

# MEN AND BOOKS FAMOUS IN THE LAW

## INTRODUCTION

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**T**he development of law study in the United States since 1870 constitutes a remarkable chapter in the history of education. When in 1794 Kent, who stands out as in many respects the most gifted and attractive figure in the annals of American jurisprudence, began his law lectures in Columbia College, they were attended by "seven students and thirty-six gentlemen, chiefly lawyers and law students who did not belong to the college." Three years later he abandoned his professorship for want of students. When in 1823, after a distinguished judicial career during which he had achieved a national reputation as a liberal scholar and jurist, he returned to his professorship, the maximum attendance at his lectures was "thirty-three gentlemen and fourteen private students." Even in the heyday of the Dane Law School, later the Harvard Law School, under the leadership of Parker, Parsons, and Washburn, that school had little to identify it, either in methods of work or in the number of its students, with our modern system of legal education wherein numerous schools scattered throughout the country are thronged with eager students who devote three and often more years to the purely academic study of their chosen profession.

It is not the purpose of this brief introduction to inquire into the causes for this surprising development. They have been too often and too thoroughly discussed to require any elucidation here.

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<sup>†</sup> When *Men and Books Famous in the Law* was first published in 1921, he was Dean of Columbia University Law School. Numbers in {brackets} indicate pagination in the 1921 edition, in which this Introduction began on page 9.

It will suffice if the attention be directed to certain outstanding characteristics of the new order which make the production of this little volume by Professor Hicks an extremely interesting and valuable experiment.

With the very general adoption of the case method of instruction in American law schools, the day of law study from institutes and authoritative treatises as original sources was at an end. For nearly a generation now, law study in all the important centers of legal learning has been dominated by the scientific spirit which rejects the dogmatic statement of legal doctrine and demands that every legal principle be traced to its original source in judicial precedent, and be re-examined in the light of its relation to social utility. The new order began with the insistence upon the study of precedent as the original and practically the only source of legal knowledge, but it did not stop there. In our own time there has been a growing recognition of the fact that precedents cannot be justly valued and intelligently applied without some adequate understanding of the social and economic conditions out of which they sprang and to which in our own day they must be applied; and of late there has been a marked tendency toward a more searching analysis of the fundamental concepts on the basis of which our legal structure is reared, and greater emphasis upon a more precise and exact use of legal terminology. These are all manifestations of the scientific spirit which in every field of human endeavor is giving us more exact knowledge and increased capacity for its utilization.

In such a scheme of things there is small scope for the authoritative pronouncements of any individual, {11} however penetrating his intellect and however gifted he may be in his powers of expression. It rejects the pedantry of Coke, it sets little store by the artificial reasoning of Blackstone, and it prefers the opinions of Kent the judge and the chancellor to the mellifluous passages of Kent the commentator. It is not surprising therefore that the figures of the great lawyers and commentators treated of in this volume, so vivid and outstanding to law students of an earlier day, are becoming shadowy and indistinct to the students and the lawyers of this generation. In this interesting and valuable series of studies Professor

Hicks challenges the attention with the query whether we have done well to let them become so.

That, by the application of scientific methods to law study, legal knowledge and juristic science have been the gainers, no one familiar with the work carried on in the great centers of legal study in this country can doubt. How great the gain is no one can now say. At least another generation must pass before we can begin to gather its fruits in abundance and to form some estimate of what we may hope to be accomplished by it. But this great gain has not been without some attendant loss. The modern law student has gained in the exactness of his legal knowledge, in his familiarity with the history of legal doctrine, and above all in his power of analysis and his capacity to apply legal principles to new states of fact. But he is the loser in his lack of intimate contact with the precision and thoroughness of Littleton and Coke, with the literary style of Blackstone, and the liberal and enlightened spirit of Kent. In our passion for science we have been prone to overlook the human element in the development of law. {12} After all, law is the product of human experience. Into its warp and woof have entered human interests, human needs, human emotions, and notions of ethics and philosophy which are the product of our racial experience.

At intervals during the eight or nine centuries since the Common Law began to take form, there have appeared the figures of the great commentators. One can almost count them on the fingers of one hand – Bracton, Glanville, Littleton, Coke, Blackstone and Kent. They and some others of lesser note have definitely and visibly influenced the development of our law. What that influence has been, what manner of men they were, how their work was done, and what were the vicissitudes of their publications in those centuries are questions of vital interest to every lawyer and student of the law, and the answer to them is of positive educational value. Without abatement of the scientific spirit, we can do much to humanize law and law study. We can no longer study Coke and Blackstone and Kent as the very foundation stones of the law, but we can glean much from their lives and work and from the lives and work of those who, like them, have permanently influenced legal thought, to

give to law study its human interest and to increase its real value. This the author has done; and in doing it has rendered a service to every earnest student of the law, who will find in his pages inspiration to know more of the makers of the great law books.

Of especial interest to American Law students are the author's accounts of Livingston and Wheaton. They did not affect the current of legal thinking in the same manner or to the same extent as did Kent, or indeed any of the other subjects of these essays, but Wheaton gave the first great impetus to the study of international {13} law in this country. His writings have been widely read abroad and have exercised a potent influence there.

Livingston, whose life, judged by the immediate results of his work, has been counted as almost a failure, united in his extraordinary mentality legal knowledge, practical idealism and a unique capacity to give concrete expression to it in legislation which gave him a positive genius for codification. He was fully a century in advance of the legal thought of his time, but as the problems of law improvement through legislation and codification press more and more upon us we shall turn more often to his life and work for guidance and inspiration. The lives of both men are replete with human and dramatic interest. They are interwoven with our legal history and touch at innumerable points the lives of those famous in the chronicles of our law.

One could wish that other masters of legal literature had been included in the list selected by the author, and express the hope that the success of this volume may encourage the production of a second in which they may be included. ❶