

= Matthew Hale ( jurist ) =

Sir Matthew Hale SL ( 1 November 1609 ? 25 December 1676 ) was an influential English barrister , judge and lawyer most noted for his treatise *Historia Placitorum Coronæ* , or *The History of the Pleas of the Crown* . Born to a barrister and his wife , who had both died by the time he was 5 , Hale was raised by his father 's relative , a strict Puritan , and inherited his faith . In 1626 he matriculated at Magdalen Hall , Oxford ( now Hertford College ) , intending to become a priest , but after a series of distractions was persuaded to become a barrister like his father thanks to an encounter with a Serjeant @-@ at @-@ Law in a dispute over his estate . On 8 November 1628 he joined Lincoln 's Inn , where he was called to the Bar on 17 May 1636 . As a barrister , Hale represented a variety of Royalist figures during the prelude and duration of the English Civil War , including Thomas Wentworth and William Laud ; it has been hypothesised that Hale was to represent Charles I at his state trial , and conceived the defence Charles used . Despite the Royalist loss , Hale 's reputation for integrity and his political neutrality saved him from any repercussions , and under the Commonwealth of England he was made Chairman of the Hale Commission , which investigated law reform . Following the Commission 's dissolution , Oliver Cromwell made him a Justice of the Common Pleas .

As a judge , Hale was noted for his resistance to bribery and his willingness to make politically unpopular decisions which upheld the law . He sat in Parliament , either in the Commons or the Upper House , in every Parliament from the First Protectorate Parliament to the Convention Parliament , and following the Declaration of Breda was the Member of Parliament who moved to consider Charles II 's reinstatement as monarch , sparking the English Restoration . Under Charles , Hale was made first Chief Baron of the Exchequer and then Chief Justice of the King 's Bench . In both positions , he was again noted for his integrity , although not as a particularly innovative judge . Following a bout of illness he retired on 20 February 1676 , dying ten months later on 25 December 1676 .

Hale is almost universally appreciated as an excellent judge and jurist , with his central legacy coming through his written work , published after his death . His *Historia Placitorum Coronæ* , dealing with capital offences against the Crown , is considered " of the highest authority " , while his *Analysis of the Common Law* is noted as the first published history of English law and a strong influence on William Blackstone 's *Commentaries on the Laws of England* . Hale 's jurisprudence struck a middle @-@ ground between Edward Coke 's " appeal to reason " and John Selden 's " appeal to contract " , while refuting elements of Thomas Hobbes 's theory of natural law . His thoughts on marital rape , expressed in the *Historia* , continued in English law until 1991 , and he was cited in court as recently as 1993 .

= = Life = =

= = = Early life and education = = =

Hale was born on 1 November 1609 in West End House ( now known as The Grange or Alderley Grange ) in Alderley , Gloucestershire to Robert Hale , a barrister of Lincoln 's Inn , and Joanna Poyntz . His father gave up his practise as a barrister several years before Hale 's birth " because he could not understand the reason of giving colour in pleadings " . This refers to a process through which the defendant would refer a case over the validity of his title to land to a judge instead of a jury , through claiming a ( false ) allegation about this right . Such an allegation would be a question of law rather than a question of fact , and as such decided by the judge with no reference to the jurors . Although in common use , Robert Hale apparently saw this as deceptive and " contrary to the exactness of truth and justice which became a Christian ; so that he withdrew himself from the inns of court to live on his estate in the country " . John Hostettler , in his biography of Matthew Hale , points out that his father 's concerns about giving colour in pleadings could not have been very strong " since he not only retired to his estate at Alderley where he managed to live on his wife 's

inherited income , but also directed in his will that Matthew should make a career in the law " .

Both of Hale 's parents died before he was five ; Joanna in 1612 , and Robert in 1614 . It was then revealed that Robert had been so generous in giving money to the poor that at his death his estate provided only £ 100 of income a year , of which £ 20 was to be paid to the local poor . Hale thus passed into the care of Anthony Kingscot , one of his father 's relatives . A strong Puritan , Kingscot had Hale taught by a Mr. Stanton , the vicar of Wotton known as the " scandalous vicar " due to his extremist puritan views . On 20 October 1626 , at the age of 16 , Hale matriculated at the University of Oxford as a member of Magdalen Hall , with the goal of becoming a priest . Both Kingscot and Stanton had intended this to be his career , and his education had been conducted with that in mind . He was taught by Obadiah Sedgwick , another Puritan , and excelled in both his studies and fencing . Hale also regularly attended church , private prayer @-@ meetings , and was described as " simple in his attire , and rather aesthetic " . After a company of actors came to Oxford , Hale attended so many plays and other social activities that his studies began to suffer , and he began to turn away from Puritanism . In light of this , he abandoned his desire to become a priest and instead decided to become a soldier . His relatives were unable to persuade him to become a priest , or even a lawyer , with Hale describing lawyers as " a barbarous set of people unfit for anything but their own trade " .

His plans to become a soldier died after a legal battle concerning his estate , in which he consulted John Glanville . Glanville successfully persuaded Hale to become a lawyer , and , after leaving Oxford at the age of 20 before obtaining a degree , he joined Lincoln 's Inn on 8 November 1628 . Fearing that the theatre might dissuade him from his legal studies as it had at Oxford , he swore " never to see a stage @-@ play again " . At around this time he was drinking with a group of friends when one of them became so drunk he fainted ; Hale prayed to God to forgive and save his friend , and forgive him for his previous excesses . His friend recovered , and Hale was restored to his Puritan faith , never drinking to someone 's health again ( not even drinking to the King ) and going to church every Sunday for 36 years . He instead settled into his studies , working for up to 16 hours a day during his first two years at Lincoln 's Inn before reducing it to eight hours due to health concerns . As well as reading the law reports and statutes , Hale also studied the Roman civil law and jurisprudence . Outside of the law , Hale studied anatomy , history , philosophy and mathematics . He refused to read the news or attend social events , and occupied himself entirely with his studies and visits to church .

= = = Civil War , Commonwealth and Protectorate = = =

= = = = Barrister = = = =

On 17 May 1636 , Hale was called to the Bar by Lincoln 's Inn , and immediately became the pupil of William Noy . Hale and Noy became close friends , to the point where he was referred to as " the young Noy " , and more crucially he also met and befriended John Selden , a " man of almost universal learning , whose theories were to dominate much of [ Hale 's ] later thought " . Selden persuaded him to continue with his studies outside the law , and much of Hale 's written work is concerned with theology and science as well as legal theory . Hale gained a good legal practise , although he allowed his Christian faith to govern his work . He sought to help the court reach a just verdict , whatever his client 's concerns , and normally returned half his fee or charged a standard fee of 10 shillings rather than allow costs to inflate . He refused to accept unjust cases , and always tried to be on the " right " side of any case ; John Campbell wrote that " If he saw that a cause was unjust , he for a great while would not meddle further in it but to give his advice that it was so ; if the parties after that would go on , they were to seek another counsellor , for he would assist none in acts of injustice " .

Despite this , he was wealthy enough to purchase land worth £ 4 @, @ 200 in 1648 . He was in great demand ; law reporters began recording his cases and in 1641 he advised Thomas Wentworth , the first Earl of Strafford , over his attainder for high treason . Although unsuccessful , Hale was

then called to represent William Laud , the Archbishop of Canterbury , during his impeachment by the House of Lords in October 1644 . Hale , along with John Herne , argued that none of Laud 's alleged offences constituted treason , and that the Treason Act 1351 had abolished all common law treasons . John Wilde , arguing for the prosecution , admitted that none of Laud 's actions amounted to treason , but argued that all of them together did . Herne , in his arguments written by Hale , retorted that " I crave your mercy , [ Wilde ] . I never understood before this time that two hundred couple of black rabbits would make a black horse ! " The case against Laud began to fail , but Parliament issued an Act of Attainder which declared him guilty , and sentenced him to death . After the capture of Charles I , Hale was expected to defend him , and indeed offered to do so ; the King refused to submit to the court , claiming he did not recognise its jurisdiction . Edward Foss writes , based on the statement of Charles Runnington , that it was Hale who actually provided the King with this defence , and that it was only because the defence prevented any counsel being called for the King that Hale did not appear in court .

When it became clear that the King was losing the Civil War , and only Oxford held out , Hale decided to act as a commissioner to negotiate its surrender , fearing that the city might otherwise be destroyed . Thanks to his intercession , honourable terms were reached , and the libraries preserved . Despite practising in the politically charged environment of the English Civil War and primarily defending opponents of the resulting Commonwealth of England , Hale 's reputation did not suffer . First , he largely kept out of the war , even ignoring news of its progress , and instead translating *The Life and Death of Pomponius Atticus* into English . Second , he was acknowledged as universally able and of high integrity during his cases , retorting to those who complained of his defence of the Royalists that he was " pleading in defence of the laws which they professed they would maintain and preserve ; and that he was doing his duty to his client and was not to be daunted by such threatenings " .

= = = = Hale Commission = = = =

During the rule of both the Commonwealth and the Protectorate , there was considerable desire for law reform . Many judges and lawyers were corrupt , and the criminal law followed no real reason or philosophy . Any felony was punishable by death , proceedings were in a form of Norman French , and judges regularly imprisoned judges for reaching a verdict they disagreed with . Oliver Cromwell and the Rump Parliament aimed to establish a " new society " , which included reforming the law . To that end , on 30 January 1652 Hale was appointed chairman of a commission to investigate law reform , which soon became known as the Hale Commission . The Commission 's official remit was defined by the Commons ; " taking into consideration what inconveniences there are in the law ; and how the mischiefs which grow from delays , the chargeableness and irregularities in the proceedings in the law may be prevented , and the speediest way to reform the same , and to present their opinions to such committee as the Parliament shall appoint " . The Commission consisted of eight lawyers and 13 laymen , which sat from 23 January approximately three times a week .

The Commission recommended various changes , such as reducing the use of the death penalty , allowing defendants access to legal counsel , legal aid and the abolition of *peine forte et dure* as a torture mechanism . Dissolved on 23 July 1652 after producing 16 bills , none of the Commission 's recommendations immediately made it into law , although two ( to abolish fines for original writs and to develop procedures for civil marriages ) were brought into force through statutes by the Barebone 's Parliament . Almost all of the recommendations eventually became part of English law , with John Hostettler , in his biography of Hale , writing that if the measures had been put into law immediately , " we would have been honouring such pioneers for their farsightedness in enhancing our legal system and the concept of justice " .

= = = = Justice of the Common Pleas = = = =

Oliver Cromwell , noting Hale 's abilities , asked him to become a Justice of the Common Pleas . Although Hale considered that taking this commission would make others think he supported the

Commonwealth , he was persuaded to do so , replacing John Puleston . Only Serjeants @-@ at @-@ Law could become judges , and as such Hale was made a Serjeant on 25 January 1653 . He was formally appointed a Justice of the Court of Common Pleas , one of the three principal Westminster courts , on 31 January 1653 , on the condition that he " would not be required to acknowledge the usurper 's authority " . He also refused to put people to death for offences against the government ; he believed that because the government authorising him to do so was an illegal one , " putting men to death on that account was murder " . William Blackstone later wrote that " if judgment of death be given by a judge not authorized by lawful commission , and execution is done accordingly , the judge is guilty of murder ; and upon this argument Sir Matthew Hale himself , though he accepted the place of a judge of the Common Pleas under Cromwell 's government , yet declined to sit on the crown side at the assizes , and try prisoners , having very strong objections to the legality of the usurper 's commission " . Hale also made decisions which negatively impacted on the Commonwealth , executing a soldier for murdering a civilian in 1655 , and actively refusing to attend a court hearing outside term time . On another occasion , Cromwell personally selected a jury in a trial he was concerned with , something contrary to law ; as a result , Hale dismissed the jury and refused to hear the case . On 15 May 1659 , Hale chose to retire , and was replaced by John Archer .

= = = Member of Parliament = = =

On 3 September 1654 , the First Protectorate Parliament was called ; of the 400 English members , only two were lawyers ? Hooke , a Baron of the Exchequer , and Hale , who was elected Member of Parliament for his home county of Gloucestershire . Hale was an active MP , persuading the Commons to reject a motion to destroy the Tower of London 's archives , and introducing several motions to preserve the authority of Parliament . The first was that the government should be " in a Parliament and a single person limited and restrained as the Parliament should think fit " , and he later proposed that the English Council of State be subject to re @-@ election every three years by the House of Commons , that the militia should be controlled by Parliament , and that supplies should only be granted to the army for limited periods . While these proposals got support , Cromwell refused to allow any MPs into the Commons until they signed an oath recognising his authority , which Hale refused to do . As such , none of them were passed . Dissatisfied with the First Protectorate Parliament , Cromwell dissolved it on 22 January 1655 .

A Second Protectorate Parliament was called on 17 September 1656 , which wrote a constitution titled Humble Petition and Advice that called for the creation of an Upper House to perform the job of the former House of Lords . Cromwell accepted this constitution , and in December 1657 nominated the Upper House 's members . Hale , as a judge , was called to it . This new House 's extensive jurisdiction and authority was immediately questioned by the Commons , and Cromwell responded by dissolving the Parliament on 4 February 1658 . On 3 September 1658 , Oliver Cromwell died and was replaced by his son , Richard Cromwell . Richard Cromwell summoned a new Parliament on 27 January 1659 , and Hale was returned as MP for Oxford University . Richard Cromwell was a weak leader , however , and ruled for only 8 months before resigning . On 16 March 1660 General Monk forced the Parliament to vote for its own dissolution and call new elections . At the same time , Charles II made the Declaration of Breda , and when the Convention Parliament met on 25 April 1660 ( with Hale a member from Gloucestershire again ) it immediately began negotiations with the King . Hale moved in the Commons that " a committee might be appointed to look into the overtures that had been made , and the concessions that had been offered , by [ Charles I ] " and " from thence to digest such propositions , as they should think fit to be sent over to [ Charles II ] " who was still in Breda . On 1 May Parliament restored the King , and Charles II landed in Dover three weeks later , prompting the English Restoration .

= = = English Restoration = = =

== == Chief Baron and Chief Justice == ==

Hale 's first task in the new regime was as part of the Special Commission of 37 judges who tried the 29 regicides not included in the Declaration of Breda , between 9 and 19 October 1660 . All were found guilty of treason , and 10 of them were hanged , drawn and quartered . Sitting as a judge in this trial led to some viewing Hale as hypocritical , with F.A. Inderwick later writing " I confess to a feeling of pain at finding [ Hale ] in October 1660 , sitting as a judge at the Old Bailey , trying and condemning to death batches of the regicides , men under whose orders he had himself acted , who had been his colleagues in Parliament , with whom he had sat on committees to alter the law " . Perhaps as reward for this , he became Chief Baron of the Exchequer on 7 November 1660 , replacing Sir Orlando Bridgeman . Hale had no wish to receive the knighthood that accompanied this appointment and so tried to avoid being near the King ; in response , the Lord Chancellor Lord Clarendon invited him to his house , where the King was present . Hale was knighted on the spot .

There were many instances of parties to a case attempting to bribe Hale . When a Duke approached him before a case " to help the judge understand a case that was to come before him " , Hale said that he would only hear about cases in court . In another case , he was sent venison by a party . After noticing the man 's name and verifying that he had indeed sent Hale some venison , Hale refused to let the case proceed until he had paid the man for the food . When Sir John Croke , suspected in engaging in a conspiracy , sent him some sugar loaves to excuse his absence from a case , Hale remarked that " I cannot think that Sir John believes that the King 's Justices come into the country to take bribes . Some other person , having a design to put a trick upon him , sent them in his name " . Hale returned the loaves , and refused to continue until Croke appeared before him . Hale was noted during this period for giving latitude to those accused of religious impropriety , and through doing so " secured the confidence and affection of all classes of his countrymen " . His knowledge of equity was considered as great as his knowledge of the law , and Lord Nottingham , considered the " father of equity " , " worshipped Hale as a great master " .

On 2 September 1666 , the Great Fire of London broke out . Over 100 @,@ 000 people were made homeless , and by the time the fire ended over 13 @,@ 000 houses and 400 streets had been destroyed . An Act of Parliament enacted on 8 February 1667 constituted a Court of Fire , tasked with dealing with property disputes over ownership , liability and the rebuilding of the city . Hale was tasked with sitting in this court , which met in Clifford 's Inn , and heard 140 of the 374 cases the court dealt with during its first year in operation .

On 18 May 1671 , Hale was made Chief Justice of the King 's Bench after the death of John Kelynge . Edward Turnour replaced him as Chief Baron of the Exchequer . Hale was not noted as a particularly innovative judge , but took pains to ensure that his decisions were easy to understand and informative . Roger North wrote that " I have known the Court of King 's Bench sitting every day from eight to 12 , and the Lord Chief Justice Hale 's managing matters of law to all imaginable advantage to the students , and in that he took a pleasure or rather pride ; he encouraged arguing when it was to the purpose , and used to debate with counsel , so that the court might have been taken for an academy of sciences as well as the seat of justice " . He was noted for allowing counsel to fix any problems with pleadings , and for letting them correct him if he made an error in his summing up . He disliked eloquence , writing that " If the judge or jury has a right understanding it signifies nothing but a waste of time and loss of words , and if they are weak , and easily wrought upon , it is a more decent way of corrupting them by bribing their fancies and biassing their affections . " As a judge , however , he was noted by Lord Nottingham as the greatest orator on the bench .

== == Retirement and death == ==

By 1675 , Hale had begun to suffer from ill @-@ health ; his arms became swollen , and although a course of bloodletting relieved the pain temporarily , by the next February his legs were so stiff he could not walk . His initial attempts to resign as Chief Justice were declined by the King , but when Hale applied for a writ of ease the King reluctantly allowed him to retire on 20 February 1676 ,

granting him a pension of £ 1 @, @ 000 a year . He was replaced as Chief Justice by Richard Raynsford . After suffering for ten more months , Hale died on 25 December 1676 at his country home , The Lower House ( now the site of the present day Alderley House ) . He was buried next to his first wife 's tomb in the churchyard of St Kenelm 's , the church which adjoined his home at Alderley , with a monument erected that reads :

Here is buried the body of Matthew Hale , Knight , the only son of Robert Hale , and Joanna his wife ; born in this parish of Alderley on the 1st day of November , in the year of our Lord 1609 , and died in the same place on the 25th day of December in the year of our lord 1676 ; in the 67th year of his age .

His estate was largely left for his widow , with his legal texts given to his grandson Gabriel if Gabriel chose to study the law , and his more valuable manuscripts and books given to Lincoln 's Inn . The male line of his family died out in 1784 with the death of Matthew Hale , his great grandson ; also a barrister .

= = = Personal life = = =

In 1642 Hale married Anne Moore , the daughter of Sir Henry Moore , a Royalist soldier , and the granddaughter of Sir Francis Moore , a Serjeant @-@ at @-@ Law under James I. Moore and Hale had 10 children , but she was evidently a highly extravagant woman , with Hale warning his children that " an idle or expensive wife is most times an ill bargain , though she bring a great portion " . Moore died in 1658 , and in 1667 Hale married Anne Bishop , his housekeeper . Descriptions of Bishop differ ; Roger North wrote that " [ Hale ] was unfortunate in his family ; for he married his own servant made , and then , for an excuse , said there was no wisdom below the girdle " . Richard Baxter , on the other hand , described Anne as " one of [ Hale 's ] own judgment and temper , prudent and loving , and fit to please him ; and that would not draw on him the trouble of much acquaintance and relations " . Hale himself described her as a " most dutiful , faithful , and loving wife " who was appointed an executrix on his death .

= = Legacy = =

Hale is universally considered an excellent judge and jurist , particularly due to his writings . Edward Foss wrote that he was an " eminent judge , whom all look up to as one of the brightest luminaries of the law , as well for the soundness of his learning as for the excellence of his life " . Similarly , John Campbell in his Lives of the Chief Justices of England , wrote that Hale was " one of the most pure , the most pious , the most independent , and the most learned " of judges . Henry Flanders , writing in the University of Pennsylvania Law Review , describes Hale during his lifetime as " the most learned , the most able , the most honorable man to be found in the profession of the law " . Hale 's writings have been cited as recently as 1993 , in the case of R v Kingston , where the Court of Appeal relied on his statement that " drunkenness is not a defence " to uphold a conviction . William Holdsworth argues that it was his learning in Roman law and jurisprudence which allowed him to work so effectively ; because he had seen other legal systems at work , he " could both criticise the defects of English law and state its rules in a more orderly form than they had ever been stated before " . Hale 's political neutrality and personal integrity has been attributed to his Puritanism , and his support of the common law ; " Regimes come and go , the common law abides ... For Hale ... legal continuity was vital for civic identity " .

Much comparison has been made of Hale with Edward Coke . Campbell considered Hale to be the superior lawyer , because while he failed to engage in public life he treated law as a science , and maintained judicial independence and neutrality . Hostettler , while considering Hale a better lawyer than Coke and more influential , says that Coke was better overall . While Hale was in possession of judicial impartiality , and his written works are considered highly important , his lack of venture into public affairs limited his progressive influence . Coke 's active intervention allowed him to " breath new life into medieval law and use it to oppose conciliar justice " , encouraging judges to be more independent and " unfettered except by the common law whose supremacy it was their duty to

uphold " . J.H. Corbett , writing in the *Alberta Law Quarterly* , notes that with Hale 's popularity at the time ( Parliamentary constituencies " fought over the privilege of returning him " ) he could have been just as successful as Coke if he had chosen to take an active role in public affairs .

= = = Writings = = =

Hale 's posthumous legacy is his written work . He wrote a variety of texts , treatises and manuscripts , the most major of which are *A History and Analysis of the Common Law of England* , published in 1713 , and the *Historia Placitorum Coronæ* , or *The History of the Pleas of the Crown* , published in 1736 .

The *Analysis* was based on lectures he gave to students , and was most likely not intended to be published ; it is considered the first history of English law ever written . Divided into 13 chapters , the book dealt with the history of English law and some suggestions for reform . William Blackstone , when writing his *Commentaries on the Laws of England* , noted in his preface that " of all the earlier schemes for digesting the Laws of England the most natural and scientific , as well as the most comprehensive , appeared to be that of Sir Matthew Hale in his posthumous *Analysis of the Law* " . Hale proposed the creation of county courts , and also drew a strong distinction between written laws , such as statutes , and customary , unwritten laws . He also argued that the common law was subject to Parliament , far before the confirmation of Parliamentary supremacy , and that the law should protect the rights and civil liberties of the King 's subjects . He also argued for the confirmation of trial by jury , which he described as " the best mode of trial in the world " , while the 13th chapter divided the law into the laws of persons and of property , and dealt with the rights , wrongs and remedies recognised by the law at the time . William Holdsworth , himself considered one of the greatest common law historians , described it as " the ablest introductory sketch of a history of English law that appeared till the publication of Pollock and Maitland 's volumes in 1895 " .

The *Historia* is perhaps Hale 's most famous work . Pleas of the Crown were capital offences committed " against the peace of our Lord the King , his Crown and dignity " ; as such , the book dealt with capital crimes and the associated procedure . The 710 @-@ page work followed the pattern of Coke 's *Institutes of the Lawes of England* , but was far more methodical ; James Fitzjames Stephen said that Hale 's work " was not only of the highest authority but shows a depth of thought which puts it in quite a different category from Coke 's *Institute* ... [ it ] is far more of a treatise and far less of an index or mere work of practice " . The book dealt with the criminal capacity of infants , insanity and idiocy , the defence of drunkenness , capital offences , treason , homicide and theft . In the 19th century , Andrew Amos wrote a critique of the *Historia* titled *Ruins of Time* exemplified in Sir Matthew Hale 's *History of the Pleas of the Crown* , which both criticised and praised Hale 's work while directing the main criticism at the judges and lawyers who cited the *Historia* without considering that it was dated .

Hale also reorganised the first of Coke 's *Institutes* , which dealt with Thomas de Littleton 's *Treatise on Tenures* ; Hale 's edition was the most commonly used , and the first to extract Coke 's broader philosophical points . His written works , however , were fragmentary , and did not individually lay out his jurisprudence . Harold J. Berman , writing in the *Yale Law Journal* , notes that it is only " possible by a study of the entire corpus of Hale 's writings to reconstruct the coherent legal philosophy that underlies them " .

Hale 's writings on witchcraft and marital rape were extremely influential . In 1662 , he was involved in " one of the most notorious of the seventeenth century English witchcraft trials " , where he sentenced two women ( Amy Duny and Rose Callender ) to death for witchcraft , sorcery and " unnatural love " . The judgment of Hale in this case was extremely influential in future cases , and was used in the Salem witch trials to justify the forfeiture of the accused 's lands . G. Geis , writing in the *British Journal of Law and Society* , ties Hale 's opinions on witchcraft in with his writings on marital rape , which are found in the *Historia* . Hale believed that a marriage was a contract , which merged the legal entities of husband and wife into one body . As such , " The husband cannot be guilty of a rape committed by himself upon his lawful wife , for by their mutual consent and contract the wife hath given up herself in this kind unto her husband , which she cannot retract " . This

exception to the law of rape existed in England and Wales until 1991 , primarily due to his influence , until it was repealed by the House of Lords in *R v R*.

There are still dozens of volumes of Hale 's manuscripts that have not been published , including numerous theological treatises . The majority of these manuscripts are found in the Fairhurst Papers at the Lambeth Palace Library . His largest work in manuscript , " *De Deo* " ( ca . 1662 @-@ 1667 ) , consists of ten books filling five volumes and is estimated to contain nearly a million words . There are also three copies of a treatise on natural law at the British Library . A critical edition of this treatise on natural law has been published as *Of the Law of Nature* ( 2015 ) , which contains chapters on law in general and the law of nature . In the same work , Hale criticizes the reduction of natural law to self @-@ preservation as " the only Cardinall Law ? ( the view normally associated with Thomas Hobbes ) , cites John Selden 's *De jure naturali et gentium juxta disciplinam Ebraeorum* repeatedly , and appears to share conceptual continuities with both Hugo Grotius 's *De jure belli ac pacis* and Francisco Suárez 's *Tractatus de legibus ac deo legislatore* .

= = = Jurisprudence = = =

During Hale 's period as a barrister and judge , the general conclusion in England was that the repository of the law and conventional wisdom was not politics , as in Renaissance Europe , but the common law . This had been brought about thanks to Sir Edward Coke , who in his *Institutes and practice* as a judge advocated judge @-@ made law . Coke asserted that judge @-@ made law had the answer to any question asked of it , and as a result , " a learned judge ... was the natural arbiter of politics " . This principle was known as the " appeal to reason " , with " reason " referring not to rationality but the method and logic used by judges in upholding and striking down laws . Coke 's theory meant that certainty of the law and " intellectual beauty " was the way to see if a law was just and correct , and that the system of law could eventually become sophisticated enough to be predictable . John Selden held similar beliefs , in that he thought that the common law was the proper law of England . However , he argued that this did not necessarily create judicial discretion to play with it , and that proper did not necessarily equal perfect . The law was nothing more than a contract made by the English people ; this is known as the " appeal to contract " . Thomas Hobbes argued against Coke 's theory . Along with Francis Bacon , he argued for natural law , created by the King 's authority , not by any individual judge . Hobbes felt that there was no skill unique to lawyers , and that the law could be understood not through Coke 's " reason " ( the method used by lawyers ) but through understanding the King 's instructions . While the judges did make law , this was only valid because it was " tacitly confirmed ( because not disapproved ) by the [ King ] " .

Hale 's legal theory was highly influenced by both Coke and Selden . He argued that the making of the law was a contract , but that it was subject to a test of " reasonable " character , something that only the judges could rule on . In this way , he sat in a middle ground between Selden and Coke . This was in conflict with the argument of Hobbes . In 1835 , Hale 's " *Reflections on Hobbes ' Dialogue* " was discovered ; Frederick Pollock posits that since Hobbes ' *Dialogue* was first published in 1681 , six years after Hale 's death , Hale must have seen an early copy or draft . D.E.C. Yale , writing in the *Cambridge Law Journal* , suggests that Chief Justice Vaughan had access to the *Dialogue* , and may have passed a copy on to Hale before his death . In his *Reflections* , Hale agreed with Coke that the judge 's task was to bring the reason of the common law ( the coherence of the legal system ) in line with the reason of the law in question ( to justify that law ) . He disagreed with Hobbes that a layman could understand the law , saying that " he that hath been educated in the study of the law hath a great advantage over those that have been otherwise exercised " . The distinction between Coke and Hale is that Hale agreed with Selden that law was created through agreement , and disagreed that reason had an inherent binding power . Hale agreed with Hobbes that the interpretation of the law could not be left to individual reason , and that the law is not an exact science ; the best that can be produced is a set of laws which give a reasonable outcome in the majority of cases .

= = = List of works = = =



Hale 's full works include :

Contemplations , Moral and Divine ( 1676 ) .

The Primitive Origination of Mankind , Considered and Examined According to the Light of Nature ( 1677 ) .

The Life and Death of Pomponius Atticus written by his contemporary and acquaintance Cornelius Nepos . Translated out of his fragments , together with observations political and moral thereon ( 1677 ) .

Pleas of the Crown . A Methodical Summary ( 1678 ) .

A Discourse of the Knowledge of God and of Ourselves ( 1688 ) .

On Pomponious Atticus ( 1689 ) .

Origin of Mankind by Natural Propagation .

The Original Institution , Power and Jurisdiction of Parliament ( 1707 ) .

The History of the Common Law of England ( 1713 ) .

Government in General , its Origin , Alteration and Trials .

The History of the Pleas of the Crown ( 1736 ) .

The Analysis of the Law . Being a Scheme , or Abstract , of the several Titles and Partitions of the Law of England , Digested into Method ( 1739 ) .

Considerations Touching the Amendment or Alterations of Laws ( 1787 ) .

The Jurisdiction of the Lord 's House , or , Parliament Considered According to Ancient Records ( 1796 ) .

Reflections on Hobbes ' Dialogue of the Law ( 1835 ) .

Of the Law of Nature ( 2015 ) .

He also wrote the preface to Rolle 's Abridgment .