Order in the Archives: The Victorian Art of Legal History

Christine L. Krueger*

Abstract

English historical jurisprudence evolved in the context of nineteenth-century movements in Western historiography, but it cannot be understood without attention to the pioneers of archival historical research who brought order to the archives in the decades following the Public Records Act of 1838. In remarkable collaboration with legal professionals, historians and literary authors shaped not only the narratives of English legal history, but the very methods and materials of historical legal research. This lesser-known story, illustrated here by Thomas Carlyle and Mary Anne Everett Green, helped make possible not only historical jurisprudence, but our own multidisciplinary art of legal studies.

* * *

Historical jurisprudence was a Victorian creation, founded in monumental works by Maine, Pollock and Maitland. Viewed retrospectively, *Ancient Law* (1861) and *The History of English Law Before the Time of Edward I* (1895) appear as parts of a broad trend in Western thought, from Hegel to Marx and beyond, of historicizing everything—including the law. We do well to remember, however, that English jurisprudence came somewhat late to this party and not without resistance, notably from positivists like Jeremy Bentham and John Austin. What is more, any jurisprudence understood as an over-arching philosophy of law, be it positivist or historicist, remained largely irrelevant to the ways English lawyers and judges thought about common law. Rather, as Ayelet Ben-Yishai has demonstrated, it was common law precedential reasoning that pervaded Victorian legal and literary discourses concerned with establishing an English identity continuous with its past in a period of political and social change. What I wish to add to her ground-breaking argument is how historians contributed to this enterprise. English historical jurisprudence gained traction during the nineteenth century thanks to the institutions and individuals

---

* Professor of English, Marquette University. I wish to thank the Berg Conference on Law and the Arts, Tel Aviv University, for occasioning my reflection on the Victorian art of legal history and in particular Anat Rosenberg and Seffi Berg for their kindnesses in time of need. Thanks to Assaf Likhovski for learned comments on an earlier draft, which I have tried to address here.


concerned with what Foucault termed “the order of things” for the discipline of history. The “things” I have in mind are historical documents and the physical spaces in which they were collected. People concerned with this process might have brought to it a positivist demand for transparency, or an empiricist standard of objectivity in historical study which, as Appleby, Hunt, and Jacob put it, “locat[ed] objectivity in the object” of the document itself. But the order of the archives was also inflected by the narrative aesthetics of historical writers. Consequently, although English historical jurisprudence evolved in the context of movements in Western historiography, it cannot be understood without attention to the interface between those ideas and the complex interests of individual historians who wrestled legal documents into shape. This lesser-known story concerns me here, since it helped make possible not only historical jurisprudence, but our own multidisciplinary art of legal studies.

Overshadowed by the eminent Victorians of historical jurisprudence are the pioneers of archival historical research who brought order to the archives in the decades following the Public Records Act of 1838. In remarkable collaboration with legal professionals, historians and literary authors shaped not only the narratives of English legal history, but the very methods and materials of historical legal research. Significantly termed “literary searchers” by Public Records archivists, they applied distinctly aesthetic modes of reasoning to the task of archival research while at the same time discrediting narrative compilations of secondary sources in favor of empiricist history deriving its authority from documentary evidence. Their contributions are salient for contemporary scholars of the arts pursuing topics in English legal history. Among the challenges we face is the inscrutability of historical legal documents, including the organization of legal archives. That matters aren’t worse is owing in great measure to Victorian archival researchers. In addition to securing access to archives free of charge, they helped to determine both the ordering of earlier legal documents and how those documents would be created, organized, and accessed going forward. Indeed, one reason that the nineteenth century is such a rich field of law and literature scholarship may be the relative accessibility in The National Archives of English legal records for this period.

The list of Victorians responsible for this state of affairs includes the Public Records officials Sir Frances Palgrave and Sir Thomas Duffus Hardy, the historians Elizabeth and Agnes Strickland, and the novelists Charles Dickens and William Harrison Ainsworth. I will focus on Thomas Carlyle, both as an archival researcher and influential theorist of history, and Mary Anne Everett Green, author of the six-volume Lives of the Princesses of England (1849-54) and editor of forty-one volumes of Calendars of State Papers produced

---

5 Joyce Appleby et al., Telling the Truth About History 257 (1994).
under the Public Record Office Act. Hayden White declared Carlyle to have been the first post-modern historian because of his insights into the narrative foundations of the historical imagination. In the context of my argument, however, Carlyle is a transitional figure. Though content to construct histories from secondary sources for much of his career, once he engaged in archival research, he fused literary techniques with original documentary evidence to narrate the organic continuity of the English past and present. As I have argued elsewhere, Mary Anne Everett Green not only restored the voices of the past through her rigorously empiricist histories, but also effectively created a new genre of history writing with her pioneering methods of calendaring state papers, enabling practically and conceptually such contemporary fields as social history and women's history. Importantly, such contributions were enabled by a Parliamentary act of precedential reasoning: the Public Record Office Act.

This 1838 statute initiated unprecedented collection, ordering, and cataloguing of centuries of English legal and state documents, many of which were languishing in church cellars, school attics, and private cupboards. In the words of Sir Frances Palgrave, first Deputy Keeper of Public Records, the primary goal of this undertaking was to make accessible “the people’s records.” The unanticipated consequences of collecting documents, however, were radical reconceptualizations of how legal records were organized and institutional accommodations for new research practices. The need to document precedents, record statutes, verify titles and deeds, and other such legal business had resulted in troves of loose papers, rolls of parchment, and bundles of documents often haphazardly accumulated in various London locations, including the Tower, Rolls House, and State Paper Office. Principally these repositories served legal professionals needing to consult specific documents, for which they paid fees. By contrast, historians imagined the documents collected under the Public Record Office Act as materials of expansive historical narratives and the voices of the past. What is more, they were as likely to be interested in uncovering subjected histories—of women in particular—as in the authoritative decisions of elites.

7 (1838), 1 & 2 Vict. c. 94.
11 Cantwell, supra note 10, at 67 (citing Sir Frances Palgrave, 1841 Deputy Keeper’s Report).
12 Id. at 139-40.
These new conceptualizations of legal documents would dovetail with the demands of legal professionals, frustrated by the sorry state of archival preservation and organization. Law journals reported on the progress of document collection and reorganization being made under Lord Langdale, Master of the Rolls. Sir Henry Cole, reviewing Deputy Keeper Palgrave’s report of 1840 in The Law Magazine, wrote that “[e]xtensive discoveries we believe remain yet to be made in almost every office. However unostentatious and mechanical the labour of classifying and arranging records may be, it is that which is most wanted in the present state of the public records. The physical condition of great numbers in most of the offices demands immediate attention.” The urgency of Cole’s plea can be illustrated by John D. Cantwell’s summary of the condition of the “tens of thousands” of Chancery records described by Palgrave in 1841:

Each bundle contained Chancery proceedings in sixty or seventy suits, and there were almost as many bundles of depositions. Their arrangement was much confused due to the methods of filing. Sometimes the early bills and answers were assembled under the name of the first plaintiff, or the first name to catch the eye of the sorter, and then bundled under the initial letter, although not chronologically. From the reign of Charles II to 1714 they were even more confusingly arranged, being divided into six divisions bearing the names of the six clerks in Chancery, but each division was arranged differently from the others, and even within each division there was no consistency. As it was evident that with existing resources it would take many years even to establish the title of each bundle, and count and stamp the number of bills and answers within it, it was essential to establish a better order and arrangement for the future.

Dickens’s court of Chancery in Bleak House has nothing on this. Correspondence among PRO officials expresses considerable frustration, lack of adequate staff, and a sense of the overwhelming nature of their task to bring order to the documents in their care.

Both Thomas Carlyle and Mary Anne Everett Green took up residence in London just as caches of documents were also arriving and archivists were struggling to organize them. Carlyle, who had earlier spent periods in London, moved there permanently from Scotland in 1843. At the age of forty-eight, he was already a celebrated author, whose works included The French Revolution (1837). Still, as I have noted, Carlyle represented older historiographic traditions: the narrative compilations of secondary sources, represented by Gibbon and Macaulay, and the idealism and organicism of Kant. His experience of archival research had been confined to the manuscript room of the British Library. Green, by contrast, commenced her career by embracing empiricist demands for original documents. A home-schooled twenty-three-year-old in 1841 when she had followed her Methodist preacher father from the north of England to London, Miss Wood (as she was then) embarked on research for a multi-volume work on the princesses of England from the Norman Conquest through the seventeenth century, along the lines of the Strickland

13 Cole, supra note 6, at 364.
14 Cantwell, supra note 10, at 67.
15 Robert Cowtan, Memories of the British Museum 87-88 (1872).
sisters’ successful *Lives of the Queens of England*. By the time Carlyle moved to London, Miss Wood had already impressed records keepers at the Rolls House and Tower.

Wood joined Carlyle and the many literary searchers using the manuscript room of the British Library. Upon her 1846 marriage to the portrait painter George Pycock Green, Mary Anne would settle within blocks of the library. While she worked on her *Lives of the Princesses*, Carlyle began research at the State Paper Office for *The Life and Letters of Oliver Cromwell* (1845). Miss Wood gained access to the State Paper Office in 1845, where she likely crossed paths with Carlyle, who would later call her “that fair oracle” whom he was consulting on a research question.

Carlyle’s belated engagement with archival research caused his historiographic practice to evolve in ways that reveal the dialectic between the art of history and the Public Records Act. Though he retained his predilection for history-as-biography and hero-worship, he came to appreciate how the more miscellaneous documents of history might also be given narrative life. Indeed, they helped him to bridge the conceptual gulf between the impersonal forces of organic continuity, unfolding over the ages, and the historical agency of individuals preserved in documents. Early in his career, he had dramatized the absurdity of efforts to bring order to bags and bundles of inchoate and often insalubrious documents. In *Sartor Resartus*, published six years before the Public Records Act, he had satirized the attempts of a fictional editor to form a life story of the fictional Diogenes Teufelsdröckh from mounds of miscellaneous papers. Nevertheless, as an historian, that is precisely what he would eventually come to do. In *The French Revolution*, as well as in essays on history and historical fiction, Carlyle had articulated innovative historiographic principles, which would drive him towards archival research. Carlyle denounced “dry as dust” historical writing and urged historians to adopt novelistic narrative methods to bring history and historical figures to life, thereby revealing the past’s vital legacy to the present. In *Past and Present*, published the same year he moved to London, Carlyle developed arguments about the organic relationship between history and current events. Although Carlyle did not focus on legal history *per se*, his historiographic principles parallel interpretations of English common law as the source of continuity in English identity across time.

Carlyle’s growing commitment to represent the voices of the past would compel him to trace those speakers back to original sources. In his 1839 essay “On History,” Carlyle had written of archival materials,

> For though the whole meaning lies far beyond our ken; yet in that complex Manuscript, covered over with formless, inextricably entangled, unknown characters,—nay, which is a *Palimpsest*, and had once prophetic writing, still dimly legible there,—some letters, some words, may be deciphered; and if no complete Philosophy, here and there an intelligible precept, available in practice, be gathered; well understanding, in the mean while, that it is

---


only a little portion we have deciphered, that much still remains to be interpreted; that history is a real prophetic Manuscript, and can be fully interpreted by no man.\textsuperscript{18}

Nevertheless, Carlyle relied on printed sources for medieval documents in \textit{Past and Present}.\textsuperscript{19} It was not until he came to frequent London archives that this missionary spirit motivated his quest to seek the voice of Oliver Cromwell in the documents being collected and sorted under the Public Records Act. After several years reading “tedious” books on Cromwell, Carlyle burned his notes for a biography and started anew, reconceiving his project as “life and letters” based on original documents.\textsuperscript{20} Carlyle had transformed the slightly hysterical approach the narrator of \textit{Sartor} had taken to the documentary detritus of a life, into the historian’s mission to scour the archives for the prophetic voices of the past.

In a few short years following her arrival in London, Miss Wood managed to forge a reputation as a researcher, paleographer, and linguist, consulting documents not only in the British Museum manuscript room, but the Tower, Rolls House, and Lambeth Palace archives.\textsuperscript{21} She was mentored by Thomas Duffus Hardy, then Keeper of Records at the Tower and later Deputy Keeper of Public Records.\textsuperscript{22} She also began associations with the period’s leading antiquarians. How Wood so rapidly achieved this reputation was owing, of course, to her historiographic expertise, coupled with sheer audacity. Illustrative of her scrupulous empiricism is her introduction to \textit{Lives of the Princesses}, where she wrote that she could

\begin{quote}
conscientiously affirm that no pains have been spared to render the biographies authentic. Authorities have not been taken second-hand, when it was practicable to revert to the originals. Much care has been bestowed upon the verification of names, dates, genealogies, and other points of historic importance; and when the paucity of information has left much to conjecture, the line between fact and probability has been carefully drawn.\textsuperscript{23}
\end{quote}

Since she, unlike Carlyle, was expert in paleography, obscure Medieval and Early Modern documents were no mysterious palimpsests to her. Reviewers of the six volumes of the \textit{Lives}, published between 1849 and 1854, consistently praised her authoritative documentation from original sources as they had praised her first publication, \textit{Letters of Royal and Illustrious Ladies}, the first-ever scholarly edition of women’s letters.\textsuperscript{24} By the time of these

\begin{thebibliography}{9}
\bibitem{18} Thomas Carlyle, History, in 2 Critical and Miscellaneous Essays 251 (1839).
\bibitem{20} Kaplan, supra note 15, at 267-68, 298.
\bibitem{21} Christine L. Krueger, Mary Anne Everett Green, Oxford Dictionary of National Biography (2004).
\bibitem{22} Mary Anne Everett Green, 1 Lives of the Princesses of England vii (1849).
\bibitem{23} Id. at vi.
\end{thebibliography}
publications, she had become Mrs. Green, but it was the extraordinary chutzpah she had shown as Miss Wood in her early days working in London archives that had not only secured the critical reputation of her writings, but transformed access to the archives for all literary searchers.

Whereas the public had access to documents from 1838, even in their often-chaotic state, assistant keepers’ semi-annual reports indicate that the usual request came from someone in search of a particular document for the purpose of resolving a legal question. Miss Wood had something quite different in mind for these documents as the source material for a comprehensive history. An exchange of letters among Wood and various officials overseeing public records indicates her radically innovative conceptualization of history.

On October 26, 1843, Rev. Joseph Hunter, assistant keeper at Carlton Ride archive, called on Palgrave to ask advice regarding a lady who, for the past week, had been carrying on her research under his supervision. In a letter to Palgrave on the following day, Hunter detailed his concerns. “We have had for seven entire mornings a lady (Miss M.E. Wood),” he wrote, “pursuing researches in the Records now under arrangement, for matter illustrative of the history of any part of the Royal family, the original application being for Wardrobe Accounts.” He continued,

> According to the progress already made this is likely to continue for many weeks to come . . .
> [T]he nature and compass of her objects are such that the number is very great and the documents which must be submitted to her, the seeking and surfacing them is a work in which a great deal of time is consumed . . . . [S]uch a Search is wholly unlike the ordinary searches in a Record Office, and should be deferred till the Documents are arranged and calendared.\(^{25}\)

Hunter was concerned not only with the unfocused nature of Wood’s requests and the time they required of clerks, but also with how he should charge her, since the fee structure was based on the assumption of requests for specific—if not single—documents. He had been charging her the bare minimum of five shillings, but this was intended for the inspection of a single document, not the opportunity to trawl through boxes containing entire classes of documents. Hunter worried that, were this to become common practice, the repositories would be unable to fund the expense of clerks’ labors. Hunter despaired of the consequences for creating a usable calendar of disordered documents if they were to be made available en masse to researchers.

Palgrave’s response on October 28 may have underestimated what this challenge entailed. He reminded Hunter that fees were left to the judgment of the assistant keeper. As to the request for documents, Palgrave asserted that a better system for organizing document requests would reduce the time needed to provide them and promised to visit Carlton Ride in a few days to assist in devising such a system.\(^{26}\) He does not mention that Wood had taken her problem directly to Lord Langdale, though it is likely her letter to the Master of the Rolls had already been passed to him. On October 27, she had written to Langdale,

---

\(^{25}\) The National Archives, Great Britain [hereinafter TNA], ref. PRO 1/7.

\(^{26}\) Id.
May I request your Lordship pardon my intrusion upon your time for a few moments. Being engaged upon an historical work connected with English Royalty, I have had frequent occasion to apply for searches at the public record offices. I have met with the most polite attention and courtesy from the keepers of the records. At the queen’s remembrance office [Carlton Ride], however, my researches are unfortunately attended with considerable inconvenience. Owing to the nature of the management there, the documents which I require, principally wardrobe and jewel accounts, are not easily forthcoming & for several days the time of one of the clerks has been exclusively occupied in searching them out for me. As my research there to be completed must necessarily occupy several weeks, Mr. Hunter has manifested considerable hesitation in permitting me to continue my studies unless the matter has been laid before your Lordship. As the information I have obtained during the eight days I have already spent there is very valuable to me, I am of course reluctant to relinquish my research unless your Lordship thinks that I should intrude too far upon the time of the public officers by continuing them. I ought [obscured] in justice to myself to add that having mastered the old writing I have not had occasion to bother the clerks more than two times for assistance in decyphering [sic] documents, but merely to produce them for me. & I have only asked for such as they may know to be in the office.

I beg however to state that I do not wish to proffer the slightest complaint against Mr. Hunter. He has treated me with perfect civility & even reduced the fees to 5s/ a week for my benefit. All that I wish for is an order from your Lordship, if you think proper to grant it, for permission to continue my research at the queen’s remembrance with the assurance on my part that I will give as little trouble as possible.27

Lord Langdale passed this letter to Palgrave. As Keeper of the Rolls House, Palgrave had already met Miss Wood and been impressed with her knowledge of ancient and modern languages.28 In a November 1 letter, he informed her that she had misunderstood Mr. Hunter, and that “no prohibition was laid” upon her to seek “special permission, although Mr. Hunter had doubts whether the Searches should continue.” Furthermore, Palgrave assured her that “Mr. Hunter has instructions to give you every facility for continuing your inquiries, paying only such Fees as the responsibility of his Office towards the Treasury may require. & which will be fixed at the lowest scale consistent with Official Regulations.”29

But the entrepreneurial scholar proceeded to improve upon the plan offered by Palgrave. I reproduce the following letter to Hunter in its entirety, since it conveys the combination of scholarly expertise and audacity which launched Green’s career, and because it suggests why her name came to Palgrave’s mind when he sought the first editor of calendars in 1854.

Sir,

Being extremely anxious to remove from your mind the hesitation you felt about permitting me to continue my studies at the queen’s augmentation office, I have adopted the suggestion you threw out as advisable, of laying the case before the master of the rolls. & I believe Sir Francis Palgrave has communicated with you on the subject.

27 Id.

28 Cantwell, supra note 10, at 170 (quoting Palgrave in 1845 letter to Dawson Turner: “her [Miss Wood’s] knowledge of ancient records etc. is truly wonderful”).

29 TNA ref. PRO 1/7.
Notwithstanding the permission thus obtained, I am very wishful that some mode should be adopted by which my researches among the valuable documents under your custody may be rendered less troublesome and inconvenient than they have been. The plan which has suggested itself to my own mind is to request you to place in my hands your MS. Calendar and so to allow me to take from it a list of the documents I want. I should thus be able to save yourself and the other gentlemen the trouble of selecting for me & I should merely have to trouble someone to procure me the records. & this should be with a distinct proviso on my part, that should it occasionally happen that any one or two documents were not easily forthcoming, my request for those particular ones should be immediately dropped.

In soliciting permission to inspect a calendar which is still under revision, I am fully aware that I am asking not as a right but a favour. It is purely for an act of grace that my petition is made. & if you can consistently with your own views accede to it, you may place the fullest reliance upon me that I shall make no bad use of your kindness. You could not reprobate more strongly than I should do the taking advantage of such a permission by making either publicly or privately any unfavourable remarks on the state of an unfinished calendar. I should consider such a proceeding unfair and ungenerous in the highest degree, even supposed there were really just grounds for criticism, though I have every reason to believe from what I have seen of the manner in which the transcripts in your office are executed that the very contrary would be found to be the case. Perhaps you will allow me to plead as a precedent that Mr. Hardy of the Tower has been so kind as to place in my hands the transcripts of the royal letters which are now in progress, whether they had been examined by himself or not, & has thus very greatly diminished the labour of consulting them by enabling me at once to point those which I wanted. At the same time I am aware that the matter must rest entirely with yourself & I must abide with your decision.

I think I stated to you that at present I do not wish to bring down my enquiries lower than the reign of Edward III. & I am in hopes that it will not be necessary for me to consult your records of a later date, until the arrangements about which you have been so long and zealously occupied shall have been brought to a conclusion, & references thus rendered easy. As I have already nearly got through those of Edward I, & understand that you have not many of Edward II & that those of Edward III are generally larger rolls & therefore easier to look out, I will [endeavour?] to hope that providing you think fit to accede to my request as regards the calendar, I may be able to complete my searches up to the period mentioned without seriously intruding upon your patience.

I should be obliged by a reply at your earliest convenience, for though my other engagements will prevent my being at Carlton ride for some weeks to come, yet as I am very anxious about the success of my applications at your office, it will be a relief to my own mind to have some arrangement made which may prove satisfactory.

Permit me in conclusion to express my warm acknowledgements of the attentions I have already received at your office & to assure you that any trouble I may have occasioned has not been source of greater regret to yourself than to,

Sir,

Your’s [sic] most respectfully,
Marianne Everett Wood³⁰

Wood takes Hunter at his word that his concerns are primarily with archival housekeeping. But the ramifications of her proposal suggest that public records archivists were conceiving of the uses to be made of the documents in their care in a manner much narrower than those to which she—and historians of later periods—would put them. Hunter, fol-

³⁰ British Library, Add. MSS. 24877 f. 289.
lowing established protocol, was resistant. As the fee structure implied (with distinct fees for searches, inspecting documents, having copies made, and authenticating documents), the expectation was that “the public” would have interest in seeing specific documents relevant to narrowly-focused questions, and calendars would facilitate the production of such documents in an efficient manner. Nor had sufficient staff been budgeted to allow for genuine historical research. So Wood offered to take the task on herself.

I have been unable to find any further correspondence on this matter. Yet, in one sense, its outcome is clear. Wood’s success not only enabled her to write women into political history, but also opened the door to other literary searchers and, ultimately, to us. The fee structure, which so perplexed Joseph Hunter in its application to Wood, was waived for historians in 1852 after a petition signed by, among others, Thomas Carlyle, Charles Dickens, Agnes Strickland, and—Mary Anne Everett Green. As Anne Laurence notes, the petition distinguished lawyers, who used but a few documents, from literary and historical researchers, who required access to many as “the only sure foundation of historical truth.” Among these literary searchers, Green had surely been at the forefront of reconceptualizing history in such a way as to demand they pursue evidence through the archives wherever their questions might lead them. Finally, Green’s appointment in 1854 as the first editor of Calendars of State Papers is the ultimate testament to the success of her position on records use and the source of her most direct impact on the art of legal history.

Although the Public Records Act called for calendaring, John Romilly, who succeeded Lord Langdale as Master of the Rolls in 1851, substantially revised the scope and methods of the project along much the same lines that Miss Wood had proposed to Hunter in 1843. Robert Lemon, Hunter’s counterpart at the State Paper Office, edited the first published volume of calendars, which he had begun under Langdale’s regime. Introducing his volume, Lemon described the calendar thus:

Each separate document is briefly abstracted, the leading facts stated, and the persons and places to which it relates are mentioned, sufficiently to indicate to what particular subject it belongs. The student, whether of history, biography, genealogy, or general literature, at however remote a distance he may be placed, can thus ascertain precisely the amount of information existing among the State Papers on whatever may be the subject of his inquiry.

One of Romilly’s first moves when he took charge of the Public Records was to take calendaring out of the hands of archives assistants, like Lemon, and to appoint expert

31 Anne Laurence, Women Historians and Documentary Research: Lucy Aiken, Agnes Strickland, Mary Anne Everett Green, and Lucy Toulmin Smith, in Women, Scholarship, and Criticism: Gender and Knowledge c. 1790-1900, at 125 (Joan Bellamy et al. eds., 2000) (quoting Thirteenth Report of the Deputy Keeper of the Public Records (1852)).

32 Sir Nicholas Harris Nicholas worked in many of the same archives as Green, but his research was focused on an individual, Sir Christopher Hatton (TNA ref. PRO 6/1). Agnes Strickland also used historical documents for her Lives of the Queens of England, but never on the scale Green did for her Lives of the Princesses, which would be reflected in reviewers’ praise for Green’s research.

33 Calendar of State Papers, Domestic Series, Edward VI, Mary, Elizabeth, 1547-1580, at xi (Robert Lemon ed., 1856).
historians as editors. Green was his first of four appointments. She proved to be the most prolific editor, and the one preeminently responsible for transforming the genre, raising not only scholarly standards, but literary ones as well. During a career at the PRO that spanned from 1854 to her death in 1895, Green produced forty-one volumes of *Calendars of State Papers, Domestic*, covering portions of the reigns of Edward VI, Mary I, and Elizabeth I, the entire reign of James I, the Interregnum, and the reign of Charles II. Her *Calendars* set the standard against which reviewers judged those of other editors, and remain authoritative sources for historians of sixteenth- and seventeenth-century Britain.

In 1870, after succeeding Palgrave as Deputy Keeper of the Public Records, T.D. Hardy would declare that the *Calendars* represented a new, distinctly English, genre of history writing. Elsewhere I have demonstrated how Green’s calendars, in particular, justified this claim. I will make two points here. First, in abstracting documents, Green sometimes uses the narrative device of free indirect discourse to represent the voices of the past. Significantly, she tends to employ this device when abstracting documents that might be categorized as social history, for example, abstracting petitions of Royalist widows for government compensation or the poignant account of Nevil Davis, a subject of Elizabeth I held captive and tortured in Spain for refusing to renounce the “true religion” of England. Reviewers often noted with surprise that Green’s calendars made for a good read. David Mason, reviewing her calendars of the Interregnum (significantly the same period treated by Carlyle in his life of Cromwell) wrote that “the labour of Mrs. Green in these Calendars is nothing less than that of driving a whole population of the defunct before her from month to month, knowing all the chief of them familiarly by head-mark, and accurately noting the casual appearances and disappearances of the less well known.” In this way, she exceeded Carlyle’s own historiographic vision by joining its narrative vitality with strict empiricism.

Second, I would note the direct influence the methods of Carlyle and Green had on the founders of historical jurisprudence I mentioned at the outset. Sir Henry Maine’s enormously influential *Ancient Law* (1861) bears the marks of the kind of organic historiography promoted by Carlyle, situating legal history within social contexts as well as connecting the past with the present. In light of the work of Green and her fellow calendarers, however, it is significant that *Ancient Law* was criticized for being thin on archival research; Leslie Stephen complained of Maine’s aversion to “drudgery” evident in “the almost complete absence of any reference to authorities.” Importantly, expertise in ar-

---

34 Cantwell, supra note 10, at 246 (quoting letter from Hardy to Welby, Mar. 7, 1870, TNA ref. PRO 1/5).
35 Krueger, Mary Anne Everett Green, supra note 9.
36 Calendar of State Papers, Domestic Series, Charles II, 1660-61, at ii (Mary Anne Everett Green ed., 1860); Calendar of State Papers, Domestic Series, Elizabeth, 1581-90, at 236 (Mary Anne Everett Green ed., 1865).
37 David Mason, Review of Calendar of State Papers, Domestic Series, 1651, The Academy & Lit., Nov. 3, 1877, at 422; TNA ref. PRO 8/20.
archival research had been written into the very rules of the Public Record Office. Citing demands on archivists' time, Romilly's directions of 1851 had stipulated that “no applicant ought to present himself who is not sufficiently acquainted with the handwriting, abbreviations, and language of ancient documents so as to be able to read and decipher their contents.” Legal historians themselves, then, had to master the skills pioneered by Green. Frederic William Maitland conducted research at the Public Record Office, and later served as the first literary director of the Selden Society, formed in 1887 to publish historical documents. His many works of legal history, most notably *The History of English Law* (1895) to which Sir Frederick Pollock contributed a chapter, were not only steeped in archival research, but were also remarkable for their lively style, a feature that should be traced to Carlyle’s condemnation of “dry as dust” historical writing. Similarly, Pollock’s own substantial body of legal scholarship, building on Maine’s, provided a corrective to Austin’s positivism by insisting that a truly scientific study of law had to be informed by documentary historical evidence. Late in his life, Pollock served on the Royal Commission for the Public Records. By the time the foundational works of historical jurisprudence were being written by Maitland and Pollock, it could be assumed that order was being brought to the public records and that their order should serve the art of legal history.

39 Quoted in Cantwell, supra note 10, at 141.