CAMBRIDGE STUDIES IN ENGLISH LEGAL HISTORY

Edited by

D. E. C. YALE

Fellow of Christ's College and Reader in English Legal History in the University of Cambridge

CAMBRIDGE STUDIES IN ENGLISH LEGAL HISTORY

J. G. Bellamy	*The Law of Treason in England in the Later Middle Ages*
J. S. Cockburn	*A History of English Assizes 1558–1714*
G. I. O. Duncan	*The High Court of Delegates*
G. H. Hand	*English Law in Ireland 1290–1324*
R. F. Hunnisett	*The Medieval Coroner*
G. Jones	*History of the Law of Charity 1532–1827*
Lord Nottingham	*'Manuel of Chancery Practice' and 'Prolegomena of Chancery and Equity'*
T. F. T. Plucknett	*Early English Legal Literature*
Sir Ronald Roxburgh	*The Origins of Lincoln's Inn*
R. C. van Caenegem	*The Birth of the English Common Law*
L. M. Hill (ed.)	*The Ancient State, Authoritie, and Proceedings of the Court of Requests by Sir Julius Caesar*
R. H. Helmholz	*Marriage Litigation in Medieval England*
W. H. Bryson	*The Equity Side of the Exchequer: its Jurisdiction, Administration, Procedures and Records*

THE ANCIENT STATE AUTHORITIE, AND PROCEEDINGS OF THE COURT OF REQUESTS BY SIR JULIUS CAESAR

EDITED AND WITH AN INTRODUCTION BY

L. M. HILL
Associate Professor
University of California, Irvine

CAMBRIDGE UNIVERSITY PRESS

CAMBRIDGE UNIVERSITY PRESS
Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo, Delhi

Cambridge University Press
The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by Cambridge University Press, New York

www.cambridge.org
Information on this title: www.cambridge.org/9780521203869

First published 1975
This digitally printed version 2008

A catalogue record for this publication is available from the British Library

Library of Congress Catalogue Card Number: 73–93399

ISBN 978-0-521-20386-9 hardback
ISBN 978-0-521-08556-4 paperback

To Professor Joel Hurstfield

CONTENTS

Acknowledgments vii

Introduction ix

THE ANCIENT STATE, AUTHORITIE, AND PROCEEDINGS OF THE COURT OF REQUESTS

1 The Epistle Dedicatory 3

2 The Court's authority as demonstrated in the records of the Court of Requests 6

3 Excerpts from the Order and Decree Books and other records of the Court of Requests 39

4 Statutory and common-law precedents concerning the Court of Requests 216

5 Orders, notes and commissions from 4. Henry VI until 1630 dealing with the Court Council or the Court of Requests 229

Index of litigants 253

General index 271

ACKNOWLEDGMENTS

It has been my good fortune to have had the opportunity to discuss the text and introduction of this book with scholars whose judgment I respect and whose capacities for patient criticism are nigh limitless. I hope that an appreciable element of their good advice has found its way on to the pages of this edition of *The Ancient State*. While I cannot thank all of those to whom I owe a debt of gratitude, there are several individuals to whom I must make particular reference. Professor Joel Hurstfield had the prudent foresight to suggest that I edit *The Ancient State* before going on to a full-scale study of Caesar's public career. As was so much of the advice that he gave me when I was his student in London, this advice was timely, thoughtful and well-taken. I wish to dedicate this work to him with great respect. Professor Elizabeth Foster, who is surely the dean of scholarly editors, assisted me in conceptualising the problem and in establishing a working scheme for undertaking the task. Professor T. G. Barnes was unstinting in his assistance as I was threading my way through the labyrinth of Caesar's legal notations. When finally I felt that I had a key to making sense of Caesar's arguments it was Professor Barnes, Professor G. R. Elton and Mr D. E. C. Yale who aided me in refining my ideas. In like manner I also thank Professor W. J. Jones for his exhaustive commentaries and criticisms. It was of the greatest use to me to have J. Beardesly, Esq. read and comment upon the introduction from the point of view of the practising lawyer. He modestly insisted that his advice was nothing; I can only demur. Notwithstanding all of this assistance, for which I am grateful, I am solely responsible for the text and its interpretation.

In preparing this edition I was greatly aided by Miss Mary Beemer who undertook the translations from Latin into English. The painstaking reading and correcting of Mr Iain White, the sub-editor, was surely beyond that which any author is entitled to expect.

The University of California at Irvine has been bountiful in its support of my work. With greater numbers of scholars calling upon diminishing resources, I have found it most gratifying to have

received support from the School of Humanities as well as from the Humanities Institute of the University of California. Without the support of the University I would have been unable to accomplish this task. I also appreciate the careful assistance of Mr David Heifetz who assisted me in preparing the index.

The text of this edition is published with the kind permission of the Trustees of the British Museum. The supporting data was derived from the collections of the Public Record Office whose staff was unfailingly patient in fetching scores of little used manuscripts for which I often had need for little more than a few minutes' use. In particular I should like to thank Mr D. Lea of the P.R.O. staff whose knowledge of the vast collections exceeds that of most scholars of my acquaintance.

IRVINE, CALIFORNIA L. M. H.
Michaelmas, 1973

INTRODUCTION

(i)

In 1591, in the case of *Locke* v. *Parsons*, a complaint was lodged in the Court of Requests concerning the lease of a house in London. The Court found for the plaintiff. The defendant in turn lodged an information in Common Pleas alleging that the Requests had lacked jurisdiction to hear and determine the case and asking that Common Pleas issue a prohibition forbidding any further action in the Requests. Privy Council, acting for the Court of Requests, ordered Common Pleas to stay execution of the prohibition pending the results of an enquiry by the Solicitor General and the Attorney General. The law officers, after consulting the parties and their counsel, found that the Court of Requests had exercised proper jurisdiction and the prohibition was subsequently rescinded. Although the prohibition did not succeed the attempt itself was important: it was the first time that the jurisdictional sufficiency of the Court of Requests had been challenged in this manner by one of the common-law benches. This frontal attack upon the court coincided with the installation of a new Master of Requests, Dr Julius Caesar, an experienced civilian who foresaw the difficulties which lay ahead because of the precedent which had been set. The case of *Locke* v. *Parsons* did indeed begin a long series a prohibitions against the court and the new Master became its principal apologist when, several years later, he published *The Ancient State, Authoritie, and Proceedings of the Court of Requests*.

In the matter of *Locke* v. *Parsons* the law officers had found that the Court of Requests had 'declared as was convenient and stoode with all equitie and conscience seeking to establish that which was affirmed at the Common lawe'.[1] But the first attempted prohibition led to many more; enough to cause an anonymous commentator to draw up what has been called a 'melancholy list' of prohibitions issuing from Common Pleas from 1591 until about 1600.[2] The

[1] H. L. Huntington Library, Ellesmere MS 2924.

[2] W. B. J. Allsebrook, 'The Court of Requests in the reign of Elizabeth' (unpublished M.A. thesis, University of London, 1936), 152. [Hereafter cited as Allsebrook.]

litigants who sought prohibitions displayed their contempt for the authority of the Court of Requests. The Council was not willing to countenance such contempt but at the same time the Council did not have the time to involve itself in the Court's affairs. But concern for public order forced the Council into a mediating and occasionally into a penalising role. If the parties could not be ordered back to the Court of Requests or if both the Court and Common Pleas could not concur in the matter of jurisdiction then the Council would order the party seeking the prohibition to desist on pain of contempt. This intervention was a nuisance for the Council whose impatience was apparent when they were diverted by these jurisdictional squabbles.

Conciliar concern for the Requests was to prove inadequate protection against the next major blow which befell the Court: the decision in the case of *Stepneth* v. *Flood* which was finally determined in 1598.[1] While the controversy surrounding *Locke* v. *Parsons* had impelled Caesar to begin his researches into the origins and jurisdictions of the Court, the *Stepneth* v. *Flood* case, even before it was decided, brought his closet scholarship into the light of day.

The case itself had begun in the Court of Requests several years before when Flood was sued by his wife for separate maintenance. She alleged that he had treated her miserably and she obtained her decree from the court but Flood refused to pay the maintenance that had been ordered. Finally a writ of attachment was issued out of Requests against Flood. Alban Stepneth, the sheriff of Carmarthenshire, received the attachment and proceeded to arrest Flood who made bond to appear before Requests and was subsequently released from Stepneth's custody. Once free of the sheriff, Flood did not appear before the Requests and Stepneth eventually put the obligation in suit in the Common Pleas. Anderson, C. J. and Glanville, J. heard the case and found for the defendant. They found that Flood had indeed entered into the bond with the sheriff and would normally have been liable for its satisfaction, but in this instance, the overriding consideration was that the Court of Requests was *coram non judice* and that the attachment issuing from it had no force at law. For this reason the court determined, the plaintiff had suffered false imprisonment at the hands of the defendant. By way of *obiter dictum* the court went

[1] P.R.O. CP 40/1610.

on to point out to the sheriff that in future he should not serve any process of the Court of Requests although he was obliged to act for the Court of Wards and the Duchy Court which were deemed courts of judicature because they enjoyed statutory sanction.[1] As we shall see, this case was of the greatest importance to Sir Edward Coke when he came to argue against the Court of Requests. At the same time the decision appears to have stimulated Caesar to publish *The Ancient State*.

As we mentioned above, when Caesar came to the Court of Requests in 1591, *Locke* v. *Parsons* was a current issue. In his epistle dedicatory to Burghley, dated January 1598, Caesar recalled the 'great contention on foote betwene the Judges of the Comon Pleas and the Masters of Requests then being, touching the jurisdiction of her Majesties court at Whitehall'.[2] The Masters averted 'bitter inconveniences' to the poor suitors in the court by their 'suffering, yet necessary patience and forbearance'. In his letter Caesar told Burghley that he held it an important and necessary task to collect in one volume the records of the Court at White Hall then dispersed in seventeen volumes and to make them known 'that in this Court (as in the Chancery, Kings Benche, Comon Pleas and Exchequer) Actes past might be presidentes of things to come'. This then was Caesar's stated purpose: to present the record of his Court in order that it might take its place beside the other central courts 'of record' in Westminster. In the beginning he had intended only to 'satisfie [his] owne conscience, and to understand what aperteined to the place where [he sat] as Judge'. However, the pressure of the prohibitions against his Court eventually led him to prepare a limited publication.[3]

It would be folly to inflate the importance of Caesar's little book but it is far too easy to make less of it than it deserves. Caesar's work cannot be compared with the work of Coke, Egerton or Lambarde but within the rubric of the *apologia* Caesar wrote an important tract. W. B. J. Allsebrook has styled *The Ancient State* a 'controversial and pseudo-antiquarian' work.[4] It was indeed controversial, but then the Court was engaged in a heated controversy and at the least Caesar did not intend preemptive sub-

[1] Croke, *Reports*, i, 646.
[2] Caesar used the spellings 'Whitehall' and 'White Hall' interchangeably to refer to the chamber in Westminster Palace known as the White Hall.
[3] *Infra*, fos. 26r–26v. [i.e. BM Lansd. MS 125].
[4] Allsebrook, i.

mission to the Common Pleas. As for the 'pseudo-antiquarian' character of the work, one wonders what the term was meant to convey. Parts of the work are frankly antiquarian and lose much because they appear to be *receuils inédits* but there is also a strong argument running throughout which cannot easily be set aside. Allsebrook summarised his objections to Caesar's work in a few sentences.

> Dr. Caesar's object was not to give a clear account of the history and procedure of the Court where he sat as judge, but to provide an army of weapons against its assailants among the ranks of the Common Lawyers. As a result, his book is little more than collections of precedents as to the jurisdiction and powers of the Court, many of which depended for their value and relevance upon the soundness of his theory that the Court is merely an aspect of the Privy Council. His avoidance of major issues and his continued reference to medieval precedents betray more anxiety to observe than to settle fairly a controversy which was threatening the very existence of the Court as a judicial body.[1]

Allsebrook's comments provide us with useful material on the basis of which to attempt an assessment of Caesar's argument. While we might agree that Caesar was writing no history of the Requests, what was he doing and how well?

The book consists of two parts which are dated 2 October 1596[2] and 13 February 1593[3] respectively. In the epistle dedicatory to Burghley, Caesar spoke of having undertaken two tasks; the collecting of what he regarded as the principal records of the court and the creation of a 'brieff table of [the] colleccions themselves':

> . . . not to the end to make them common but of purpose to deliver some of them to suche, either Counsellors of Estate or counsellors at Lawe, or such students of antiquities and of histories, as from whose wisdomes and good observacions either in lawe, or storie or antiquities there might be drawne such amendment of things amisse or addition of things obscured or reducing into course, things wrested out of course as might breed hereafter a continewall peace betwene the Judges of the Common Lawe and her Majesties Counsell and

[1] Allsebrook, ii. [2] *Infra*, fo. 9r. [3] *Infra*, fo. 43r.

> might without offence of the subjects, establishe her Highnese prerogative for ever.[1]

The two dates, 1593 and 1596, represent the two phases of this work. The collection was started shortly after Caesar became a Master of Requests when the great contention was afoot between the Common Pleas and the Requests. It would appear that this venture was finished by February 1593. The 'brieff table', completed in October 1596, which served as a topical guide to the contents of the collection contained the kernel of Caesar's argument. Without this topical guide the collection of cases would have been uselessly antiquarian. When one consults the topics in the table and then follows the references to the collection of Caesar's cases, his argument emerges from the mass of citations.

The burden of Caesar's argument was carried by his elaborate explication of the jurisdiction of the Court of Requests, and by his proofs of its long-standing association with the Council. Caesar's first proposition in the printed edition set the tone for the rest of the work: 'The Court of (Whitehall or) Requests now so called was and is parcell of the Kings most honourable Counsell.'[2] As with all of the propositions in the first part of *The Ancient State*, Caesar followed the statement with a bracketed list of references to the extracts from the order and decree books of the Court which were reproduced in the second part of the book. Prepared in haste, the printed topical table was not sufficiently explicit. But this failing was well compensated in the interleaved folios of Caesar's copy of *The Ancient State* because in these manuscript folios one can clearly detect the grain of Caesar's argument. 'That the king of England is the fountain of all English justice in all causes, from whence all judges . . . derive their . . . authority no man can deny . . . upon . . . pain' and further, that the king 'never did nor doth grant any jurisdiction to any court . . . but so as he still retaineth in himself and [in] his Council attendant upon his person a supereminent authority and jurisdiction over them all'. To support this last statement Caesar referred the reader to Britton. If these propositions were true, then it followed 'that the jurisdiction of the King and his Council extendeth to the hearing and determining of causes publick, mixt and private . . .'.[3] Upon this plenitude of power Caesar based his determined assertions of the peculiar authority of the Requests. He

[1] *Infra*, fos. 26r–26v. [2] *Infra*, fo. 9r. [3] *Infra*, fo. 8r.

declared that no Court, save the High Court of Parliament and the Privy Council, could reexamine a cause already decreed in Chancery nor discharge a prisoner committed from Chancery, 'but this court hath done it'.[1] Likewise, no Court, other than Parliament and the Council, 'hath accustomed to cause noblemen to attend on it *de die in diem* and not to depart without licence as namely Dukes, Earls, Barons and the like . . . but this court hath alwaies accustomed the same . . .'. This functional analysis contrasted sharply with Coke's analysis as we shall see below but there was a similarity between Caesar's rhetoric in *The Ancient State* and Coke's in the *Fourth Institute*.

Notwithstanding his rhetoric the matter of greatest importance to Caesar was the close connection which he observed between the Requests and the Council. The Privy Seal could only be moved by the hand of a Privy Councillor as was assured by the oath of the clerk of the Privy Seal, 'but every of the Judges of this court, his hand commaundeth the said Privy Seal'.[2] If the common lawyers wished to level their biggest guns at the Requests, Caesar was determined that they should be seen to be laying siege to the authority of Council at the same time, thus entering the forbidden realm of prerogative affairs; that realm which James I described in 1616 as 'the absolute Prerogative of the Crowne, that is no Subject for the tongue of a lawyer, nor is lawful to be disputed'.[3] Caesar's list began with broad principles but it terminated in a wandering file of specific examples of the sundry activities of the Court of Requests. Yet the complete list is valuable because it provides us with an overall view of the scope of the Court's jurisdiction. This pragmatic treatment of the Court and its authority is in marked contrast with Coke's more theoretical analysis.

Sir Edward Coke was the common lawyers' most outstanding spokesman in the attack made on the conciliar or prerogative, courts, most particularly the Court of Requests. This attack was as much a function of the common lawyers' efforts to define their own jurisdictions as it was a function of internecine competitiveness. He readily admitted that the Masters of Requests were officers of ancient origin enjoying places close to the King, but they were not judges; they were the King's agents charged with the

[1] *Infra*, fo. 11r.
[2] *Infra*, fo. 11v.
[3] C. H. McIlwain, *The political works of James I* (1918), 333.

responsibility for referring petitions of redress from both subjects and strangers to the courts best suited to adjudicate the questions at hand and to provide satisfaction. Simply because the joint meeting of these Masters was commonly referred to as a court did not convey judicial authority any more than in the case of the Court of Audience and Faculties. It was Coke's opinion that during the reign of Henry VIII the Masters had managed to usurp power by securing commissions authorising them to hear and determine causes in equity. But 'those commissions being not warranted by Law (for no Court of Equity can be raised by Commission) soon vanished; for that it had neither Act of Parliament nor prescription time out of mind of man to establish it'.[1] Evidence of this seemingly arbitrary expansion of power is not quite as clear as Coke indicated. While it is true that in 1529 the term 'Court of Requests' was first used in the Order Books, during the 1530s the Court was still identified with the Council as it had been throughout Henry VIII's reign. There were quiet changes taking place over a period of time but there does not appear to have been the dramatic change that Coke intimated in his account of the period.

Coke asserted, quite correctly, that neither the Year Books, Saint German, Fortescue nor other principal legal authorities mentioned the Court of Requests; men had, nonetheless, been deceived by the Court's apparent respectability and it was against this appearance that he was struggling. He wrote that,

> as Gold or Silver may as current money pass even with the proper Artificer, though it hath too much Allay, until he hath tried it with the Touchstone, even so this nominative Court may pass with the Learned as justifiable in respect of the outside by vulgar allowance until he advisedly looketh into the roots of it, and try it by the rule of Law, as (to say the truth) I my self did: but *errores ad sua principia referre, est refellere*, to bring errors to their first is to see their last.

The *Stepneth* v. *Flood* decision was Coke's touchstone as well as his proof positive that the Court of Requests had no standing in law. But he could not ignore the troublesome fact that, properly or improperly, the Court flourished with overt royal sanction. He was thus forced to acknowledge the court *de facto* which he believed to

[1] Coke, *Fourth Institute*, 97.

have no rightful existence *de jure*. In the last paragraph of his discussion of the Requests, Coke said that,

> although the Law be such as we have set down, yet in respect of the continuance that it [Requests] hath had by permission, and of the number of decrees therein had, it were worthy of the wisdom of a Parliament, both for the establishment of things for the time past, and for some certain provision with reasonable limitations (if so it shall be thought convenient to that High Court) for the time to come: *et sic liberavi animam meam*.[1]

Coke's distinctly theoretical and constitutional approach to the problem met its antithesis in Caesar's commitment to both a *de facto* and a *de jure* defence of his Court. The *de facto* defence was self-evident, being spread out across virtually every page of *The Ancient State*. The *de jure* defence turned upon the meaning of 'right'. Was it 'right' as understood by the common lawyers with their insular myopia or was it the 'right' of the King to administer the law and provide for justice in any way that he saw fit? To deal with this question we must consider the intellectual and jurisprudential fabric of Caesar's argument. As an antiquarian Caesar attempted to give credence and acceptability to his Court in the best way that he knew: citing vast numbers of ancient references to the Court, either as an independent body or as an adjunct of the Privy Council. But there was, as we shall see, more to this work than simple antiquarianism.

Returning to *The Ancient State* we might recall that Caesar's case for his Court was quite straightforward. He had alleged that the Court of Requests was and always had been a part of the King's Council, that the judges were of the Council and that their places of meeting had once been determined by the itinerary of the King on progress. In addition, he alleged, his Court was a court of record, its procedure was the summary procedure of the civil law and its jurisdiction extended to officers of the King's Household, to paupers and to causes 'specially recommended from the King, to the examination of his Counsell: or causes concerning Universities, Colledges, Schooles, Hospitales and the like'.[2] These

[1] *Ibid.*, 98.

[2] *Infra*, fo. 12r. 'Summary' procedure was Caesar's reference to the occasional practice of the Requests by which oral responses were received and quick decisions reached.

last were of particular interest because, being corporations, they were the King's creatures and enjoyed their corporate life at his pleasure.

The type of cause over which the Requests exercised its jurisdiction was spelled out in detail in *The Ancient State*, but the precarious *modus vivendi* which was reached with the Common Pleas after the spate of prohibitions was evident in the following holographic note added to one of the printed pages.

> But it is to bee understood that causes ecclesiasticall, maritime, ultramarine, and causes triable by the common lawe are not determinable in this Court, unles ther bee some matter of equitie in them not remediable in theire proper Courts, videt., to remedie fraudes, breach of trust, extremity of common lawe or undue practices.[1]

There then followed folios both of printed and manuscript references to the multitude of causes over which the Court had assumed jurisdiction, presumably because of 'some matter of equitie in them' not susceptible to the common law.

At some point after he had published his little volume Caesar added an almost equal number of folios containing holographic and other manuscript evidence to support his contentions. Among these are the medieval precedents to which Allsebrook made reference when he assessed the value of Caesar's work. These precedents served but one purpose: to establish the nigh timeless authority of the Council and to prove 'that the Court of Whitehall or Requests is a member and parcell of the Kings most honorable Counsell attendant on his person'.[2] As tendentious as this last allegation may have been, it was a matter of faith for Caesar who required the dignity of this connection to enhance the dignity of his own Court.

Caesar was a civilian by training as well as by disposition but he was really a legal hybrid. As we shall observe below, he rose to great dignity within the Inns of Court although he never practised as a common lawyer nor was he trained to be one. While not a common lawyer he was of their society, he knew how they thought, and he was prepared to use the arguments of the common law to defeat them. Thus, Caesar was no ordinary LL.D. for he regarded the civil law in which he was trained as an integral part of the

[1] *Infra*, fo. 12v.

[2] *Infra*, fo. 10v.

English Law, indeed, of the 'common law', if one used that term to describe all laws common to all Englishmen and not as a generic definition of judge-made law augmented by statute. Here we find Caesar's unique place: he was a civilian through-and-through who thought and acted with great facility as a common lawyer. He demonstrated this legal ambidexterity in the methodology that he employed in the pages of *The Ancient State*. Caesar used the techniques of his adversaries as he sought from among the precedents of the Court of Requests and of the Council as well as from among the statutes and the commentaries upon the English law, the evidence that he required to prove the antiquity of his Court. The pursuit of the immemorial which marked the *Fourth Institute* was not absent from Caesar's work. Medieval precedents were crucial to Caesar's allegation that the Court of Requests rested upon as firm a customary foundation as that of the Common Pleas.

We have seen that Coke alleged in the *Fourth Institute* that the King could establish no Court of Equity by commission and that such a Court could be justified only by an Act of Parliament or by proof of its existence time out of mind of man. Caesar agreed and proceeded to prove that his Court, as an extension of the Council, had indeed existed time out of mind of man. Agreeing with Coke's assertion Caesar made his case in Coke's own terms. The methodology that he used was the careful collection of precedents, a method dear to his common-law colleagues. Beginning with ordinances and statutes, adding the commentaries of Bracton, Britton and Fortescue, and finally turning to the records of Council and to the Year Books, Caesar built a case which was contained entirely within the framework of the English law. While there had not been a Court of Requests immemorially there had been a King's Council and Caesar rested his case on the identity of the one with the other. How little his technique, both in respect of the citation of precedent and the use of analogy, differed from the common lawyers'!

But what of the other material contained in Lansdowne MS 125, material which, in some cases does not appear to bear directly upon the Court of Requests at all. Some of the manuscript additions are lists of judges and dignitaries who had sat in the Court or who had been parties to actions there. These lists were gathered out of the records of the Court and simply emphasised Caesar's contention that the Court had long been recognised both by the Crown and by

the legal community. Then there are letters from justices of the Common Pleas and other prominent officials asking the Requests to take over a case from the common law because of some need for equity which they could not provide.

In Caesar's addenda there was a letter from Lord Keeper Puckering, dated 2 February 1593, asking for Caesar's help in sorting out a problem which arose when the defendant in a particularly long litigation had died before he could satisfy the execution of the common-law sentence against him. If the plaintiff wished to enforce the execution he would have to institute an entirely new action against the defendant's estate and such an action promised to be as protracted as the first had been. Recognising the expedient means available in the Requests, Puckering wished to utilise its good offices.[1] In another case, Anderson, C. J. and Periam, J. wrote to the Masters of Requests in 1592 asking them to make final order in disposing of an action already determined in Common Pleas. The matter was *res judicata* but enforcement was impossible. The judges having explained their problem, concluded the letter:

> Thus leaving the said cause to bee further ordered by your good discretions in her Majesties said Court of Requests, which wee in the said Court of the Common Pleas, being a Court of Common Lawe tied to the strict and precise course thereof, could not so well helpe as wee wished.[2]

Yet again in 1599, the Common Pleas sent a note to Caesar and his colleagues which informed them that leave had been given to a defendant to go into the Requests for an injunction. The licence had been granted because the Common Pleas believed that proper jurisdiction lay with the Requests since the cause concerned intestacy and involved a crown servant. Walmsley, J., who wrote the note appealing to the Requests, justified his action by explaining the faults in the Common Pleas' jurisdiction in that particular case.[3] Thus we have several instances of the Common Pleas finding that, even after the advent of the prohibitions, it was necessary, and indeed expedient, to turn to the Requests for such relief as the common law could not provide.

Perhaps the most interesting ancillary documents in the volume are those various orders which were given from time to time to

[1] *Infra*, fo. 153r. [2] *Infra*, fos. 153r–153v. [3] *Infra*, fo. 155r.

organise better the business of the Court. But there are also orders, issued much later in Caesar's life, which concern attendance in the King's Chapel and the protocol for meetings of the Council, both of which date from the seventeenth century. Why were these orders, which seem to be totally irrelevant, interleaved with Caesar's personal copy of *The Ancient State*? If we recall Caesar's contention that the Court and the Council were nigh indistinguishable, we can perhaps better understand these documents.

The first document, 'for civility in sittinges ether in Cappell or elsewhere in court', was dated 1 January 1623.[1] Caesar's apparent motive for including this otherwise incongruous statement of precedence seems pathetic but is fully in keeping with his fundamental belief in the intimate relationship of the Requests to the Council and of the dignity of members of the Council. The order required decorous conduct and the observance of a rigid protocol at Court. It restricted approach to the royal person to those of the rank of baron or above with the exception of members of Privy Council. As far-fetched as this connexion was, it provided Caesar with a useful bit of evidence to indicate that the Council enjoyed peculiar supremacy and so also, by association, did the Court of Requests. The other obscure document in Caesar's collection also bears upon his notions of the importance of the Council. This document contains orders made 7 November 1630.[2] They required that members of the Council attend its meetings regularly and they spoke of members making a more impressive public appearance by passing through public chambers to meetings rather than through back-passages. It is interesting that these Orders for the Council were made shortly before the issuance of the Book of Orders. The King in Council was about to re-emerge as the effective administrative head of the kingdom without the impediment of Parliament. Caesar, by then in his seventies, quite possibly felt that this development was the fulfilment of his desire to see the King in Council firmly in control. Both of these documents then, although they gave the appearance of irrelevance, were quite in keeping with Caesar's theories, idiosyncratic though they may have been.

In conclusion we might assess the importance of BM Lansd. MS 125. As a document complementary to the records of the Court

[1] *Infra*, fos. 33r–35r.

[2] *Infra*, fos. 40v–42v, 167v–168r.

of Requests, Caesar's collection has greater value for us now than it had for his contemporaries when it was written. Caesar used records which lay in the Tower and in the custody of the Court. He intended these records to be used in conjunction with his work, why else did he so carefully insert the folio reference to the original documents after each entry. Furthermore, these records had never been foliated prior to Caesar's use of them. The folio numbers are in his hand written in the brownish ink with which he did so much of his work. In the intervening centuries since Caesar wrote *The Ancient State* much of the original material has been lost or severely damaged. Thus Caesar's book constitutes the only extant substitute for a series of gaps in the Order and Decree Books. *The Ancient State* is also a singular instance of the attempt of an uncommon civilian, who was well acquainted with the techniques and methods of the Common Lawyers, to use his opponents' own best weapons in defence of his own interests.

As one considers Caesar's book, with its manuscript addenda, one is struck by the sense that the author had an idea which he only partially realised. He felt threatened by his rivals in other courts and he attempted to answer their allegations but the answers were incomplete. Perhaps lack of skill or lack of time accounted for Caesar's publication of a skeleton that wanted further study to add flesh. The great number of interleaved folios suggests that the initial publication was a premature reaction to *Stepneth* v. *Flood*. Had there been more time (or less urgency) perhaps all of the material would have been published. The skeletal treatment of the Court of Requests, however, was not so much a matter of lacking time or talent but rather a matter of the brief that Caesar gave himself. He wanted to associate his Court with the Council and the King. In this respect he succeeded admirably. There is also in the work a systematic statement of the Court's jurisdiction and dignity, as well as a statement of medieval origins and precedents to support his contentions. But there is no analysis of the cases themselves; indeed, given the frame of reference that Caesar established for himself, there was no place for such an analysis. For the modern scholar a detailed study of the Court of Requests, its jurisdiction, its procedure and its decisions will be most welcome. One hopes that when such a study is undertaken, *The Ancient State* will provide useful evidence both as to the institution itself and its most important member, Dr Julius Caesar.

(ii)

Dr Julius Caesar was born in London in 1558, six months before Queen Mary's death.[1] His father, Cesare Adelmare, was a court physician who had emigrated to England from his native Padua in 1550 and subsequently married Margery Periant whose father was an official in Dublin. During Mary's reign Adelmare prospered and by the time his first son, Julius, was born, he was well enough connected at court to provide a notable set of god-parents for the boy including a *locum tenens* for the Queen. Adelmare died in 1568 and his wife was soon remarried to an adventurous merchant, Michael Locke. The family into which Julius and his brother and sisters moved as a result of this marriage gravitated towards the redoubtable puritan lady, Anne Locke. It was perhaps Anne Locke's circle that encouraged Caesar to go up to Oxford to join the puritan enclave in Magdalen Hall. He took his B.A. in 1575, proceeded to his M.A. in 1578 and upon coming down went to Paris to continue his legal studies. While in Paris he studied the Civil and Canon Law as well as foreign languages, returning to London for a year in 1580.

During this year Caesar, who already belonged to Clement's Inn, was admitted to Inner Temple. This proved a useful connexion for him although there is no reason to believe that he studied the common law. Caesar was a most unusual civilian in the light of his intimate association with Inner Temple. Simply being a member of the Inn would not have been so remarkable but he rose to preside over the house in the 1590s. From January 1592 through November 1593 he and Coke, a fellow bencher, presided over most of the parliaments of the Inn and from 23 November 1595 until 30 January 1597 Caesar presided over every parliament. On 11 November 1593 his fellow benchers elected him Treasurer of the Inn, in which capacity he served until 3 November 1595 when Coke succeeded him. In the year following his Treasurership Caesar gave £300 towards the construction of a new block of chambers for which the society thanked him profusely and styled the block, Caesar's Chambers. All of this activity in the Inn was

[1] For a detailed study of Caesar's origins see my thesis 'The public career of Sir Julius Caesar: 1584–1614' (unpublished Ph.D. thesis, University of London, 1968).

exactly coterminous with Caesar's work on *The Ancient State* and his running skirmish with the great common lawyers over the jurisdiction of his Court; but we have gotten ahead of the story.

When Caesar returned to Paris after his year in London he began to receive the degrees in law for which he had been studying. In April 1581 he received his LL.B., his licentiate in both laws, and his LL.D. On 10 May of the same year the young Dr Caesar was accorded the unusual honour of being admitted as an advocate in the *parlement de Paris*. This was a gesture usually accorded to great foreign jurists and political figures when they visited Paris and Caesar was neither of these. In a letter that he wrote to his patron, Lord Burghley, Caesar told of how the King of France had offered him a place in Paris. Upon declining the offer in favour of returning to England, Caesar allegedly received a second offer from the French King which was an offer of a pension for the young civilian.[1] While this claim may have been hyperbolic, there seems little doubt that Caesar was very well received during his stay in Paris.

Back in England in late 1581 Caesar was assisted by Dr David Lewes, the Judge of the High Court of Admiralty and a very senior civilian, as well as by Sir Francis Walsingham. He was admitted to practice in the court of Arches, a necessary antecedent for admission to Doctors' Commons, and was made a commissioner for piracy causes. In addition, Lewes commissioned Caesar his commissary in the Hospital of St Katharine next to the Tower where the old judge was the Master. Lewes also sponsored Caesar when he supplicated for the D.C.L. from Oxford shortly before the judge's death. During these early years Caesar also managed to acquire a mastership in Chancery and a place as commissary to the Bishop of London with responsibility for parts of Essex, Hertfordshire and Middlesex.

Shortly before his death in 1584 Lewes made arrangements with the Lord Admiral, Lincoln, for Caesar to be favoured when the time came to select a new judge for the Admiralty Court. Caesar had often sat as a deputy for Lewes and he had been virtually a full-time judge during the last months of Lewes' life. The problem inherent in Lewes' arrangements was that the office was held in

[1] British Museum, Lansdowne MS 157, fo. 212v (23 January 1585). [This series is hereafter cited as BM Lansd. MS.]

reversion by John Herbert, a diplomat on the Queen's service in Poland when Lewes died. Before Herbert could return to England to claim his place or before Caesar could mount an attack upon the reversion and attempt thereby to secure a place for himself, Lord Admiral Lincoln died and Charles, Lord Howard of Effingham became the new Lord Admiral. Thus it was not until the early part of 1586 that Caesar and Howard, with assistance from Burghley, could arrange for an elaborate swap that satisfied Herbert. In return for giving up his reversion, Herbert became a Master of Requests, which Burghley procured for him at Caesar's behest, and received a large sum of money from Caesar. Caesar alleged that this sum had cost him £1,300 in interest by 1592 but it had secured the office even though he was unable to secure a life patent to the judgeship until 1589.

During the time that Caesar was working with some notable skill and diplomacy as judge of the High Court of Admiralty, he was also spending a great deal of time and energy trying to secure a mastership of Requests for himself. He reckoned that he was spending more money than he was earning each year simply to perform the duties expected of the judge of the Admiralty but he knew very well that Elizabeth would not compensate him for his services or for any extraordinary expenses. The only hope of compensation lay in receiving some additional office which would provide increased revenue and influence. A mastership of Requests would have had the incalculable advantage of placing Caesar in the Queen's Household close to the monarch's person, thus there was much to be gained if his suit were successful. After much delay, Caesar was finally able to secure the mastership by linking his petition for a new job to his present work in the Admiralty Court in a way that would directly benefit the Queen.

From the moment that Caesar began to administer the affairs of the Admiralty Court on his own in 1585, he had been keen on establishing a circuit during the long summer vacation. Dr Lewes had proposed a similar idea several years before and Caesar believed that it had merit as it would hopefully make some order out of the chaos which prevailed in the provinces because of the privateering war with Spain. Caesar calculated that such a circuit would dramatically demonstrate the power of the High Court of Admiralty in remote regions along the coast while the judge's presence there might help to stem the flow of lost revenue due to

the number of cases which managed to escape the Court's jurisdiction.[1]

At first Caesar was not able to move his patron, Lord Burghley, with his ideas about a circuit and neither Walsingham nor Howard was much interested in the project. Thus Caesar let the matter lie fallow while he concentrated his efforts upon gaining security of tenure in the Admiralty Court and upon the quest for a mastership. By 1589 he had secured a life patent in the Admiralty and now he began once more to agitate for the circuit, however, this time he linked his suit for the circuit to his older plea for a mastership of Requests. Caesar suggested to the Queen that if she would grant him the mastership, which would cost her nothing, he would then have sufficient funds with which to carry out the admiralty circuit. If the circuit were successful, Caesar argued, he would increase the Queen's revenue and strengthen central authority along the troubled coast.

The suit for the mastership had moved in fits and starts for several years. From no success at all in his first attempts Caesar had by 1588 received word that the Queen intended to make him a Master. But the Queen had not given Caesar a specific date for fulfilling her promise. The Queen's initial agreement was due largely to Walsingham's pleadings in Caesar's behalf, but Walsingham had to notify Caesar that the promise would remain vacant until the Queen was ready to act upon it although he agreed to have a word with the monarch at the most advantageous moment.

Caesar was anxious to press forward with his suit and thus he turned to Burghley for assistance because he felt that the time for the appointment seemed right; Herbert was ailing and another Master, Ralph Rookesby, was lame. Surely the Queen was prepared to place a vigorous younger man among the Masters of Requests? Caesar went on to explain to Burghley that he was keen on the appointment not only for himself and his own fortunes but also for the advantages that it would provide him in executing his duties in the High Court of Admiralty. There had been difficult relations among the many Courts in Westminster and Caesar believed that such a mark of royal esteem as a Master's place would enhance his own standing as judge of the Admiralty and thus the

[1] For the results of this circuit see my article 'The admiralty circuit of 1591: some comments on the relations between central government and local interests', *The Historical Journal*, XIV, 1 (1971), 3–14.

authority of his Court. Furthermore, if he were within the Household and enjoyed access to the Queen's presence, he could more quickly settle the petitions of foreign merchants who were clogging his Court during the privateering war. These merchants, impatient with the progress of their various actions in the Admiralty Court, would frequently petition the Queen or the Privy Council for relief. If Caesar were a Master of Requests he would be the officer who received these petitions and he would be able to give expert advice based upon his experience in the Admiralty Court.

One might well ask why a man with Caesar's qualifications had so difficult a time getting satisfaction in his suit. His hard work in the Admiralty Court was both well known to and appreciated by the Queen and her Council but Elizabeth was notoriously mean and her reluctance to pay for the services of her officers was legend. Rather than pay cash, Elizabeth would always seek some other form of remuneration which would cost her Exchequer nothing. If Caesar had only to bear the burdens of the Admiralty Court with its attendant fees, he would have had little reason to complain. However, in addition to his ordinary responsibilities, the judge was constantly called upon to deal with foreign merchants and ambassadors who were seeking justice from the Crown because of the privateering war. Caesar was constantly called upon to intercede, to negotiate or to placate, often at his own expense, in order to make the impossible diplomatic tight-rope walking of the war with Spain into a possibility. All that Caesar had received from the Queen was a fairly routine grant which allowed him to receive fees in the Admiralty Court.[1]

Among the other factors which militated against Caesar's rise were his relative youth and the fact that he had a foreign father. Although he rarely used his patronym, Adelmare, and his adopted surname seemed quite unexceptional to his colleagues there were those who were prejudiced against him. In addition there was a matter which is not easily subjected to proof; an allegation that he was corrupt. Indeed he accepted gifts and favours on a scale which was within the acceptable limits of the day. Dr K. R. Andrews has neatly summarised Caesar's position and, for that matter, that of scores of officials like him.

[1] See E. Nys, 'Les manuscrits de Sir Julius Caesar', *Revue de droit international et de legislation comparée*, t. XIX (1887), 461–71.

> The patronage of the great was something no man in Caesar's position could reject or scorn without grave danger to himself, and it required stronger character than his to rise above the prevailing sychophancy of the official world. He cultivated his noble friends, preserved their correspondence with loving care and by judicious use of influential contacts manoeuvered himself into a well earned niche in the Jacobean establishment.[1]

But it is more than likely that the reasons for Caesar's difficulties in gaining preferment had little to do with his ancestry, his youth or his public morality. These allegations were the symptoms of an aversion to Caesar's civilian training. A few years later we find Cecil's aunt, the Dowager Lady Russell, writing to her nephew in order to frustrate Caesar's attempt to rise within the ranks of the masters. She was supporting a man trained in the common law when she wrote, 'Let not Dr Caesar, a civilian, deprive him [the common lawyer] of the fee due to a temporal lawyer and not to a civilian' especially since she thought that Caesar was too wealthy anyway.[2]

Caesar was fortunate in that he had highly placed supporters. Although Walsingham died in 1590 before his protegé was sworn, the unlikely combination of Burghley and Essex continued to assist Caesar. On 10 January 1591 he was summoned to Richmond and there, before the Privy Council, was sworn a Master of Requests. The records of the Council show that following the administration of the oath the new Master was 'greatly commended for his diligence, wisdome and great discrecion in executing the office of the Judge of the Admiralty'.[3] Caesar would serve both in the Admiralty and in the Requests until he was named Chancellor of the Exchequer in 1606.

(iii)

Upon first encounter the cases which Caesar noted in *The Ancient State* seem a chaotic jumble but they are none the less the evidence upon which he based his several assertions. Principally he was

[1] K. R. Andrews, *Elizabethan privateering* (1964), 26.
[2] *Historical Manuscript Commission Reports*, Hatfield MSS, VI, 215 (15 June 1596).
[3] *Acts of Privy Council, 1590–91*, 207.

showing the working relationship of his Court to others in the judicial establishment and he was demonstrating the various forms of relief available in the Requests which were not available in the common-law courts. In addition Caesar demonstrated the particular devices which allowed the Requests to accomplish its tasks. Our examination of these points will help us to understand better Caesar's argument and also to see the Court of Requests at work. From the start it is important to remember that Chancery could do everything that the Requests could do and thus Caesar could make no claim to singularity except regarding the relationship of the Court of Requests to the Council. Also, one should remember that Caesar at no time turned his argument into a civilian attack upon the common law for although he was very much a civilian, he believed that the law of England was informed by civilian principles and, thus, there was no conflict. No 'reception' question beclouded Caesar's argument.

In the pages which follow there are many cases cited by Caesar in *The Ancient State* which are relevant to his argument. The cases are, however, deceptive without a word of warning. While we know that the Court of Requests, along with the other Courts and agencies of sixteenth-century England, was undergoing great change, we are dealing here with an observer of the Court who viewed its history in a static fashion. For Caesar a precedent drawn from the reign of Henry VII was as relevant as one drawn from the reign of Elizabeth. We might even venture to suggest that he found the earlier precedents more relevant when we consider the relative scarcity of Elizabethan citations in his book. There is therefore no sense of development of the Court over time. But this was a failing which Caesar shared with his common-law brothers. Had this study been expanded to include more references from the years in which Caesar was writing it would have presented a better picture of the Elizabethan Requests but it would have, at the same time, thrown Caesar's argument out of the particular context in which he chose to place it. Should we not be mindful of the way in which Caesar weighted his own evidence with earlier rather than more contemporary citations we should run the risk of inviting a serious distortion of the Elizabethan Requests and its history.

The Court of Requests was intended to be a forum for the rapid and inexpensive resolution of poor men's causes as Caesar noted in describing the style which was first used in 20 Henry VIII: the

Court of poor men's causes in the Court of Requests.[1] But the Court tried when it could to avoid abuses of its availability to the poor. There were many cases of the remission of causes to other Courts because the parties were 'able to proceed' at law,[2] or because the parties were not poor.[3] We cannot assume that the remainder of the parties qualified as paupers as they clearly did not. There was one reference, however, to a cause in the Requests by reason of poverty but also 'for want of Justice in the law courts'.[4]

The Court's other major jurisdiction was over the Household. The Court was open to members of the Household so that they could be both a party to civil litigation and available to serve the Crown. Thus, a cause which was admittedly within the jurisdiction of the Court of the Council of the Marches was taken up by the Court of Requests because the plaintiff was an officer of Her Majesty's pantry.[5] Although Caesar did not spell out the jurisdiction over the Household it becomes apparent from the list of dignitaries at Court whose actions were heard in the Requests that the Court was their tribunal.

The Court of Requests as an equity bench could mitigate the rigours of the common law but this did not mean that the Requests was intended to be a means to avoid the jurisdiction of the common lawyers. In fact, mitigation more often than not provided a complementary equitable remedy which the common law in the sixteenth century could not provide. In one case, allegations of failure to perform an indenture having been tested in the Requests, the matter was returned to the law for its determination of the possessory questions involved.[6] In another case cross-actions for debt had been introduced at common law. The Requests stepped in to assist the law, as Caesar noted in a margin gloss. The defendant's action was stayed until he made bond to answer the plaintiff's action at law and also until the defendant answered the plaintiff's bill in the Requests.[7] But this same power to force cooperation with the common law could be used to suspend any further action at law until either the Requests or another court was satisfied. An action in the King's Bench was suspended until the plaintiff in that court (who was the defendant in the Requests) had

[1] *Infra*, 28 June, 30 H. 8.
[2] *Infra*, 11 December, 11 H. 7.
[3] *Infra*, 26 May, 6 E. 6.
[4] *Infra*, 5 May, 3&4 P. & M.
[5] *Infra*, 9 November, 3&4 P. & M.
[6] *Infra*, 16 February, 3 H. 8.
[7] *Infra*, 15 May, 21 Eliz. 1.

answered a complaint in the Requests.[1] The Court ordered another common-law action to be stayed until the defendant in that action had proved his title in the Court of the Lord President of the Council of the North.[2]

The rigours of the law were not limited to the common law; the Requests was equally concerned with local courts such as manorial courts which were of particular interest in the sixteenth century.[3] The lord of the manor both in law and according to custom was the chancellor of his manor in matters pertaining to the equity of the customary law of the individual manor.[4] The customary tenant had therefore to appeal in the first instance to the same lord from whose decision he sought relief. If the appeal failed the customary tenant could proceed by petition in Chancery or in the Court of Requests but this was not a matter of right but of royal favour. The petition sought a subpoena against the lord requiring him to appear with the manorial rolls or other appropriate evidence. Fitzherbert reported a Chancery decree in the midfifteenth century which went so far as to suggest that even an ousted tenant at will had recourse to subpoena against his lord. But this was not a singular instance of such intervention. Littleton and Coke each report subpoenas of a like nature, the former in 1467 and the latter in 1390. None the less these were exceptional cases and one cannot ascribe typicality to this use of the subpoena.

Of course, some lords contemptuously tried to ignore interference in their manors by the central courts, and they were successful as long as their tenants did not press the matter further.

Because the common law had come to recognise that a copyholder by custom enjoyed an estate, it was necessary for a customary tenant who wished to proceed in Chancery or in the Requests to allege his requirement for equitable relief in terms which went beyond simple customary tenancy. One of the most frequently encountered of these requirements concerned allegations of the hostility or partiality of the lord of the manor. The lord

[1] *Infra*, 13 October, 10 Eliz. 1. [2] *Infra*, 17 October, 2&3 P. & M.

[3] Another customary institution which was breaking down in the sixteenth century was the marketing system. Under several categories one can adduce cases which go directly to troubles in the market place occasioned by the rapid growth of private marketing. See A. Everitt, 'The marketing of agricultural produce' in *The Agrarian History of England and Wales*, IV (1967), 563.

[4] The following material regarding the manor is derived largely from E. Kerridge, *Agrarian problems in the sixteenth century and after* (1969), 69 *passim*.