

MEN AND BOOKS FAMOUS IN THE LAW

CHAPTER I: THE HUMAN APPEAL OF LAW BOOKS

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To transmute base metals into fine gold, to reconcile the irreconcilable, these are vain attempts. Why then seek elements of human appeal in law books? Is there any such thing? The majority of people would answer at once that the question contains a contradiction in terms. As well suppose that there is human interest in a treatise on differential calculus as in a law book! It is true that to those who know the story of the development of mathematical science and its connection with the progress of civilization, even calculus has an appeal all its own, but to the general reader, the proposition is not self-evident. Neither is it self-evident that law books have any interest that is not purely utilitarian. When seen in a lawyer's office, or on the shelves of a great library, law books appear to be only the uninteresting tools of a trade. They lack that diversity of form which attracts the eye and arouses the curiosity. There they stand, row after row, uniform in binding, in color, and in size, distinguishable from each other only by different stages of dilapidation and decay. And if the layman has the hardihood to look into these books on pleasure bent, and not in pursuit of necessary information, is any better impression given? Perhaps he has selected one of the Year Books (the earliest reports of law {16} cases)

[†] When *Men and Books Famous in the Law* was first published in 1921, he was Associate Professor of Legal Bibliography and Law Librarian at Columbia University Law School. Numbers in {brackets} indicate pagination in the 1921 edition, in which Chapter I began on page 15.

and he finds that it is written in a mongrel kind of French, and printed in a type that confuses the eye. Or he has hit upon some modern law report containing the opinions of judges who delight in technical terms and use an involved style which repels the intellect. Or he attempts to read a statute, and finds that in construction it rivals the intricacies of the longest German sentences, and in the profuse use of synonyms puts Walt Whitman to shame, while wholly lacking his imagery. Or he takes down a ponderous digest, which is apparently made up of a hodge podge of unrelated paragraphs, grouped under mysterious headings, and ornamented with hieroglyphics of combined letters and figures. Or he has in hand a treatise, the title of which conveys no meaning to him and the contents of which seem to defy comprehension. So far, it must be admitted that law books are forbidding, in whatever superficial way we look at them. They do not have the attraction of a brightly jacketed novel, nor are they "easy reading" to the uninitiated.

Granting all this, it does not follow that, to the discerning reader, law books are devoid of human appeal. Overcome the natural repugnance of the layman to law books, examine them at first hand, think of their authors as living men, give even so brief attention to technical terms as is required of the operator of an automobile, and law books take on a new aspect.

Law books have a human appeal because of what they contain, and what they represent in the history of society; because of their place in English literature, because they are impressive historical and biographical documents; and because of the vicissitudes through which some of the great books have passed. {17}

THE CONTENTS OF LAW BOOKS

A distinguishing characteristic of law is its universality. Avoid the law as we will, it nevertheless creeps into the language and thought of our daily lives, and becomes part of our domestic, social and political environment. Throughout the ages, it has been a progressive, mobile thing, the result and expression of civilization rather than its source. Law is not divorced from life; it is an intimate part of it. Law is a subject which every era forms an essential stra-

tum in the structure of society. Cleave down through any part of this structure, seeking the foundations upon which modern philosophy, religion, history, economics, and sociology are built, and you come to a layer of law – not lawyer’s law alone, but the people’s law,— which is the product of human experience. That there is a legal side to nearly every subject of investigation and research is a conclusion that cannot be escaped.

And so, law books, which are the tangible of evidences of what the law is, can no more be set aside as things remote from life, than can the law itself. They are not merely technical books which have application only to a special science of restricted scope, but they have played and continue to play a part in the development of the enduring things of life,— philosophy, religion, social concepts, justice, humanitarian interest, political organization. They record history in its most authentic form. In the statute books are laid down rules for the benefit of all in the preservation of rights, the punishment and correction of wrongs, and the administration of government. The great charters are beacon lights of human progress. In law reports are the conclusions reached by judges in actual controversies between living persons. {18} Motives are shown. Error, enmity, weakness, cupidity, crime are there; but also purity, openness, goodwill and strength of purpose. Life is there with the gloss rubbed off,— tragedy, comedy, sordidness, meanness, manners, customs, superstition, tradition. All are truly pictured here by contemporary evidence. Back of the arguments of contending counsel, back of the opinions and decisions of the judges, is always some story of human interest. It may be only the sordid story of a mismated husband and wife, or of a trivial neighborhood quarrel; but it may be the epic of “big business,” or of the tragedy of treason, or of the heroism of a prize crew in a captured vessel. In treatises and commentaries, we find reasoned statements of the law under which men live, discussion of legal concepts; of human significance and philosophical import, reflecting the best thought of the time in which they were written, and sometimes filled with the personality of their authors.

LAW BOOKS AS LITERATURE

That law books as a class are not *belles-lettres* may be taken for granted. As we know them today their chief characteristics are not beauty of thought or elegance of style, but accuracy and clarity of statement often at the expense of style. Yet law and the politer forms of literature are in their origins closely akin. Before the use of writing, the poet, lawyer and historian were one. It was by act of memory, and by constant repetition, that the story of battles, of unusual events, and the record of customs were handed down from generation to generation. To assist the memory, says Jeudwine (*The Manufacture of Historical Material*, p. 14), "the help of rhythm, of musical sound, of polished verse, was called in, in all the literatures of all the nations of which we {19} have knowledge, to make endure in the mind of the bard the doubtful wanderings of the law, the uncertain event of the battle, the remote birth and origin of the race." Thus the poet, lawyer and historian were combined, and the poet, by the very act of putting customary laws into verse for the purpose of preserving them, was an interpreter and often a creator of law. The poetic character of early oral versifications of law has survived the advent of printing, and we find that many charters, famous statutes, forms of pleading and judicial oaths in use to-day in the courts of law, flow from the tongue in poetic metre. They have the same musical quality and rhythmical cadence as have chants and responses in the English prayer book. A serious attempt to use rhythm and rhyme to assist the memory and emphasize the chief points of law is found in the "Reports of Sir Edward Coke, Kt. in Verse," published in 1742, in which each case in eleven volumes of his Reports is put into a couplet.

The language and style of the great English law books, while affected by the technical character of their subject-matter, and by the development of law as a profession, are no more complex and disconcerting than the language and style of theology, philosophy or ethics. The books take their characteristics from the period in which they were written. For example, in the statutes, reports, and treatises of Elizabeth's reign, we have the prose of writers contemporaneous with Shakespeare. The law books of the next reign are in the

style of the King James version of the Bible. The involved, fulsome, florid style of Coke was not his creation, but was in common use by the learned.¹ {20}

Conceiving of literature as made up of books which “are marked by elevation vigor and catholicity of thought, by fitness, purity, and grace of style, and by artistic construction,” many of the great law books in every period since the beginning of law printing are found to come within this definition. They possess much more than mere accuracy and clarity. Their style and rhetorical construction are influenced by the nobility, dignity, and rugged originality of their subject-matter. Examples of legal writings of high literary quality may be found in forensic oratory, and many judicial opinions are without doubt works of literature. They have breadth of view, vision, sympathy, and lofty perception, expressed in a pure and facile style. The prefaces of law books – reports, treatises, digests, – are often fine examples of the art of the essayist. The Bills of Rights in written constitutions embody noble concepts in noble language. The preambles of the early American and English statutes, though sometimes fulsome, are yet fine products of moral, religious and patriotic thought. The Commentaries by Blackstone and Kent, and the monographs by Bigelow, Holmes, Robinson, Odgers and Sugden, are the work of masters of English style.

LAW BOOKS AS HISTORICAL AND BIOGRAPHICAL DOCUMENTS

One of the mistakes of those who have not cultivated an acquaintance with law books is to assume that they are products of the labors of extraordinary persons who have little in common with the rest of humanity. How absurd this is, is seen as soon as we admit the universal application of the law, the consequent scope of law books, and the many attributes of literature which they possess. {21} How comes it that such books have been written, if there are not great personalities back of them? Not negligible as persons are those who have drafted the great charters and statutes, who in great

¹ See Beer, Thomas: *Coke Literature*, Ohio State Bar Association, 30: 182-206.

judicial causes have written epoch making opinions and reached enduring decisions, who have composed with creative genius the classical treatises of the law. Nor were they mere clerks who compiled the great law dictionaries, abridgments and digests based on the source-books of the law. Even those men were notable in their times, some of them judges and dignitaries of state. And so it is that if we inquire when, where, and by whom the great English and American law books were produced, we find ourselves in the realm of history and biography. For instance, to provide a historical setting for the books whose story is told in subsequent chapters it has been necessary to range superficially through a period of more than 450 years, from 1422, when Littleton was born, to 1881, when ended the great suit of *Lawrence v. Dana*. The story of Littleton begins in a tiny village in England of the Wars of the Roses. It is not yet ended. Cole and Cowell draw us into the London era of Elizabeth, James I., Charles I. and the Protectorate. They were contemporaries and associates of a group of men and women whose names are by-words of history, literature, politics and religion – Shakespeare, Marlowe, Bacon, Archbishops Bancroft and Laud, and the Duke of Buckingham. Cosell was a representative of the Civil and Ecclesiastical Law, and held a chair at Cambridge. In the combined story of Cowell, Coke and Bacon we come into contact with two great legal controversies – that between the Church and the common Law, and that between the latter and the Courts of Chancery. In the political arena, {22} they illustrate the contest between the Crown, with its prerogatives, and the House of Commons. With Blackstone we visit Oxford, see a picture of academic life in the early years of the eighteenth century, and learn how University teaching of the Common Law in England began. The influence of Blackstone reached across the Atlantic, and his work, was taken up by James Kent. In following his career, and that of Livingston, we learn something of Revolutionary days in the Colonies, of interruption to the education of college students by the advent of war, of readjustment when war had ended, of the creation and development of the United States as a sovereign state, of development of courts of law and equity in this country of politics and the play of personal forces. Blackstone's

Commentaries are the product of Oxford lectures, Kent's are the product of legal teaching in the early days of Columbia University. In his own account of these lectures and the book which grew out of them, we have a first-hand view of college life in America before 1830. Livingston and Wheaton were contemporaries of Kent, and all three were associates of Hamilton, Adams, Jefferson, Webster, Jackson and the other great figures of the time. Livingston's story includes life in New York City, in New Orleans just after the Louisiana Purchase, in Washington, and in the court of France during the time of Louis Philippe. Livingston's great controversy with Jefferson over the Batture lands produced classic examples of controversial literature, which in spite of the bitterness of the parties are models of learning, argument and deduction. And throughout his life he was possessed of a great purpose to reform the system of criminal law in the United States. His purpose found expression in a work the influence of which spread to the whole world. Henry Wheaton, a student, lawyer, writer and diplomat, leads us, in the events of his life, from Providence to New York, thence to Washington, thence to Copenhagen and to Berlin. The story of his books is the story of his daily life in the realms of literature, history, and private and public law. His United States Supreme Court Reports form a chapter not only in his own life but in that of a great body of Federal judges during the formative period of the United States government. His great work on international law was the subject of a bitter personal quarrel and legal battle between two men famous in their own right in American annals, William Beach Lawrence and Richard Henry Dana.

Great law books are so much a part of the social fabric of their times that they are in themselves historical documents. They are as truly biographical documents in the lives of their authors, most of whom are men of note quite aside from their fame as law writers. Easily obtained evidence leads to the conclusion that these men were not "mere lawyers," and that the human side of their characters was developed to an unusual degree by contact with life in all of its kaleidoscopic aspects. And while they influenced the world through their books, their own lives were often very much affected

by them. For instance, Cowell's life was ruined by his dictionary, Coke lost his Chief-Justiceship partly on account of his law reports, Blackstone would probably have been a mediocre practicing attorney to the end of his days had he not had the impetus to lecture and to write. He became a judge on the strength of the reputation derived from his Commentaries. Kent changed the *decrecendo* of forced retirement from the chancellorship of New York, into a {24} *crescendo*, in the waning years of his life, by writing his Commentaries. Livingston preserved himself from despair and the evil effects of rancor in the face of financial disaster and a generation's unsuccessful struggle with fortune, by the pursuit of an ideal. While he succeeded eventually as a lawyer, statesman, and diplomat, it was his Louisiana Penal Code, the expression of a humanitarian ideal, which made his success something more than a personal victory.

THE STORY OF THE BOOKS THEMSELVES

If, in the following chapters, the error is made of bestowing fulsome praise upon the men about whose books the sketches are written, it is because the initial appeal grows as one studies their work, and realizes that these men wrote, hampered by all those human limitations which most of us use as excuses for lack of accomplishment. With two exceptions, the books were written while their authors were under the stress of other labors. Bibliography would be a dry and uncongenial task if it were not for biography. Bibliography, in its present meaning, is the systematic description of books with special reference to their authorship, titles, publishers, dates, history, editions, subject-matter and value either material or intellectual. A list of books, however great they may be, however many editions they have run to, and however accurately they may be described, makes no very readable page. But biography adds the leaven of sympathy which lightens for the booklover the sad loaf of bibliography. Some books there are, however, which have romantic stories of their own, have passed through unusual vicissitudes, and have survived disaster. The {25} life of these cannot be shown by annotated lists, but must be told in connected narratives, which bridge gaps between successive editions. It was not mere chance

that made it a tradition in the Inns of Court to read Littleton's Tenures completely through each Christmas day, just as many read Dickens' Christmas Carol. The book was the product of a universal human impulse. It was written by a famous judge for the use of his son in the study of the law. It had and still holds the quality of fatherly advice. Poor Cowell's Dictionary, which compassed his ruin, has the distinction of having occupied the attention of King James I., both Houses of Parliament, several impressive committees, and the Court of King's Bench for upwards of a month. It was "suppressed" by proclamation under the King's hand, survived the ordeal, and in a new edition became a participant in the trial and condemnation of Archbishop Laud. Each time that it was attacked, new champions rose up in its defense. Coke's Reports were never suppressed; but they were adjudged by the King in Council and by a special committee of judges to be filled with error put there with calculated purpose. Coke was commanded to revise and correct them. This he never did, and so, if Coke really invented some of the opinions, he was not only an interpreter of law on the bench and a reporter of decisions, but in his own private person a lawgiver. Coke's Institutes also went through vicissitudes. The first, Coke Upon Littleton, was published in Coke's lifetime, but the manuscript of it, together with that of the second, third and fourth parts, was seized by Royal command while their author was on his deathbed. They were not published until ten years later, but one of them is said to have played a part in the preliminaries to overthrow {26} of Charles I. To Viner's Abridgment, a ponderous work produced by great industry, but yet only a humble index, the world is indebted for the establishment of the chair at Oxford which Blackstone occupied when he wrote his Commentaries. The latter, far from being unconnected with life, raised a religious and political controversy the literature of which fills a whole volume. The book itself, extravagantly praised and cordially hated, "created by repulsion the later English school of jurisprudence" Livingston's Louisiana Code, the work of a lifetime, was destroyed by fire on the very night when it was completed. The author rewrote it, and then suffered the disappointment of having it rejected by the state for which it had been prepared. Wheaton's

Elements of International Law was the cause of a controversy which suspended until the present its career as an American publication. It has thus far been republished only in England.

Such events in the life of books give personality to them. They are, in themselves, characters in history, members of society, chief citizens in the commonwealth of literature.

Law books have a human appeal because of their contents and the pictures of life which form their background, because they are elemental forms of literature, because they tell the story of men and events, and because they have themselves undergone and survived vicissitudes. For other reasons, which cannot here be dwelt upon, great books of the law should be known to every cultured person. Philosophy, religion, science, the fine arts, engineering, medicine, all have their literary heroes. So has the law, and legal literature is in the first rank in point of time and of importance in the progress of {27} human society. In the infancy of bookmaking, law and lawyers vied with theology and the priesthood. In the study of the history of printing, law books form an essential element; and in the history of thought, they challenge attention. To such names as Aristotle, Machiavelli, Bacon, Hume, Locke, Beethoven, Michael Angelo, Cellini, Shakespeare,— to select a few at random,— there must be added those of Glanville, Bracton, Littleton, Coke, Blackstone, Kent and Story.

The preceding general allegations undoubtedly need to be supported by a bill of particulars. Some such requirement the following chapters are intended to meet. But dealing with only a few books, they will not illustrate every phase of the human appeal which has been attributed to law books. The method of presentation does not admit of extended discussion either of the contents of the selected books or of their literary qualities. It does, however, allow the books to speak for themselves as personalities which have survived the test of time, and have existed as the associates of great men and events. ❶