of divine justice in the way of His providence may reach in after time a guilty person, or of evidence to convict him, he may hereafter repent and amend; but the loss of the life of an innocent is irrecove[r]table in this world. But this must be intended where upon a sincere, judicious, impartial, inquiry the evidence is inevident, not where a man out of partiality or vain pity will render use to himself to ease himself of doing justice upon a malefactor.

9. In cases especially of life it is [f.7] ordinarily a safe rule not to condemn a person as guilty upon such evidence as might befall the most innocent person living; it is a great adventure in any judge that out of the abhorrence he has of a crime imputed barely upon circumstances to conclude a person guilty, which circumstances may nevertheless befall a person innocent. For many times there falls out such a contexture of circumstances even to an innocent person that may by the apposition of one thing with another seem to infer a strong presumption of guilt, and this was the reason of that wise Jewish law that no man should suffer death but under the testimony of two witnesses. They expected a full evidence to convict such a malefactor, and would not pass that sentence only upon connections and implorations of circumstances that contained not in themselves a full evidence.<sup>19</sup>

[f.9] Huntingdon.  
6 Sept. '68

When a man is about an employment whereunto he is lawfully called he may often observe a special enabling providence accompanying him. I began to fall ill at Aylesbury, yet I thank God I had such relaxations as rendered me fit to go through my business there and at Bedford. It grew upon me in my journey to Huntingdon and on this day of rest wherein I was not mancipated to business it was, as I hope, at the highest; and had it been a day of business, as it was of rest, I had not been able to have undergone it. It was the goodness of God that though my distemper was not cured, but must have its course, yet it was then at the highest wherein I and the public might best bear it; and that day of rest gave me liberty to bear my weakness, and relaxation from business has given me a hope and expectation of the declination of my distemper before I come to the business of the following day.

[f.9v] Edmunds Bury  
13 Septemb.

The good providence of God has brought me to this place with a



competent measure of health and ability for the business to which he has called me. And here I found a jail filled with malefactors of the greatest kind: four murders, willfull burning, theft. Some whereof were yesterday convicted, the rest reserved for trial tomorrow. So that, although I met with some offenses, even of the highest nature, yet they equaled not the number of this one place. The uses that I made of this experience are these:

1. That although the temper of my nature inclines me much to compassion and lenity, yet I find there is a necessity of severity, especially when great enormities abound, and towards those especially who are guilty of blood. First, because the everlasting edict of almighty God is of perpetual obligation that the shedders of human blood should be punished with death; 2[nd], because severe examples are the best means to prevent the like offenses I shall, therefore, by the Grace of God, be justly severe in the punishment of offenders in bloodshed and if I exercise any degree of lenity and mercy it shall be in relation to those wherein our English laws seem too severe in many cases. And yet even in those I [f. 10] shall fear some examples of severity for the prevention of the excesses that by total impunity or over much remissness in punishment may arise or increase.

2. Yet even in relation to those offenses that require the severest animadversion and punishment I shall exercise it still with a compassionate heart even to those very malefactors that shall suffer under the severest sentence: that while I exercise my office as a judge in punishment of the offense, yet I may not forget that common humanity that is fit to be shown to the offenders and, therefore, ever to avoid insolence, passion, intemperance, or unevenness and inequality of mind or deportment in what I do herein.

And a man that rightly considers must needs be of such a spirit. For, it is the grace and goodness of God that I myself have not fallen into as great enormities as those upon which I give judgment. I have the same passions and lusts and corruptions that even those malefactors themselves have; and if they have not broken out into the same disorders, it is the goodness and bounty of God that has prevented it either by the advantage of that education His providence has given me above them or by snatching, as it were, from me those [f. 10v] apurtenances that my own lusts, passions, and corruptions would have made use of to discover themselves by diverting or abating those temptations which might or did befall me, which possibly were more fierce and powerful in those wretched offenders by the powerful and effectual incumbance of those holy admonitions which I have received by the word of God, read, or [were] heard by me. By the overawing of my heart with His fear

and the actual sense of His presence by the secret strivings of His grace and spirit upon my heart counter-working the corruptions thereof; and the impressions that temptations might otherwise have made upon. Without those and the like influences of almighty God, His providence and spirit, I might have fallen into as great enormities as the worst of malefactors convented before me. And possibly had the worst of malefactors those assistances, they might have been innocent. I have therefore cause to bless God and to be thankful to Him for His goodness in preventing me, but no cause of [f.11] insulting over the vilest malefactor or using an undercut or inhuman deportment to him. But even while the duty of my place requires justice and possibly severity in punishing the offense, yet the sense of common humanity and human frailty should at the same time engage me to great compassion to the offender.

2. [sic] But yet further, although I have been by the divine providence and goodness preserved from those great transgressions and am by His dispensation appointed judge and an avenger of the like in others, yet I am to come under the judgment of almighty God myself. And who can say I have cleansed my heart from iniquity, I am pure from my transgression? It is true I am not a murderer, an adulterer, a thief, an extortioner, an oppressor. But yet have I never had revenge, lust, lawlessness, immoderate causeless anger? Was there never any secret, though undiscerned, partiality in my heart? Did I never in my life do any action that I could not justify myself in the sight of my own conscience? Is there no sin in my heart or in my life which, though it may be not subject to the tribunals of men, [f. 11v] yet such as most certainly I cannot justify in the sight of God? If this be true, as most certainly it is concerning the most righteous judge or man on earth, then most certainly I stand in need of mercy from my great Lord and judge of the whole world more than the prisoner that stands before me upon trial for his life stands in need of mine. For my judgment extends at farthest to a temporary excision; but the judgment of the mighty God extends to an everlasting excision. How then can I dare with an insolent, domineering, unmerciful heart exercise the office of penal justice upon my fellow creatures, when, at the same time, I must apply myself unto the great judge of heaven and earth for mercy and compassion to myself? And truly upon this account I have ever accounted the office of a judge the most difficult in the world for, on one side it is impossible to find any person in the world but he has his sins and corruptions about him, though [f.12] possibly restrained from actual exorbitances and, on the other side, there are many great offenses and exorbitances in the world that if they were not restrained and punished the world would come to confusion. Yet of necessity, therefore, a human judge must be,<sup>20</sup> and

yet when he comes to punish offenses, he must needs be conscious to himself that he has the very seeds and roots planted in his corrupt nature of those very exorbitances which he punishes in others and, though perchance he be innocent from the commission of those offenses he is to punish, yet he cannot clear his own conscience in the sight of God from many offenses of which he stands guilty before Him, though possibly not such as fall under the sentence of an earthly judge as pride, vainglory, passion, covetousness, lust, and the like.

3. Again many of those that have fallen into enormous offenses possibly have so fallen for want of due education or by reason of some illicit temptation. Certainly [f.12v] the great enemy of mankind is the greatest malefactor in the world who carries very many malefactors into those offenses; they must ever teach me pity and compassion unto the very worst offenders.

4. But though as a private person and in relation to offenses committed against myself I am in a great measure lord of those very injuries and therefore may commit the injury. Yet as I am a judge I am a person trusted, trusted by God as the avenger of offenses committed against Him so far forth as my prince's commission extends, trusted by my prince forth for himself, and for the community, as a public avenger of injuries committed against him, his laws, and subjects, trusted by the community and society of men among whom I am to exercise this office and, therefore, although I pity and compassionate the offenders, yet when the offenses [f. 13] are of such a wasting and destructive nature as are not tolerable with the good of the community, I am obliged to execute the laws with which I am trusted: 1, because the interest in the punishment of these offenses is in truth, not mine but others; 2, because my remissions herein may multiply the offenders; perchance a just severity to one malefactor may contain very many within their duties and the want thereof may occasionally subject many others to the severity of the law; 3, though my indulgence to this malefactor may be an act of pity to a malefactor, it may be an act of cruelty to the honest quiet peaceable party of men in sparing a murderer or other notorious malefactor. I am hard hearted to the innocent and peaceable men who either have already suffered by his means or may possibly suffer by the like. I give a general insecurity and danger to the [f.13v] innocent by sparing the nocent, and so I misplace my pity by bestowing it upon a malefactor and thereby denying it to the innocent. If one or more guilty persons suffer the sentence of law it may for the future secure the country for the like for the future, and the death of one nocent person may by its example keep many innocent; but a remissness to one notorious offender makes many more such in expectation of the like impunity, and subjects a whole country to the continual fear and

expectation and oftentimes to the feeling and sense of the like mischiefs. Punishments of offenders are not only instituted by way of compensation of the injury done but by way of prevention of the like for the [f. 14] future, that all may hear and fear and do no more so wickedly because vengeance is not exacted speedily against malefactors. The hearts of the children of men are fully set to do evil.<sup>21</sup>

## NOTES

1. 'Sir Matthew Hale's *History of the Common Law* is the first book with any pretense to be a comprehensive account of the growth of English law. There is a gap between the pretense and the performance, but the book is nonetheless a landmark in historiographic tradition.' Charles M. Gray in his Introduction to Sir Matthew Hale, *The History of the Common Law of England*, Classics of British Historical Literature (University of Chicago Press, 1971), p.xi. See also, D.E.C. Yale, *Hale as a Legal Historian*, Selden Society Lecture, 7 July 1976 (Selden Society, 1976).  
I am grateful for Dr. John Baker's kindness in reading this brief piece on Sir Matthew Hale.
2. Concerning Hale's interest in natural science, particularly with regard to the gravitation of fluid bodies, see below, n.19. For a list and brief description of Hale's published works and unpublished manuscript tracts in the British Library, see Edward Heward, *Matthew Hale* (London, 1972), Appendixes A and B, pp.124-67, 183-4). For the most completely scholarly account of Hale's work, particularly on prerogative, see D.E.C. Yale's introduction to his edition of *Sir Matthew Hale's, The Prerogatives of the King*, Selden Society, vol. XCII (London, 1976).
3. The Hale-Blagden connection was forged in 1784 when Matthew Hale, probably great-grandson of Sir Matthew, died, leaving Alderley, the family estate, and various papers therein to John Blagden, who had married Matthew Hale's niece and heiress. Permission to print the diary was kindly given by Mr. Stephen R. Parks, Curator of the Osborn Collection.
4. Charles M. Gray, Introduction to Hale's *History of the Common Law of England*, pp.xiv-xv.
5. The Rules are printed in various collections. See, for example, Sollom Emlyn's preface to the 1736 edition of Hale's *Historia Placitorum Coronae* (Robert H. Small, Phila., 1847), pp.vii-viii; see also Heward, *Matthew Hale*, p.67.
6. Richard Baxter, *Additional Notes to the Life of Sir Matthew Hale*, bound together with Gilbert Burnet, *The Life and Death of Sir Matthew Hale* (London, 1805) p.190.
7. For biographical details of Hale's life see references in note above and Heward's biography cited in n.2; Edward Foss, *The Judges of England* (London, 1857), VII, pp.105-16; *Dictionary of National Biography*. There is to date no judicial biography of Hale.
8. *The Records of the Honorable Society of Lincoln's Inn, The Black Books*, III, 285, 309, 339, 379.
9. Thomas Bramston, ed., *The Autobiography of Sir John Bramston* (London, 1845), Camden Society, p.78. Burnet says that Hale was counsel for Strafford although there is no mention of him in Howell, *State Trials*, III, pp.1382-1536.
10. Basil Duke Henning, *The House of Commons, 1660-1690, The History of Parliament* (London, 1983), III, 461-62.
11. Heward, pp.64-5.
12. Henning, p.462.
13. The speech is printed in C.H. McIlwain, *The Political Works of James I* (Cambridge, Mass., 1918), pp.326-45.

14. Some of these words have changed their usual meaning, e.g. *wrest* meant to twist or pervert, and *countenance* to show favour to.
15. I.e. show partiality to the poor out of pity.
16. 2 Chron. 19:6.
17. MS: *and*.
18. Deut. 13:14.
19. Folio 7v is blank. On f.8 there are 23 lines of notes describing a procedure for making 'Rarefactone (*sic*) Condensation'. The year following Hale's death, 1677, a book of *Observations Touching the Principles of Natural Motions and Especially Touching Rarefaction and Condensation* (pp. 285) was printed by W. Godbid and W. Shrowsbury from Hale's papers.
20. I.e. Yet of necessity, therefore, a judge must be human.
21. Listed on the last two leaves of the diary in brief outline form are categories of law, as *De lege naturali*, *De lege in guerre*, etc.