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OCCASIONAL SERIES

Conversations with Sir John Hamilton Baker QC: Aspects of Resolving the Legal History of the Common Law

Abstract: Professor Sir John Baker was born in Sheffield in April 1944 towards the end of the Second World War. His path into legal history was via the Edward VI Grammar School in Chelmsford, and University College London (UCL) in the early 1960s. It was his good fortune that lecturing arrangements still in place at UCL as a wartime legacy caused him to fall under the inspirational guidance of Professor Toby Milsom at LSE for his legal history tuition. By the time John Baker moved to Cambridge in 1971 he had been called to the Bar at the Inner Temple, and his interest in the development of the common law in the late mediaeval/early Tudor period was firmly grounded. The next forty years were spent at Cambridge, where he established an enviable reputation as an innovative and meticulous scholar, whose publications output has become legendary. He retired from the Downing Chair of the Laws of England in 2011, and was knighted for his services to legal history in 2003. This article by Lesley Dingle attempts to highlight some aspects of Professor Baker's illustrious career, and should be read in conjunction with his entry in the Cambridge Eminent Scholars Archive, both of which are based on interviews that she conducted with Sir John in the Law Faculty in February-March 2017.
Keywords: legal history; academic lawyers; legal biography

INTRODUCTION

Professor John Baker, then the Downing Professor of the Laws of England at the University of Cambridge, was made a Knight Bachelor by Her Majesty the Queen at Buckingham Palace on 16th October 2003. Thus were rewarded nearly forty years of continuous and innovative research at Cambridge on the history of the common law.

I interviewed Sir John for the Eminent Scholars Archive[1], during February and March 2017 in the Law Faculty, and a chronological account of the highlights of his career has been given on our website. An autobiographical account has been given in his own writings (e.g. The Introduction in *Collected Papers on English Legal History, Volume I*, pages 1–16[2]).

Here, I would like to place before readers some of the more intangible elements that underlie his career and research activities, as revealed in his conversations with me for the archive, but not directly identified in his own works, or emphasised in the ESA entry.

SOME FORTUNATE CONTINGENCIES

During our conversations, I learned that Sir John's path to academic distinction had been strewn with a variety of fortunate contingencies. Here I mention four, which woven together, constitute the foundation for his ultimate success as an eminent scholar of Legal History.

The earliest, and most pivotal of these occurred shortly after John was born in April 1944. World War II was in its later stages, and the German Luftwaffe had previously pounded the steelworks and manufacturing capacity of Sheffield, the city where he was born, and lived with his mother. As a consequence, at the bottom of the garden of the Baker residence there lay an air-raid shelter into which John's mother was wont to take herself and the baby during bombing raids. Possibly around Christmas 1944, the sirens blared again, but for some reason, Mrs Baker decided to stay indoors. A rare *Vergeltungswaffe 1* (doodlebug) fell from the sky that night and demolished the shelter.[3]

Seventeen years later, as his education began to unfold, but while still unsure where his true academic interests lay, John was exposed, inadvertently, to the techniques of deciphering the mysteries of mediaeval manuscripts. By the fortunate circumstance that he was in the science stream at his secondary school in Chelmsford, a quirk of the curriculum dictated that sixth-form science students had to "*do something cultural and one of the options was to go down to the local record office*….[and] *I was set the task of editing some 14th century manorial rolls*[4].

So I was taught palaeography by one of the archivists (who had actually written a guide to palaeography, so I had the right person teaching me)[5] *Later on, when I turned to look at legal manuscripts, it never occurred to me that I was reading funny handwriting, because I had already done that at school. I'd never have had that advantage if I had been reading History at school,"* (Q10). By this encounter, coupled with his O-Level Latin courses, the King Edward VI Grammar School had fortuitously bequeathed John Baker ready access to sources for the early common law, and laid the foundations for his future illustrious career.

This practical experience reinforced a "*fascination with the past*" with which he had been fired at the time of the Coronation of Queen Elizabeth in 1954 by "*an exhibition in Chelmsford of "Heraldry in Essex"…..I was absolutely fascinated by these manuscripts and seals and paintings of coats of arms, and so forth. I really trace my interest in history to that moment.*" (Q6).

Once embarked on his early academic career, further contingencies followed, which nudged him in the direction of Cambridge and his dedication to the history of the common law. The first of these was the unlikely stroke of good fortune of being rejected for a place at Trinity Hall Cambridge in 1962 to read Law. Under most circumstances this could have been a major setback, and at the time it probably seemed as such. Nevertheless, faced with this dilemma, John fell back on an offer to enter University College, and he moved to London to undertake his undergraduate studies in Law. As a consequence, he found himself obliged to commute between Bloomsbury and the London School of Economics to take courses in Legal History, where by good fortune he fell under the guidance of the charismatic legal historian Toby Milsom[6]. Milsom's intellectual influence in his career is a factor that Professor Baker acknowledged on numerous occasions during our conversations. It is a moot point whether his career would have followed a similar trajectory had he gained entry to Trinity Hall and failed to establish an early and inspirational relationship with Toby Milsom. I shall revisit this topic later.

The contingency that set the seal on his entry into a Cambridge career, was a meeting John Baker had with Professor Clive Parry[7] in 1971. This was apropos an application for a lectureship that he did not get, and the offer of a post in the Squire Law Library for which he had not applied. It was this meeting that finally ended John's aspirations of following a career at the Bar, which "*until I took the decision to come to Cambridge, I still thought that I was someday going to be a barrister.*" (Q31).

He recalls the circumstances: "*Most of my life was spent taking up posts I never applied for. One day, Tony Thomas*[8]*, the professor of Roman Law at UCL, said to me, "There's this vacancy at Cambridge. I think it would suit you. It's your sort of world." He said, "Why don't you apply?" I never thought of it myself. But I thought, right, I'll have a go. When I came up, I was taken for a walk around Downing College by Clive Parry who was on the* [Appointments] *Committee, and I think was also chairman of the Library Committee at that time. He said, "I have to tell you that you're second on the short list, so you're not going to get it, but would you like to be Librarian of the Squire Law Library?". I was very taken aback and I said, "I don't have any librarianship qualifications," to which his response was, "You read books, don't you?" Then he said, "It pays a lecturer's salary, so you would be paid more that what you have applied for, and you will have a room in the library, so ideal for doing your research. It's not a full-time job," he said: "You would spend half your time doing your own research in the library…Just make the library your base." So I thought that was worth trying for a bit, and so I agreed.*" (Q36).

Although Parry's offer diverted John into Cambridge academia and away from the Bar, his original aspiration remained an essential factor in the trajectory of his academic research. In originally following a route into legal practice, he had already formed a great affinity with the Inns of Court, and as his researches progressed, he realised the inns had been, and remain, the fount of the common law, as we have inherited it. His close associations with and interest in the inns have remained a vital element in his understanding of the common law's evolution.

ENTHUSIASM FOR THE EDITING OF MANUSCRIPTS

Professor Baker's research output has been impressive, and citing from a list he supplied before our conversations for ESA, I quote his own data: 38 books, 123 chapters in books, 183 articles and notes, 12 pamphlets, 35 book reviews, and 97 invited lectures.

During the interviews I referred to this list several times, but he self-deprecatingly dismissed my suggestions that to have maintained, over more than forty years, a research regime that produced the enormous amount of data that it did amass, had required a high level of organisation and focus. His following reply was typical: "*I don't think I've ever been very organised, but I was enthusiastic about Legal History….. at UCL….I could go down* [to the British Museum] *and look at manuscripts, which I started doing as an undergraduate…. I was enthused by an article that Brian Simpson*[9] *wrote about Spelman's* [10]*reports which he discovered, so I went off and looked at the manuscript myself. And I thought, that's very interesting, perhaps I should edit that*[11]*…It was also in those years that I discovered Coke's*[12] *notebooks, which was probably the most exciting discovery I ever made...*" (Q31).

Enthusiasm and a sense of excitement for what he might discover, appear to have been important spurs to his long-term success, coupled with a remarkable degree of determination. He characterised his illustrious career with "*academically I have had a pretty uneventful life following a rather long rut. It's largely a matter of serendipity, I think. If you just keep looking at manuscripts, every so often you hit something that's rather interesting, and that sparks off another article or a project. But I haven't taken any radical*

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crossroad decisions that I can recall offhand. I have just gone on doing the same sort of thing. And I have been very fortunate to have a career in which I was able to do that, with nobody breathing down my neck and telling me what I should be doing…I have loved every minute of it." (Q172 & 173). In summary, his life-long research endeavours amounted to a "voyage of constant discovery"[13].

But it was all with a purpose, and he encapsulated this in a remark made to a question as to why he had chosen to study legal history "*I don't think I ever felt I understood anything legal unless I knew where it came from, and why*" (Q178).

This sounds a simple notion, but to do it he needed to study the origins of the common law, and for that, he would have to "*slog through the sources*" (Q179). And of course those sources are, *inter alia,* the plea rolls, year books, and lawyers' note books, including the accounts of readings of the Inns of Court: all in manuscripts that are now, euphemistically, "scattered between Cambridge and California"[14].

To accomplish this John Baker "spent [his] career editing….[it] has been at the core of what I do,"[15] Hence, during our conversations, when I asked him how he had achieved his results at each stage of his career, he replied progressively with "*driven by looking at manuscripts*", "*I just went on doing it*", "*I just kept doing what I have always done*", "*Business as usual*"[16].

"*…I have just got on and done it, doing what seemed obviously necessary to gather the evidence. I have always tried to stick to the evidence...*," (Q182).

To this end, early in his career, Professor Baker had to master the deciphering of the abbreviated Latin and Law French in which these manuscripts were written."*I started with the printed yearbooks in the Inner Temple Library….It's as much a matter of understanding the abbreviations as the language. Eventually you realise it's all standardized and you come to know what the forms are. My biggest learning period, I suppose, was editing Spelman, when I had to grapple with Law French and with the Latin of the plea rolls. If you are editing something, you can't duck issues - you have got to translate every word, and so you have to keep at it until you have made sense of it. Eventually I ended up writing a little glossary of Law French because no-one had done one before.*" (Q181). In this regard, as I have noted earlier, Professor Baker was forever grateful for his formative experiences at the Essex Record Office while still a pupil at the King Edward VI Grammar School in Chelmsford. As he put it in answer to a question apropos his output while a Lecturer at Cambridge in the 70s "*my work then, and since, has been driven by looking at manuscripts, which I've always been fascinated by - thank goodness for my early training at school - so whenever I see legal manuscripts, I want to look at them and find out what they are*," (Q79).

The "voyage of constant discovery" to which I eluded above, was seemingly never ending, and was an enduring source of intrigue. This was largely due to the unknown legal terrain into which John Baker ventured every time he looked at texts, so that in essence, his research trajectory was predicated on what he unearthed: "*I'm not sure I have ever had any conscious strategies ….my work has been very largely based on manuscripts* [*and*] *what I find in them*," (Q182).

Numerous practical and intellectual problems assailed him in this work. For instance, with the plea rolls, there was no indexing system. "*If you know the name of the case you are looking for – which you often don't - and it's a King's Bench case, then there are some docket rolls kept by the clerks which you can go through quite quickly and find the membrane number. But even that doesn't work for the Common Pleas, where most of the cases went. So, if you are editing year books or law reports, you simply have to read miles and miles of plea rolls looking for a case of which you may not know the name or the exact date, or exactly how the point arose – you have to use some imagination in guessing what it will look like on the roll. That part of the editor's work is much more difficult than reading the French*," (Q288).

A further difficulty was that to make sense of what he had translated in a text, one had to bear in mind constantly that "*palaeography and translating aren't just a matter of learning the shapes of letters and having the vocabulary….you can't make sense of hieroglyphic abbreviated text unless you develop a sense of what the text really means. That obviously improves over time, as you get more familiar with legal procedures and concepts, because editing a legal text means you have got to understand the procedures that they are talking about and the lines of argument. It's quite hard, and I expect that explains why not many people care to take it up*," (Q197).

Such exploratory work frequently threw up unexpected results, which accounted for the constancy of the quest on which John Baker had embarked when he undertook a career in legal history.

He gave an example of the apparent trivia with which one could be confronted. "*Well, you do notice things of interest. I sometimes jot them down, and sometimes I don't because I think, "Well, I will never use that, so I will let someone discover it." I remember one day I was working in the old Public Record Office and a friend of mine, Janet Loengard*[17]*, suddenly said with delight that - while she was looking at an Elizabethan plea roll – she had just found an action on a contract for building a round theatre in London, earlier than the Globe…. that became an article of great interest to theatre historians - and no way would they have found it if they had gone looking through plea rolls, because you would have to read several miles of abbreviated Latin before you came across it, without even knowing that it would be there anyway. There is a lot of material like that, which is not even law related, and which there is no way of getting at. They will never be indexed - too much of them*," (Q289).

This sense of forever exploring new legal landscapes "*encouraged me to look at all the legal manuscripts I could lay my hands on, in case there would be something interesting…*[*and*] *certainly every time you would look at a legal manuscript, it makes you think about something you haven't thought about before..*" (Q79).

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In a simplistic sense, Professor Baker had chosen for his career the attempting to solve a legalistic jigsaw puzzle that constantly expanded in scope, because, as he put it "*legal history isn't about single discoveries, because - insofar as it's based on case law - case law is cumulative, and you just have to keep looking at as many manuscript law reports as you can get to.*" (Q198). It has been a lifetime's quest that has involved "*a lot of detective work, and working out what the text is to begin with from various fragments, and fitting them together, and then putting them in context; then, if they are law reports, you try to find the corresponding records in the Public Record Office, which is a bit like looking for a needle in a haystack,*" (Q81).

THE REINVENTION OF MAGNA CARTA

Professor Baker provided an excellent example of the importance of reinterpreting what are ostensibly well-known legal phenomena by unearthing and editing contemporary sources. Such an occasion arose with the 800th anniversary of Magna Carta in 2015. I asked him if he had learned anything new during his preparation of the commemorative works that he produced for that event. He had a surprisingly long list, not on the Charter of Runnymede itself, which had a short life, but the "*later importance of Magna Carta - if it weren't for what the common lawyers did with Magna Carta in the 16th century it would now be known only to a few specialists...*" (Q221).

What he did, was to "*look at and edit the lectures given in the Inns of Court on Magna Carta in the later Middle Ages. It was only a selection, but it was still almost a thousand pages - there was an awful lot of it. I made four discoveries in the course of doing that,*" (Q221). These, along with material he gathered for lectures to the Temple in 2014 on Magna Carta and religious liberty, he presented in his 2017 book *The Reinvention of Magna Carta 1216–1616*, CUP.

He summarised the four discoveries that he made.

"***Firstly**, that in all these lectures there was hardly any joined up constitutional learning - it wasn't seen as being a great constitutional statute. There was a lot of technical law about dower and so forth, but not about the constitution. **Secondly**, I found that there was a treatise - which originally I had thought was a reading in an Inn - but it was a treatise by William Fleetwood*[18] *of the Middle Temple in the 1550s, which was still very much in the same mould. So this gets us right up to the middle of the 16th century and they are still not thinking of Magna Carta as being a great constitutional document, or at least not a source of ideas that can be used. Not even the great chapter 29 - the readers and Fleetwood, more or less say it has no effect because there were no remedies laid down and it doesn't mean very much anyway when you analyse it. Then, **thirdly,** I discovered - having read ahead a bit beyond the readings - that there was a sudden surge of interest in the 1580s that seemed to be connected with the so-called "puritan" lawyer MPs.* [**Fourthly**] *I also found that Coke had written a treatise on chapter 29 in 1604 and linked it with habeas corpus. It was before he even became a judge - he wrote this while he was a law officer to King James I. I thought, "These are all really rather remarkable facts that nobody had noticed before, and some sort of explanation needs to be found*" (Q221).

It is an absorbing book for the way Professor Baker throws new light on a document that has fundamental constitutional significance today for common law jurisdictions, by re-investigating manuscripts relating to it. Its present almost mythical universal political potency is illustrated by his anecdote about the authorities in Beijing banning from public display the 1217 Hereford Cathedral version written in Latin.

What I found equally fascinating, hidden away on page 218, is that after discussing Fleetwood's efforts to "uncover the origins of the common law from the best available sources", Baker announces that William Fleetwood "can justly be regarded as the first English legal historian".

Nevertheless, after giving numerous examples showing the importance of editing manuscripts and even printed texts for an understanding of the common law (e.g. p.9, *Collected Papers*, vol I, 2013), Professor Baker sounded a word of practical caution for those thinking of following in his footsteps. This revolved around the time-consuming nature of the work, which places severe restrictions on career aspirations: "*it's not something you do at the beginning of your career - it doesn't get you noticed. No-one credits editing as being particularly worthwhile. I don't think anyone who hasn't done it realises how exacting it is, and what it contributes to scholarship. So you need to have tenure before you start doing things like that. But you learn so much from editing - that's why I think people should do it,*" (Q286).

INTELLECTUAL INFLUENCE OF TOBY MILSOM

By his own assessment, Professor Baker's researches into, and understanding of, the common law owe much to the intellectual influence of Professor Toby Milsom. As already mentioned, he first encountered Milsom when an undergraduate at UCL in the 1960s. The circumstances were a legacy of war-years' staff-shortages and accommodation bomb-damage, and they necessitated that some inter-collegiate teaching was still practised amongst the London colleges. Consequently, John Baker had to commute to the London School of Economics to attend the Legal History courses give by the newly-installed Professor F S C 'Toby' Milsom[19]. Classes were very small, and Milsom's style was "*very chatty, and yet you learned a lot without seeming to. He was a very brilliant man,*" (Q17). Thus was forged, at the very beginning of his legal training, a long-lasting friendship and professional relationship with a mentor whom Professor David Ibbetson[20] has

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recently described as the "dominant intellectual voice in English Legal historiography" for the last fifty years[21].

During our interviews, Professor Baker was particularly generous in his praise and recognition of the role played by Milsom in the development of his own understanding of the common law's evolution. He made it clear, that it was through this enlightenment that he was able to advance his own ideas on how the law had evolved. As he expressed it," *law is an intellectual system with its own history. Historians think that's anathema, that the law is an observable phenomenon, and how the results come about is just technical gibberish, written in funny French which obscures what was really happening,*" (Q293).

In short, as a lawyer, Professor Baker came to understand the history of the common law as an autonomous phenomenon, in contrast to the understanding of historians who would view its development as a progressive phenomenon, reflecting a succession of social changes. The latter view legal history as "*gobbledygook*", as he put it (Q291).

When I asked him how fundamental Toby Milsom's contributions to Legal History had been, he replied, "[In] *his 1967 paper on "Law and Fact in Legal Development"*[22], [Milsom explained that] *Legal development in the common law - that is, increasing sophistication in working out the detailed application of legal principles - could only occur as and when procedures were developed which required courts to consider facts in more detail than the forms of action themselves disclosed. It was blindingly obvious when pointed out, but nobody ever had. That influenced a lot of my work.*" (Q219).

This revelation led to Professor Baker's maxim, in the Introduction to his *Collected Papers on English Legal History Vol I* (p.6–7), that "we cannot properly understand anything of the earlier common law unless we understand the dominance of form and procedure, and the limitations which the procedural framework placed on the questions which could be asked at the time…" When I asked about him about this conclusion, and what had drawn him to this realisation, Professor Baker said simply "*It was pure Milsom. It came from Milsom*" (Q280).

A further example of Milsom's insightfulness and Professor Baker's acknowledgement of its influence, was shown in their jointly-written 1986 book *Sources of English Legal History: Private Law to 1750*. (It was written when John Baker was a Reader at Cambridge, and Milsom was close to retiring from his chair there.) I asked Professor Baker the significance of a quotation in the Preface, to the effect that the purpose of the book was to allow readers "to sink deep enough into past discussions, to lose the misleading perspectives of hindsight" He replied "*Those were Milsom's words. I think he meant that, to understand legal developments one shouldn't just look at the outcomes but at the arguments, especially the losing arguments - and also the contemporary framework of discussion, because they seldom argued in our terms, and we can be misled if we go back looking for a modern kind of discussion. You have really got to get into the sources,*" (Q251). As we have already seen, editing these sources was at the heart of Professor Baker's research ethos.

Finally, I can point to a further sentiment that Professor Baker shared with Toby Milsom. It was brought out when I asked him to comment on a remark Milsom had made during his own ESA interviews[23], to the effect that he seemed somewhat indifferent to no-one else caring about his work because he himself enjoyed it, describing it as a "self-indulgence" paid for by Trinity College. Professor Baker answered "*Well, I suppose I share a similar attitude, in that I have selfishly pursued things that have interested me. I suspect that's true of most academics - it's one of the few perks of the job. You are given a bit of freedom to look into things that interest you.*" But, he added, "*…I'm not sure how far that remark was tongue-in-cheek…. Toby certainly cared very much about what people thought of his work - and I suspect that, like me, he would have been happier if more people had shown an interest in legal history.*." (Q216).

As a postscript to Professor Milsom's influence in the Faculty at Cambridge, it might be of interest to note that Professor Baker mentioned that in his capacity as Faculty Chairman (1986–88), it was Toby Milsom who was instrumental in initiating the process of translocating Law from the Old Schools, to its present West Road site. Ironically, Professor Baker, during his own chairmanship of the Faculty (1990–92), became involved in the sometimes fractious and tedious negotiations with the architects (Sir Norman Foster[24] and his partners). Further irony is attached to the fact that, for Professor Baker, the Sir David Williams Building, is a structure with which he is not in tune. When asked if he liked it, he replied "*Not greatly, no. I don't like to come here too much..*" (Q104).

Apropos Milsom's role in the historic move, Professor Baker said "*the impetus first came when Professor Milsom was chairman and he persuaded the General Board that things just couldn't go on as they were. That was agreed, and then during Len Sealy's*[25] *term as chairman the decision was made to commission Foster and Partners to produce a plan. There had been a competition, and I think it's fair to say that the general view in the Law Faculty was not in favour of Fosters - they would have preferred something rather more conventional - but the decision was not made by the Faculty, it was made by the General Board's building committee*," (Q101).

MEDIAEVAL COMMON LAW EMBRACES HI-TECH AND THE DIGITAL AGE

For a researcher so immersed in early material, much of which even predates the advent of printing, Professor Baker was an enthusiastic early convert to using contemporary technology for his research.

John Baker's first encounter with what then passed as hi-tech research methods was in 1972, while he was Librarian at the Squire Law Library and still based in the Cockerell Building of the Old Schools. He was invited to visit Harvard to edit and record manuscripts: "[it] *ultimately* [went] *back to my friendship with Bill Butler*[26], *who*

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had got friendly with a microfiche company called IDC which had filmed a lot of his Soviet material. He said, "Why don't you do a Legal History project?" and so I said, "That sounds like a good idea," particularly with material at Harvard which I can't get to see normally. I'd never been to the States. So IDC said, "Splendid idea, we'll fly you over and you can catalogue it all" - because there was no catalogue of it either. So it was a way of finding out what there was, and I went over to the Harvard Law School to do that. I spent a week there and it was fascinating. Then subsequently, we filmed manuscripts in Lincoln's Inn and Gray's Inn, and the Bodleian Library, and Cambridge University Library. My goal was to do the British Library, but they are so antediluvian … that we could never get agreement on how to do it - or anything else" (Q65).

Such technology was germane to a problem to which I have referred: *viz* single discoveries *vs* the cumulative nature of case law - i.e. solving the legalistic jigsaw by access to large amounts of data. But in the 70s the technology was still too unwieldy to cope, and Professor Baker and other researchers had to wait several years for further advances: "*I tried to facilitate that with my microfiche project years ago* [i.e. 1972], *but that technology now seems a little cumbersome. It will become a lot easier if more legal manuscripts can be digitised. So far* [in 2017] *that's only happened seriously with the plea rolls - a project started by Professor Robert Palmer*[27], *with transformational consequences - absolutely amazing. No travelling with a notebook to Kew - which takes two hours there and two hours back from here - anyone can now read the plea rolls at home online, even if they are in Arizona. A wonderful advance, and if that could be done with law reports then it really would be tremendous…*" (Q198).

As it happens, the Squire Library had, at the time John Baker was on their staff, an early computerised catalogue system: "[The Squire was] *just being computerised when I was Librarian. It was originally all on cards, and then we had what I think it was probably the first, computerised catalogue in Cambridge, if I'm not mistaken. It was an experimental piece of work*," (Q41), but it introduced John Baker early to the benefits of institutional computerisation.

Similarly, in his role as Literary Director of the Selden Society (1981–2011), he found the transition to digital editing and manuscript processing undaunting. When I asked him if he experienced any problems in the switch-over to electronic publishing, he replied "*Not really, no. In the case of the Selden Society which I know best, it made the volumes cheaper actually. And it means that one can be a bit more generous to editors in letting them change things than we used to be. In the old days you used to have to count every letter when you altered something in a line of moveable type, and you really didn't want to make major changes, whereas now we can be a little bit more profligate*," (Q149).

These were large-scale technological applications he embraced enthusiastically, while on the personal level he was an early user of what became known as desk-top PCs. This occurred in the aftermath of his collaboration with Toby Milsom on their joint text *Sources of English Legal History: private law to 1750*[28]. Of this, he said "*In 1987 I acquired a computer for the first time and, of course, that transformed my research, and the work after that. Professor Milsom had his before I did, and I thought, "If he has one I should have one",* " (Q96).

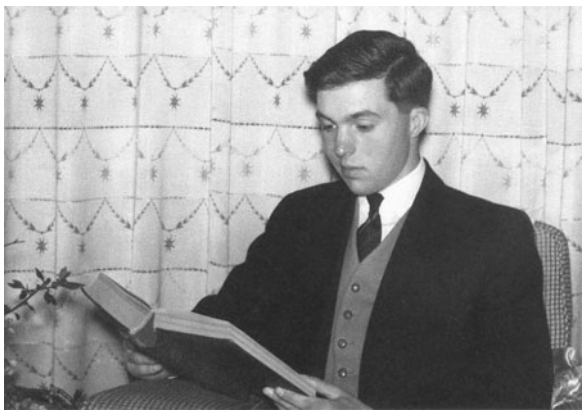

Figure 1. 1962, Reading first law book.

When I asked Professor Baker to summarise what role digital technology plays in his research, he enthused on the way it had, and continues to enable his work. It is worth quoting his reply at length, as I suspect it epitomises the experiences of older researchers who had to make the transition from an analogue to a digital *modus operandi*.

"[I] *t's become absolutely vital. It's very difficult to remember those early days with a manual typewriter and needing to use pencils in libraries without digital cameras and so forth. So it has become vital - in four ways, I think.* ***Firstly****, word processing, and that's where I started. I got my machine in 1987, primarily because I thought it was magic to have footnotes put in automatically. Until then you would renumber in ink and then (if you retyped them), you could retype the numbers: but then you would almost certainly want to put something in later, and so it became footnote 3a*, or some such. In those days the printers were marvellous at converting all that into consecutive numbers when they set up the type. But they wouldn't know how to do it now in India. So just having word processing is an absolutely amazing transformation of one's work. Then, of course,* [**secondly**] *there are all these materials online - rare books. I bought a lot of 17th century books early in my career, but they are all online now. It's still, I think, easier to read the originals but now we can access every single book whether we own a copy or not. Then,* ***thirdly****, searching for information, quotations, persons, or relevant literature - you can just find things that you could never have dreamed of finding in a month of Sundays in the old days. Too much information, of course, to some extent. Then,* ***fourthly****, the digital camera. Thanks to the pressure from genealogists, local record offices began to allow people to use cameras, and the Public Record Office soon followed suit. Then eventually, last year, the British Library caved in. So now - everywhere that I use anyway - you can take in what used to be a camera, it's now an iPhone. My iPhone is much*

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better than my camera and sees much better than I do, so in the really dark conditions of the British Library I can take a photograph - my iPhone can read it - and then when I get home I can put it on a screen, and I can read it. Absolutely wonderful. We never dreamed of those things in the past. One thinks how much more work one could have done sensibly if one had been able to take all these shortcuts. I envy the next generation," (Q283).

Nevertheless, and notwithstanding his third point, Professor Baker is alert to the temptations of seemingly easy solutions posed by the Internet. In his Introduction to *Collected Papers on English Legal History, Volume I*, to which I have referred several times already, on page 7 he issues a warning that most academics would echo heartily in one form or another. "…the research programme of a legal historian should begin not with Google searches on keywords generated by today's preconceptions, but rather with much reading of cases which seem to be of no conceivable interest, and with much struggling through records to understand what they can tell us and what they cannot." The heart of the problem here, of course, is that the researchers need to be able to "switch [their] minds over to the same thought processes as the lawyers of the period in which [they] are working…"

In essence, this notion has been the key to his unravelling the history of the common law for periods when procedures and concepts were significantly different to the modern milieu.

SERENDIPITOUS CONSULTANCIES

A disadvantage of being a student of legal history, as Professor Baker pointed out, apropos the difficulty in finding and retaining PhD students, is jobs - or the lack of them "….*I wanted to have more, but people don't want to do it for obvious reasons, as there are no jobs*," (Q157). Similarly, one has to engage in Legal History by the back door, "*there are no jobs in legal history. So you have to get an appointment as a Law teacher, and then do legal history once you are safely established.*," (Q196).

It was interesting to learn from him, therefore, a little about some of the varied consultancies that he undertook during his career, when the skills of a legal historian were called upon in the commercial arena - from the safety of a tenured faculty position. Even these were mainly about translating charters and interpreting their meanings, which posed "*insoluble problems which result*[ed] *from the Crown granting the same thing twice, or making a mistake in draftsmanship, or something.*" It was telling, however, that he added "*Legal history* [wasn't] *a great deal of help, except that you* [could] *put things in context.*" (Q168).

One interesting and rather amusing case on which he advised "*did potentially raise interesting legal questions …. which involved the Stannaries in Cornwall. It arose when somebody from the Department of Trade and Industry (as it then was) rang me up and said, "Would you be able to help us translate a line of Latin in a charter?" I said, "Well, I will have a go, send it to me."*

The next I knew I was attended in my College rooms by seven solicitors, four from the DTI and three from the Treasury Solicitor, and they spread out rolls on the floor and so forth. It was because a chap in Cornwall had hit on a brilliant wheeze. He had discovered that the Cornish Stannaries has something called a "parliament" and he had jumped to the conclusion that that means a sovereign legislative body -which, of course, it wasn't - and he had some support from Professor Pennington (the company lawyer) who had said that this parliament had sweeping powers. Anyway, he was selling shares in a completely bogus tin mining company on the footing that if you bought one of these shares you became a tinner and you didn't have to pay your poll tax - a tax just introduced by Mrs Thatcher[29]*, because it hadn't been approved by the stannary parliament.*

This got the DTI terribly worried, and so they were trying to close him down and stop him trading…… It raised quite interesting questions about whether letters patent - which is what they were relying on - could ever prevail against parliamentary taxation. The obvious answer to a modern lawyer is, of course it can't, because Parliament is higher than the government; but actually there was quite a bit of authority for saying that, because taxation was payable to the Crown, the Crown could waive it in advance, just as it can waive it afterwards by a deal with the Inland Revenue. It can be granted an exemption from paying taxes in the future, and some current tax legislation actually has a section (usually towards the end) saying that "no charter of exemption from taxation shall be pleaded against this tax" - so, clearly, the draftsmen thought that these charters were effective. That wasn't argued in this case at all, but I foresaw it coming and I wrote a paper for the DTI on the dispensing power of the Crown - I don't think many lawyers have done that since the 17th century - trying to deal with lots of points that could have been argued but weren't. So it was a potentially interesting case, but because he didn't get legal aid the person in question conducted the case himself rather badly - making absurd claims about Cornwall being a separate state - and it didn't get very far in the Chancery Division. But he made more than enough money, probably at least a million pounds, selling these shares - more than enough to pay his poll tax, I think. A non-existent tin-mine, but a veritable gold mine," (Q168).

Apart from the interesting legal points raised in the Stannaries Case, Professor Baker added dryly, that he had stumbled inadvertently upon a fail-proof method of stopping "….*a government department in its tracks for at least a year, just cite anything in Latin, and it will do the trick. It won't necessarily win eventually, but you can certainly hold them up,*" (Q168).

Another case in which Professor Baker was involved also had an amusing side to it, in that it epitomised a "*truly Dickensian kind of Chancery litigation*" (Q169) that can be caused by ambiguity, in this case turning "…very largely upon the meaning of a particular sentence, or a couple of sentences, in a grant in 1635."[30]

The case had been going on "*for a very long time* [and] *was a dispute about mineral rights in North Wales*[31]*, in which Michael Prichard was on the other side. They brought*

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me in originally to explain an opinion written by John Barton[32] *of Merton College, Oxford, who was quite a distinguished legal historian but wrote sometimes in a rather unusual style which tended to leave out every other sentence - so it was quite difficult to follow his line of thought. I ended up giving advice over quite a long time, and I had to dig up lots of material in the Record Office…..It just got more and more complicated ….In fact, at the first conference I went to in Lincoln's Inn, they produced an opinion written by Roundell Palmer*[33] *(who became Lord Chancellor to Queen Victoria) in this very case, with the same family on the other side - which I didn't agree with actually. But in the course of my research I found that there had been a case in the Court of Exchequer, I think, in the 17th century, on exactly the same issue with the same family, and it had never been decided. It still hasn't been, but I think everyone concerned - including the Crown - has now settled, so it never will be decided. We spent ages on that, and we just couldn't make head or tail of the documents because the roots of title just didn't work.*" (Q169).

CONTEMPORARY VIEWS ON TRAINING IN ENGLISH LAW

To draw some aspects of his research and academic activities together, I would like to comment briefly on Professor Baker's interest in the principles of teaching of law. In addition to his dedicated research activities, he played an unusually full role in the administrative and teaching life of his college (St Catharine's), the Faculty, and the University during his 40 years of service at Cambridge.

His interest in teaching extended not only from his own activities in the modern era at UCL and Cambridge, but also to the particulars of training lawyers in the late mediaeval and Renaissance period on which most of his legal history research focussed.

During our conversations, and in his writings, Professor Baker frequently referred to the Inns of Court as the "Third University", a notion that has been in currency since at least Coke's reports in 1602[34]. [It must be remembered that at this time there were only two universities in England - Oxford and Cambridge.] Consequently, his research into the history and workings of the Inns of Court during the Middle Ages, necessitated, *inter alia,* a knowledge of the methodology of training common lawyers.

This led Professor Baker to the realisation that the inns were, *de facto,* the cradle of the common law - its intellectual source and vehicle for onward transmission to future generations. As he explained "*..the universities contributed nothing to the common law before Blackstone in the 1750s - and even then it was basic teaching aimed at gentlemen students who might need to know a bit of law to run their estates, preside as magistrates, or whatever. Legal scholarship even after Blackstone still belonged to the Inns of Court - that's where the serious work was done. The holders of my chair* [Downing Chair at Cambridge] *before Maitland*[35] *didn't write very much of significance. One of them* [Amos[36]] *even gave up lecturing because no-one seemed interested enough to trek out to Downing to hear him,* " (Q206).

When asked why Oxbridge eschewed the common law, he postulated that "*they just took the view that what they taught had to be universal knowledge, and the common law was just a kind of local custom and beneath their notice - they didn't bother with it. You should be able to go from Bologna straight to Cambridge and read the same subject and know what they are talking about and argue in the same language, in Latin*," (Q282). This resulted in the dichotomy of the inns educating lawyers, who practiced the law of the land, while the "*universities saw themselves as being mainly concerned with the education of the clergy…. even though both universities - all three universities, I should say - attracted lots of students who weren't going into the professions*," (Q195).

An understanding of the role and history of the inns as a venue for intellectual underpinning of the common law was, consequently, intimately bound up with its educational activities, and from early in his career, John Baker collected whatever he could glean from his manuscript editing to document this aspect. In answer to Question 213, he enunciated some of his views on the premises on which the law functioned pre~1600, and difficulties this posed to students attempting to train as lawyers: "*the law always was - and is - a kind of professional knowledge which is not necessarily to be found in books. But that sort of unwritten understanding was much more important in a world with few books, or books which focused on procedural matters rather than underlying principles. For instance, the year-books contain very few decisions on points of law. You have to read between the lines to try and work out what the legal assumptions are, whereas by the end of the 16th century law reports look much more intelligible to us.*"

He contrasted this with the modern era "*We seem to be in a different world, in which the law is assumed to be sought in judicial decisions, and the judges are willing to say what the law is in their decisions.*" It caused him to "*wonder whether it was correct to assume that the common law was always thought of as case-law. I was intrigued by the large corpus of readings (or lectures) from the Inns of Court between about 1400 and 1640, which were mostly unpublished and had been little explored. I had the idea that they might be regarded as a source of law in their own right, like the continental* ***doctrine****. They may not have been as authoritative as judicial statements. But the mediaeval legal system was not designed to produce legal pronouncements, except in a very roundabout way, whereas the lecturers were trying to make sense of legal principles in a connected way. A medieval law student would have found it almost impossible to learn the law from reported cases*," (Q213).

As for curricula, "*there was no formal teaching beyond the lectures and moots - which, as I have said, were really stuck in the 14th century. They were still using 14th-century moot cases in the 17th century and there was an exercise in the Inner Temple until George III's reign which you had to pronounce in Law French. I suppose they all thought, "Well, we had to do it, so we'll make the next generation do it". There was no tutorial supervision, and no attempt to teach people modern things of any kind,* " (Q214).

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The rigid nature of teaching was lecturing on statutes, but this did evolve, so that by the 1500s "*..they gave up the old cycle - if indeed, there was one - of lecturing on the 13th century statutes, and they could choose a more interesting recent one, like the Statute of Uses. But the reason why they could only give lectures on statutes was because of the ingrained medieval idea that a lecture is reading out and commenting on a text. That's what lectura means in Latin - it's what "reading" means in English, I suppose - and the only text that they could use was the Statute Book. Bracton wouldn't do, because that was an idiosyncratic textbook which was already out of date when the Inns came into being. So they just chose the statutes, and as far as we can tell the original scheme was to start with chapter 1 of Magna Carta: every reader took over where the previous one left off until they got to the end of the 13th century, and then they zoomed back to Magna Carta*," (Q269).

The Civil War (1642–46) presented an opportunity to "modernise" the way that teaching was undertaken at the inns. During the war years "*members all went to join the colours or to defend their homes so there was nobody left in London and they couldn't keep the learning exercises going. So the Inns more or less closed down for four years - 1642 to 1646 - and there were no lectures during the Cromwellian period at all. They kept very rudimentary moots going, because the only way you could be called to the Bar was to perform a moot, but they didn't have serious exercises,* " (Q209).

But, as Professor Baker regrets, with the Restoration (1660) "*they lost an opportunity to rethink legal education. Unfortunately, they decided that they would simply go back to what it had been….but they went back to the medieval system of legal education, as if that was somehow part of the common law that you couldn't ever change. It meant they couldn't lecture on the common law, or on things that students might have found interesting, so the students didn't really want to go to these lectures…*," (Q209). At some point between 1670 and 1680, the lectures were discontinued, and an opportunity missed.

It would be pointless to compare these early educational strategies for teaching lawyers with modern ones, but I would like to highlight an aspect of this theme that Professor Baker touched on in the Preface to his 2002 fourth edition of *An Introduction to English Legal History*. Referring to legal history as an "introduction to law and legal culture", he quoted that "some city firms of solicitors are now reported to be taking on history graduates in preference to law graduates, because the latter are becoming too narrow in their educational background."

I asked him to comment on this, and whether the situation has changed over the intervening fifteen years. His reply suggested that all is not well with the teaching of law: "*that's what I was told by solicitors when I was a Director of Studies. And legal education is now actively discouraged by some eminent judges such as Lord Sumption*[37] *- who himself read History but he is hardly a typical example to hold up. We are the only country in the world, I think, which doesn't require lawyers to have a law degree. But the problem, and I accept it - and that's what I was referring to, is that law schools are more and more trying to concentrate on more practical subjects because that's what students want, and they think that's what the profession wants - and it isn't, because they say, "We will teach you all the company and commercial law you need to know. What we want are people who have got a good general background and know the techniques but can also think sideways sometimes and outside the box." If the remedy for that is to go and read History rather than Law, that seems a very serious indictment of what we are doing in the Law Faculty,*" (Q247).

Figure 2. 2014, Inner Temple Hall – lecture on Magna Carta.

He touched on the general subject again in the concluding chapter to his seminal *Collected Papers on English Legal History* (2013), which was a lecture he gave at the University of Galway in 2006. The subject was "Why

Figure 3. 1987, Selden Society Centenary Dinner – with Mr Yale (co-Literary Director), Prof. Donahue, The Duke of Edinburgh (the patron), and Prof. Milsom (President).

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Figure 4. 2011, St Catharine's College, Sky Hall before moving out.

should undergraduates study legal history." After citing (p.1577) the comments that "some judges….would dissuade intending barristers from reading law at university", he concluded it is a "terrible indictment of what we do". He finished his piece with the comment "if it were not expensive a luxury, law would properly be a post-graduate subject…[but] that is probably unthinkable.."

Asked to comment further, Professor Baker's conclusion on modern law teaching was that a major factor has become "….*economics. American law students run up debts on a scale which would probably still be unacceptable here*….. [but] *we are heading in that direction here…since student loans were introduced…..one of the problems about paying for education is that the institutions come under great pressure to provide what the customers think will enable them to earn their fortunes - and they are often wrong. As Lord Sumption and others rightly point out, that isn't what employers want. They want people to have been educated as widely as possible. You see the US law schools becoming narrower and narrower in the sorts of things that interest them*," (Q295). From an experienced academic who has researched in-depth aspects of the teaching of law in England over a period of 600 years, his cautions should carry weight.

POSTSCRIPT

The three interviews I conducted with Professor Baker, and the limited readings I did of his voluminous publication output, carried me over a wide sweep of legal notions, whose historical and social contexts have been meticulously researched and reconstructed over a lifetime of endeavour. If this were not impressive enough, Sir John's contributions to the administrative and functional activities in his college, Faculty, and University at Cambridge, as well as the Selden Society and the Inns of Court, are deserving of far lengthier treatment than the snippets I have presented here and in the biographical summary on his ESA tribute.

It was a great pleasure and privilege to have had the opportunity to capture a flavour of the illustrious and impressive career of such a convivial and self-deprecating scholar.

I thank Professor Baker for his comments and corrections to a draft of this article.

Career Highlights of Sir John Baker

- 1944 Born 10th April, Sheffield
- 1949–55 Trinity Road Primary School, Chelmsford
- 1955–1962 King Edward VI Grammar School Chelmsford
- 1962–65 LLB, University College London
- 1966 Barrister, Inner Temple
- 1965–67 Assistant Lecturer in Law, University College London
- 1967–71 Lecturer in Law, University College London
- 1971–73 Librarian, Squire Law Library, Cambridge
- 1971–2011 Fellow St Catharine's College, Cambridge, Emeritus (2011).
- 1973–83 University Lecturer Law, Cambridge
- 1983–88 Reader in English Law, Cambridge
- 1988 Honorary Bencher, Inner Temple
- 1988–98 Professor English Legal History, Cambridge
- 1996 QC *honoris causa*
- 1998–2011 Downing Professor of Laws of England, Cambridge, Emeritus (2011)
- 2001 Honorary Foreign Member, American Academy of Arts and Sciences
- 2003 Knight Bachelor
- 2011 Retired
- 2013 Honorary Bencher, Gray's Inn

Footnotes

[1] https://www.squire.law.cam.ac.uk/eminent-scholars-archive/professor-sir-jh-baker Direct quotations from Professor Baker's answers in the transcript are shown in *'italics'*, while question numbers shown as Qxxx. These can be located on the website.

[2] 2013, CUP, 512pp.

[3] See http://www.chrishobbs.com/beightondoodlebug1944.htm

[4] Roxwell Manor records in the Essex Record Office.

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[5] Hilda Elizabeth Poole Grieve, (1913–1993), archivist and historian, Essex Record Office (1939–66).
[6] Stroud Francis Charles (Toby) Milsom, QC MA FBA (1923–2016). Professor of Law Cambridge (1976–90), Professor of Legal History LSE (1964–76).
[7] Clive Parry (1917–1982), Professor of International Law, University of Cambridge (1969–1982).
[8] Joseph Anthony Charles Thomas (1923–1981); Professor of Roman Law, UCL (1965–81).
[9] Alfred William Brian Simpson (1932–2011), Fellow Lincoln College Oxford (1955–73), Professor of Law, Kent (1973–83), Charles F. and Edith J. Clyne Professor of Law University of Michigan (1987–2009).
[10] Sir John Spelman (1495?–1544), judge of the King's Bench.
[11] Which he did, and the essay he produced won him the 1975 Yorke Prize. This later became the introduction to his Selden Society Spelman's reports - Q72.
[12] Sir Edward Coke (1552–1634), Attorney General (1594–1606) to Elizabeth I & James I, Chief Justice of Kings Bench (1613–16).
[13] P. 8 *Collected Papers on English Legal History Vol I*, 2013.
[14] P. 8 of his Introduction to Volume I *Collected Papers on English Legal History*, CUP.
[15] Op cit.
[16] Q79 (end of Lectureship), Q96 (end of Readership), Q112 (end of Professorship), Q120 (retirement from Downing Chair), respectively.
[17] Janet Senderowizt Loengard, Professor of history emerita at Moravian College, Bethlehem, Pennsylvania. See: Janet S. Loengard, 1983. An Elizabethan Lawsuit: John Brayne, his Carpenter, and the Building of the Red Lion Theatre. *Shakespeare Quarterly*, 34 (3), 298–310. KB27/1229 m30, printed and translated at Loengard 1983, 306–310.
[18] William Fleetwood, (1535? – 1594) lawyer and politician. Recorder of London (1571–91), a Queen's Serjeant in 1592.
[19] He also went to Kings College, for Evidence, with Prof Gerald Nokes.
[20] David. J. Ibbetson, Regius Professor of Civil Law, Cambridge.
[21] In: Ibbetson, D. 2004, Publication Review: "A Natural History of the Common Law", Law Quarterly Review, 120; 696–700.
[22] Law and Fact in Legal Development (1967) 17 *University of Toronto Law Journal* 1–19.
[23] https://www.squire.law.cam.ac.uk/eminent-scholars-archive/professor-stroud-francis-charles-toby-milsom
[24] Sir Norman Robert Foster, Baron Foster of Thames Bank, (1935-), architect.
[25] Leonard Sedgwick Sealy, (b. 1930), Emeritus S J Berwin Professor of Corporate Law, Chairman 1988–90.
[26] William Elliott Butler, (1939-) John Edward Fowler Professor of Law, Pennsylvania State University (2005-), Professorial Research Associate, SOAS (2006-), Emeritus Professor of Comparative Law in the University of London (2005-). A specialist in Soviet Law, whom John Baker came to know while a colleague at UCL.
[27] Robert C Palmer, Cullen Professor of History and Law University of Houston.
[28] 698 pp., Butterworths, 1986. New impression (corrected) 1999. 2nd enlarged edn as *Baker & Milsom Sources of English Legal History* by Sir John Baker (Oxford: Oxford University Press, 2010.
[29] Former Prime Minister, 1979–90.
[30] A quote from Q113–114 in the ESA interview with Michael Prichard in 2012 https://www.squire.law.cam.ac.uk/eminent-scholars-archive/mr-michael-j-prichard
[31] It concerned the Lordship of Bromfield and Yale, in Denbighshire, North Wales and was related to limestone quarries associated with the old lead and coal mines of the Alyn valley (Q114 of Mr Prichard's interview).
[32] John Latimer Barton, (1929–2008), Law Tutor and Reader in Roman Law, Merton College, Oxford. *Inter alia,* a specialist on Henry de Bracton (Ca.1210–1268).
[33] Roundell Palmer, 1st Earl of Selborne (1812–95), British lawyer and politician. He served twice as Lord Chancellor.
[34] See, e.g. pp. 7, 45, Chapter 2 "Learning exercises in the medieval Inns of Court and Chancery", in 1986 *The Legal Profession and the Common Law*, Hambledon Press.
[35] Frederic William Maitland (1850–1906), Downing Professor (1888–1906).
[36] Andrew Amos (1791–1860). Downing Professor (1849–60).
[37] Jonathan Philip Chadwick Sumption, Lord Sumption (b. 1948), Justice of the Supreme Court (2012).

Biography

Lesley Dingle is the Foreign & International Law Librarian at the Squire Law Library, University of Cambridge. She is also the founder of the Eminent Scholars Archive.

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