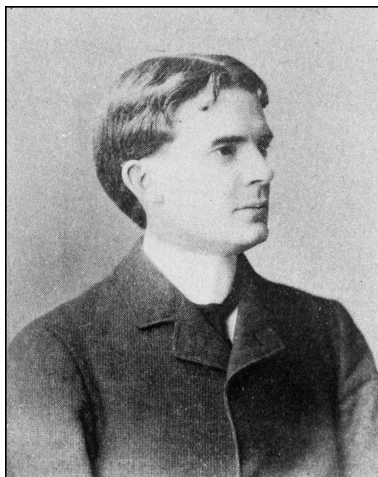


CHAPTER ONE

A JOURNAL OF LAW BOOKS



Frederick C. Hicks

SUMMER 2012

CHAPTER ONE

Robert C. Berring, Editor

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A FAMOUS BOOK ABOUT FAMOUS BOOKS

MEN AND BOOKS FAMOUS IN THE LAW,
BY FREDERICK HICKS

Robert C. Berring[†]

“Some books there are, however, which have romantic stories of their own, have passed through unusual vicissitudes, and have survived disaster. The life of these cannot be shown by annotated lists, but must be told in connected narratives which bridge the gaps between successive editions.”¹

Chapter One was created to tempt the reader. We want you to sample the first chapter of a book, then to feel compelled to seek out the whole work. To qualify for Chapter One, a book must carry meaning, be well written and hold the reader’s interest. This time the choice is a special one. Instead of simply presenting a book that carries value, we offer Frederick Hicks’s *Men and Books Famous in the Law*, a book that tells the story of books that hold value. Though this approach brings on mind an M.C. Escher print, with a book about books that are about books in an endless regression, this book is worth the risk. Professor Hicks chooses well, and tells the tale of these books with relish and clarity. The book is a good read and afterwards one feels much smarter. That is a heady combination by anyone’s lights.

Fred Hicks has long been one of my heroes. Hicks presents us with a beguiling blend of legal scholar, innovative teacher, master

[†] Walter Perry Johnson Professor of Law, Berkeley Law School.

¹ Hicks, *Men and Books Famous in the Law*, (Lawyers Coop, 1921) p. 25. I will not provide pin cites to any other parts of the Chapter. After all, my goal is for you to read the whole thing.

law librarian and prolific author that is difficult to match. Just as Professor Hicks was an extraordinary man, so too is *Men and Books Famous in the Law* sui generis. As the Chapter reprinted in this issue demonstrates, Hicks has a special take on famous law books. He saw each book, and its author, in context. This made for a new kind of work. As Dean Harlan Fiske Stone cautions in his Preface, “No pretense is made of giving an adequate picture of the contents of the books. . . . Nor is a complete picture of the authors of the books given.”² Is Dean Stone damning with faint praise? No, he is pointing out that this book is built around a novel idea.

Hicks strives to catch each book in its moment in time and to focus on why the book came to matter. Instead of eruditely parsing through the cobwebbed legal arguments that are the content of each work, or belaboring the reader with biographic details of the author’s grandfather’s life, he comes at each book in an entirely different manner. In each case Hicks describes why the author is important in the context of the book and how the book fits into the grand scheme of the development of the law. It is a hybrid form of scholarship, which, though seldom seen, has much to offer. Why do some books last, withstanding the ravages of time? What makes an important book into a timeless classic? How can a book which cost its author his position, or which was still barred from publication in the United States at the time Hicks wrote be deemed a classic?

Hicks wrote in 1921. He was reaching back to the centuries before, trying to save a place in the minds of contemporary lawyers for the great works that he feared were slipping away. At some point, the great thinkers of the past become dusty intellectual relics. The authors names may be carved into the wall of a building, the name of the book may ring a faint bell of recognition in the mind of the listener, but no one actually goes back and reads the book. Hicks wanted to breath life back into a few of law’s touchstones.

Having twice offered a seminar at Berkeley Law School that is a bit pretentiously titled “Elegance in Legal Writing, Elegance in Le-

² We include the Introduction by Dean Stone as it appeared in the first edition. Do not be dismayed by the eminent Dean’s prose, let it serve as a reminder of the felicity of Professor Hicks’s prose.

gal Thought” that acquaints the law student of the 21st Century with the great legal thinkers of the 20th Century, I can empathize. I offer the seminar in 2012, awash with the same concerns that Hicks must have felt in 1921. If we lose the substance of the great works that went before us, we can never truly understand the legal milieu in which we live. Snapshot considerations of legal theory, or assessments of legal practice, that do not consider the root system that produced the contemporary world, are dangerous.

It is arresting to consider that the books that we read as part of the seminar, Holmes, Cardozo, Frank, Llewellyn, Fuller et. al were part of the contemporary intellectual landscape of Hicks’s day. *Men and Books Famous in the Law* presents us with the books that Cardozo’s generation was in danger of losing. The wheel turns.

Given his times, and the much more limited collection of works from which to choose, Hicks reaches back far beyond the preceding century. He casts his net as far back as 1422 to sweep in Lord Coke. The breadth of his learning cannot fail to impress.

Before these books became classics, they represented the efforts of authors caught in the swirl of events of their own day. Judgments made slowly over the passage of time anointed them as permanent parts of the legal firmament. But time grinds everything down. Today’s trendy theory is tomorrow’s object of ridicule. Hicks chooses only those books that endured for the long haul, books that represent breaks in intellectual tradition, books that made a difference, books that set us on our modern path.

Blackstone, Kent, Coke, Littleton, Livingston, Cowell and Wheaton were names that any law student could once have rattled off. Even these books, which most likely are now ensconced in Rare Book Rooms, or roughly scanned into jumbo data bases, have something to tell us. Some are still quite readable, some were hardly readable in their own time, but all matter. Professor Hicks was on a mission to preserve them as important markers in the law.

While stylistic taste is an individual matter, Hicks’s style remains fresh. He is an acute and objective observer. The prose flows well, the meanings are clear. This is a book to read so that one can understand the true value of famous books that one will likely never read.

(Though I contend that Blackstone is still an invigorating text, and that Wheaton sadly sketches out problems that we have yet to solve). Reading *Men and Books Famous in the Law* is a treat and it makes you wiser. Such a powerful combination should be good motivation for the reader.

To sweeten the pot in this edition of Chapter One, we include a short biographical essay on Professor Frederick Hicks, authored by Stacy Etheredge of the West Virginia University Law Library. Ms. Etheredge paints a picture of a man of many talents who changed both legal education and law librarianship. We also include two contemporary book reviews, drawn from the law reviews of the day.

Men and Books Famous in the Law is still in print, a good sign for a 92 year old imprint about books that were old when it was written.³ You can even find a digital version via HeinOnline. The point is, give this chapter a read and see if you are game for more give the whole book a try. If you only read the chapters on Blackstone and Wheaton, you will the better for it. ❶

³ The book has been reprinted by Gryphon Press, Rothman and Legal Exchange. All appear to be straight-forward copies of the original text. It can also be found for free at the Google Books site and, for those who have access to HeinOnline, the full text can be found there.

FREDERICK HICKS

THE MAN BEHIND *MEN AND BOOKS*

Stacy Etheredge[†]

Professor Fred Hicks stands as a giant in the world of legal education in general, and law libraries in particular. To overstate his importance in both is really not possible.

Frederick Charles Hicks was born in the small community of Auburn, New York, in 1875. He must have heard the siren's call of librarianship early, as he started work in the Manuscripts Division of the Library of Congress after graduating from Colgate University in 1898. As an early example of a lifelong vigor for work, he also attended Georgetown University Law School while working full-time, graduating in 1901. Hicks practiced law for a year back in his hometown but then returned to librarianship and never looked back, working first at the Naval College and then at the Brooklyn Public Library, until finally arriving at Columbia University. Although he worked at Columbia's main library, records indicate that he may have had dealings with the law school's library as early as 1913. He was officially moved to the Columbia School of Law and appointed Law Librarian (director of the library, in today's parlance) in 1915. For the next thirty-one years Hicks was to play a hugely influential role in the law libraries of two of the country's most important law schools, first at Columbia and then Yale, where he worked from 1928 until his retirement as an Emeritus Professor of Law in 1945.

Hicks proved to be an especially able player in the fine art of library administration, systematically overhauling the libraries and

[†] Reference and Instruction Librarian, West Virginia University's George R. Farmer, Jr., Law Library. The author wishes to thank Bob Berring for long-ago introducing her to Frederick Hicks – from old articles come new delights.

transforming them in terms of facilities, collections, organization, and efficiency. Just one of his major endeavors was to spearhead an increase in the volumes of books held by the libraries at both law schools, increasing the numbers held to an incredible three times the original size. But while normally a huge marker of success for any other 20th Century library director, this was one of Hicks's lesser accomplishments. Much more important than the elevation in the collections' quantity, was the elevation in their *quality*. Building quality in a collection requires an individual who is truly dedicated to both their craft and their institution. It necessitates the stewardship of someone, like Frederick Hicks, who has both the skill and the fortitude to embark on the arduous journey of changing the tone of a library from adequate, to superlative. It calls for a deep base of learning and the ability to foresee the developing fields of legal scholarship. Building a collection that anticipates the needs of the researcher is a daunting challenge, one that Hicks took on with enthusiasm.

Hicks moved both the Columbia and Yale law libraries forward, and thus both law schools, by understanding the distinction between a regular law library and a *university* law library whose true function was education. He felt that an academic law library needed to serve two purposes. It needed to be a working library, one that prepared students for the professional practice of law. But it also should be a research library, one that encouraged and supported the pursuit of academic scholarship. Therefore, while he made sure the core collection of Anglo-American law was there, he also brought in the related subjects that he believed were critical to a broader scholarly understanding of the law (such as English legal history, and Roman and Canon law). Hicks also understood the changes that were happening globally during the heady years between the world wars, and thus saw the importance of collecting foreign, international, and comparative materials. And after observing that the courses offered in law schools were involving fields of knowledge that touched the broader reaches of the law, he realized that this was a new movement in legal education and began collecting in subjects such as economics, history, political science, philosophy, and sociology. All of

these collection development decisions, each ahead of their time, helped move the law libraries into the echelon of first-rate institutions.

Another giant step set in motion by Hicks was the development of the role that legal research played in law schools. In 1913, he wrote his first major work on the subject, *Aids to the Study and Use of Law Books*. Sensing that the students at Columbia Law School needed help, his intent was to “select material practically helpful to all users of law books.”¹ Thus, *Aids* was not a legal research manual but a concise bibliography of books about law books. The masterpiece came in 1923, when Hicks wrote the first authoritative volume on American legal research and bibliography, *Materials and Methods of Legal Research*. The book was a seminal text because of Hicks’s approach to explaining legal research, which focused as much on literary criticism as on the practicalities of teaching it. It fulfilled a much-needed role as a teaching manual and reference tool by both discussing the use of law books and providing extensive bibliographies of legal resources. And, unlike any other text, it went much further in educating the reader by discussing the historical development and classification of law books, a theme that was personally important to Hicks. The most significant tribute to *Materials* may very well be the longevity of its existence, appearing in three editions over a span of twenty years (1923, 1933, and 1942). It was considered for decades to be “standard equipment in any working law library”² and, incredibly, was still being utilized well into the 1980s, a full sixty years after the first edition.

Hicks also had a huge impact on the legal world by being the primary force behind the nascent movement of teaching legal research in law schools. He was interested in setting up formal classes of instruction in legal bibliography, and when he arrived at Columbia Law School he began work on his “experiment,” as he called it, almost immediately. He started by taking notes on the types of questions the law students were asking in the library, seeking to “appreciate the attitude of mind of the student, and the underlying

¹ FREDERICK C. HICKS, *AIDS TO THE STUDY AND USE OF LAW BOOKS* at 5 (1913).

² Miles O. Price, Book Review, 35 *LAW LIBR. J.* 503, 503 (1942).

conceptions or misconceptions of which the specific questions were illustrations.”³ The notes were then classified into types of problems and fashioned into a presentation format that would help students learn the types of legal aids that could solve the problems. During one October week in 1915, Hicks presented six lectures on legal research and bibliography. He had feared a lack of participants due to the students’ crowded curriculum, but that fear turned out to be groundless as an average of 129 students attended each lecture. Encouraged by this success Hicks proceeded with the second part of his experiment, forming weekly seminars “for the purpose of acquiring experience in the use of law books.”⁴ More than a hundred students immediately signed up and the first session (of fifty-seven) was held one week later, in groups of students and around their schedules. When those ended Hicks offered additional seminars in the spring semester, which would continue on from the fall’s material. This time, though, he had to reduce the number of seminars and arrange the student groups around his schedule. Still, sixty-five students registered and attended regularly, with forty-eight sessions held in all.

The approach Hicks took to his lectures and seminars followed a philosophy of teaching legal research that he would advocate and use for the rest of his life. The lectures were meant to be chiefly bibliographical and historical in nature. He thought it important to begin by tracing the development of law books, from their early beginnings in England to contemporaneous publications, in order to help the students “gain perspective in regard to the literature of the law, enabling them to use books intelligently.”⁵ The seminars were organized around a different method of teaching altogether, as they were meant to be practical work in legal research. After first outlining a specific problem and discussing what legal aids he would use to solve it, he would then give the students their own problems, each a different one, and send them off to the library to solve theirs. The

³ Frederick C. Hicks, *Instruction in Legal Bibliography at Columbia University Law School*, 9 LAW LIBR. J. 121, 121 (1916).

⁴ *Id.* at 122.

⁵ *Id.* at 121.

“experiment” that Hicks embarked on turned out to be a magnificent success. Dean Harlan Stone approved of the courses and they continued each year on a voluntary basis, until eventually they were required. In 1921, as an official acknowledgement of his achievement, the law school rewarded Hicks with the faculty rank of associate professor of legal bibliography. But most likely the greatest reward to Hicks was watching the teaching of legal research in law schools become standard practice during his lifetime.

On top of all these accomplishments in law librarianship, Frederick Hicks also had a wide-ranging intellect and artistic bent. He was a dedicated musician and played first flute in the Business and Professional Men’s Orchestra of New Haven. A skillful painter in both watercolors and oils, he had several of his paintings exhibited; he also loved photography and was a prizewinner in the New Haven Camera Club competitions. Hicks was a genuine scholar in the truest sense of the word. He was blessed with a vast intellectual curiosity, described as having an “overwhelming zeal for learning and progress”.⁶ Probably nowhere is this more evident than in his written output, where even the adjective “prolific” seems lacking. He wrote or edited more than 20 books, and published 52 articles or bibliographies in 23 different periodicals (and this is not counting over 40 miscellaneous pieces, such as book reviews, pamphlets, and articles in encyclopedias and essay collections).

Where his scholarship really astounds, though, is in the incredible breadth of what he wrote. His work went well beyond the expected books and articles on librarianship and legal bibliography. Like the very epitome of the Renaissance man he was, he would write about anything that struck his fancy – history, biography, finance and economics, legal ethics, esteemed orations, famous closing arguments, international issues, and the unauthorized practice of law, among others. He wrote an article questioning whether Shakespeare was a lawyer, authored a biography of former President Taft’s tenure as Professor of Law at Yale, compiled and annotated a book covering 300 years of Bermudan poetry, and penned a fictional

⁶ Lawrence H. Schmehl, *Who’s Who in Law Libraries: Frederick C. Hicks, Librarian of the Yale Law School Library*, 37 *LAW LIBR. J.* 16 (1944).

novel based on a real-life trial involving a “too many bodies in the life raft” scenario. Whatever got his curiosity stirred up was fair game. Some of the work that illustrates his diversity includes:

- *A Topographical Description of Virginia, Pennsylvania, Maryland, and North Carolina; reprinted from the original edition of 1778 by Thomas Hutchins* (1904). Hicks was responsible for its reprinting and also contributed the first-ever biographical “sketch” (which, contrary to its name, was not brief) of Hutchens, the first and only appointed “Geographer of the United States.”
- *Famous American Jury Speeches* (1925). Here he reaches back into history (including two speeches from his favorite, Joseph Choate) and mines contemporaneous arguments as well (e.g., Clarence Darrow’s oration in the Leopold and Loeb case). He felt that these addresses to the jury “are not merely speeches, but they are human documents in the development of American life”⁷ and “retain the essence of true oratory, which is to make the auditor think and feel as the speaker thinks and feels.”⁸
- *High Finance in the Sixties: Chapters from the Early History of the Erie Railway* (1929). Hicks edited this book of essays on the Erie Railway scandal and litigations, originally written between 1869 and 1872 (including three by Henry and Charles Francis Adams). As Hicks so humbly put it, “. . . [t]heir essays have become classics which cannot be superseded. To reprint them is a better service than to rewrite them. . . . extensive comments would only weaken their force.”⁹
- *Organization and Ethics of the Bench and Bar: Cases and Other Materials* (1932). What may very well be the first law school casebook concerning professional responsibility for lawyers. The text was written by Hicks as a response to the then-new trend of states including legal ethics questions on their bar examinations, which had prompted some schools to start offering courses.

Frederick Hicks loved the history of law and law books and law men (for law was, up until his time, certainly male-dominated). The

⁷ FREDERICK C. HICKS, *FAMOUS AMERICAN JURY SPEECHES* (1925), at 4.

⁸ *Id.* at iii.

⁹ FREDERICK C. HICKS, *HIGH FINANCE IN THE SIXTIES: CHAPTERS FROM THE EARLY HISTORY OF THE ERIE RAILWAY* (1929), at 2.

THE MAN BEHIND MEN AND BOOKS

quintessential work of this personal and professional affection is probably his *Men and Books Famous in the Law*. Published in 1921, *Men and Books* is still in print which, given the realities of the publishing world, is high praise, indeed. It is a collection of biographical sketches of the authors of Anglo-American legal literature and their classic works, what one reviewer called a “happy combination of biography, bibliography and gossip.”¹⁰ In short, they are Hicks’s own love letters to the men and books that occupy a unique place in the development of our history and traditions.

And thus, *Men and Books Famous in the Law* is a perfect little book because it is a perfect little encapsulation of Frederick Hicks, the man and scholar who loved his chosen work – The Law (writ large). ❶

¹⁰ Floyd R. Mechem, Book Review, 22 COLUM. L. REV. 195 (1922).

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MEN AND BOOKS FAMOUS IN THE LAW

PREFACE

Frederick C. Hicks[†]

The following sketches have been drawn as illustrations of the appeal which law books have when considered as the product of human needs, experience and environment. Out of the hundreds of authors and books that might have been considered, the selection of these few has been made almost at random – because they happened to be of special interest to the author. Nevertheless, it will be found that most of the great classes of law books are discussed or referred to, as well as the problems that have arisen in the progress of law-book publication. Statute law is represented by Livingston's Code, law reports by those of Blackstone, Coke, Dyer, Peters, Plowden and Wheaton; digests by Viner's Abridgment, dictionaries by Cowell's Interpreter; institutional works by Coke, Cowell, Blackstone and Kent; monographs by those of Littleton and Wheaton.

These studies deal only with Anglo-American law books. They are the outgrowth of lectures and seminar work given by the author in the Columbia University Law School, in a course on Legal Bibliography, and lectures to students in Library Economy and several Library Schools.

No pretense is made of giving an adequate picture of the contents of the books. That would require a technical presentation

[†] 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 this Preface began on page 7.

FREDERICK C. HICKS

which would defeat the end sought. Nor is a complete picture of the authors of the books given. The studies are merely impressionistic sketches of men and books famous in the law, with glimpses here {8} and there of the events and people of the time in which the books were written, published and read. The last word is not said on any of the men and books treated. To some readers unacquainted with the law, this book will be the first word on the subject; to others it will be only a reminder of things already known; and to others it will supply details on matters already generally understood. To all, it is hoped that the book will give some inspiration to look further in the realms of legal literature.

Grateful acknowledgment is made to Professors John Bassett Moore, Nathan Abbott and Henry F. Munro for reading portions of the manuscript, and to Dean Harlan F. Stone for reading all of it.

Frederick C. Hicks.
Columbia University,
May 11, 1921. ❶

MEN AND BOOKS FAMOUS IN THE LAW

INTRODUCTION

Harlan F. Stone[†]

The 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.

[†] 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

MEN AND BOOKS FAMOUS IN THE LAW

CHAPTER I: THE HUMAN APPEAL OF LAW BOOKS

Frederick C. Hicks[†]

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

BOOK REVIEW

MEN AND BOOKS FAMOUS IN THE LAW

Henry deForest Baldwin[†]

This small volume traces in the broadest outline the lives of a few law writers, and more especially the story of their legal writings, the inception, production, and vicissitudes of works which for the most part have become classics in legal literature. It contains chapters on Cowell's Interpreter, Lord Coke and the Reports, Littleton and Coke upon Littleton, Blackstone and his Commentaries, James Kent and his Commentaries, Edward Livingston and his System of Penal Law, and Henry Wheaton, together with an appendix containing bibliographical suggestions. The book is also illustrated with portraits of the writers who are the subjects of the chapters. The chapters which deal with American authors seem on the whole better than those which deal with English authors. One might question the selection of authors and books, yet criticism is disarmed at the outset, for Mr. Hicks frankly admits that "out of the hundreds of authors and books that might have been considered, the selection of these few has been made almost at random – because they happened to be of special interest to the author" (p. 7).

Indeed to measure adequately the function of the book requires an appreciation of what the author has consciously undertaken. In Mr. Hicks's own words, "no pretense is made of giving an adequate picture of the contents of the books. That would require a technical presentation which would defeat the end sought. Nor is a complete picture of the authors of the books given. The studies are merely impressionistic sketches of men and books famous in the law, with glimpses here and there of the events and people of the time in

[†] This review originally appeared at 31 Yale L.J. 793 (1922).

which the books were written, published, and read” (p. 7). It seems to be assumed that the present methods of legal instruction are producing a body of lawyers who, while more scientific than their predecessors, are becoming progressively ignorant in the classics of their profession. “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” (p. 11). The purpose of the book is to inspire students to know more of the makers of the great law books, to the end that much of educational value may be gained from a study of the men and books that have influenced to a marked degree Anglo-American legal development. The author goes further and maintains that law books have a human appeal and should be a part of the general knowledge of every cultured person. The book, therefore, is directed to two essentially different classes of readers. The attempt is worthy of praise; its success is open to question. The chapters are too sketchy to give any real sense of satisfaction to a reader trained in the law. Even a student of law is worthy of more substantial mental diet. Sketchy as the chapters are they are not calculated to appeal to the general reader. The book is too much of the commentary and too little of the informative, and the commentary is upon matter of which the lay reader is usually ignorant. One might go further and take issue with Mr. Hicks on his fundamental proposition that law books have a universal human appeal. The law itself is catholic; its subject matter embraces all human activities, touches all the social relations, but it does not follow that books about the law have a general human interest. It is to be feared that Bracton, Glanvill, Littleton, Coke, and even Blackstone will continue to be of interest almost solely to the historian. ❶

BOOK REVIEW

MEN AND BOOKS FAMOUS IN THE LAW

William Edward McCurdy[†]

Hamilton Odell, a distinguished member of the New York Bar, who died a few weeks ago in his eighty-eighth year, is said to have found keen enjoyment during his last years in reading the Advanced Sheets of the New York State Reports. But it takes a long life devoted to the law to enable a man to find enjoyment and relaxation in such a pastime. A taste for law literature is a cultivated taste. The flood of new law literature, which is overwhelming to a practicing lawyer of to-day, has made the task of keeping up with even the latest decisions an immense one, and discourages lawyers, young and old, from seeking general improvement or relaxation in the reading of reports. I have no doubt Mr. Odell had read Coke's Reports, but I doubt if there are half a dozen of his survivors practicing in New York City who have done so. Except for selected cases, there are probably few lawyers to-day who have any precise familiarity with the ancient literature which instructed the able lawyers who distinguished our profession in the early half of the last century.

Professor Hicks has performed a great service to the legal fraternity, and indeed to the educated public at large, in giving us this thoroughly entertaining little volume. We have here an easy and pleasant means of obtaining a little knowledge of certain legal writings which are monuments in the history of the law. And the sketches of the seven great lawyers whose fame has been perpetuated to our time because of their authorship of these historic documents supplies a need of the profession. This book will fit into a fair

[†] This review originally appeared at 35 Harv. L. Rev. 354 (1922).

sized pocket. It contains interesting and human facts about the men and books it tells about. It will shorten a railroad journey for any educated person, even if he has not had the advantages of pursuing the law as a calling, and will make a lawyer during a quiet evening forget about a dissatisfied female client or the lack of intelligence displayed by a jury.

The great men whose famous books have led Professor Hicks to draw them to our attention were not closet students remote from the great world. Indeed the writings of three of the four Englishmen he treats of, got them into considerable political trouble.

The prerogatives of the King; a disposition in some quarters to extoll the excellence of the Civil Law in comparison with the Common Law of England; the powers of the Court of Chancery to take jurisdiction of cases which had already been decided by the Court of King's Bench; and the "liberties of Parliament" aroused violent feeling among politicians as well as among lawyers during the seventeenth century. It involved some personal peril to write law books in those times.

John Cowell wrote a book on the Common Law of England which won for him some fame. He then proceeded to write another work called *The Interpreter* which was a law dictionary. It is reported that this book gave great offence because of a few statements therein contained. It was brought up in Parliament and received the attention of the King, the Lords Spiritual, the House of Lords, and the House of Commons during a considerable period in 1609 and 1610. All the fuss resulted in the King issuing a proclamation from which we quote a few clauses expressing in the quaint wording of the period sentiments which are not unfamiliar at the present day. After reciting the disposition of "this later age and times of the world wherein we are fallen," "such an itching in the tongues and pens of most men, as nothing is left unsearched to the bottom, both in talking and writing"; "whereupon it cannot otherwise fall out, but that when men go out of their element, and meddle with things above their capacity, themselves shall not only go astray and stumble in darkness, but will mislead also diverse others with themselves into many mistakings and errors; the proof whereof we have lately had

by a book written by Dr. Cowell called "The Interpreter." Wherefore, to prevent the said errors and inconveniences his Majesty "resolved to make choice of Commissioners, that shall look more narrowly into the nature of all those things which shall be put to the press."

But it was not much easier to suppress a published book in 1610 than it is to-day. While Cowell was put under technical arrest during the investigation of his work, he was not actually restrained of his liberty. "Like a wise man he took his leave of the press, and retired to his colledge, and his private studies." A generation later his book figured in the trial of Archbishop Laud, it being charged that Laud had connived at its being printed in 1637.

Lord Coke's character and stiff-necked defiance of the King and his Lord Chancellor have made his career as a judge and politician as famous as his reports and his annotations of Littleton. When the King asked him whether if at any time in a case depending before the judges which his Majesty conceived to concern him, either in power or profit, and thereupon required to consult with them, and that they should stay proceedings in the meantime, they ought not to stay accordingly, the Lord Chief Justice of the King's Bench said for answer that "when that case should be, he would do that which should be fit for a Judge to do."

In a land where we have so many elected judges who receive their positions on the bench from some powerful politician, this famous story cannot be repeated too often or made too familiar.

But Coke was removed from his office as chief justice. He suffered for his judicial courage and integrity, just as judges in our own time have been refused a re-election, because of their unwillingness to yield to the demand of some powerful politician. It is pleasant to learn, however, that having been retired as a judge he was elected to Parliament and immediately became a leader and an advocate of the "liberties of Parliament." That it was as dangerous to incur the disfavor of the King in Parliament as on the bench is shown from the fact that at the dissolution of Parliament he was arrested and confined in the Tower for nine months.

Blackstone's reputation was based on his *Commentaries*, first is-

sued in 1765, and still largely used by law students. Yet he too had his human side. Professor Hicks tells us that the Commentaries were written late in the evening with a bottle of wine before him "in order to correct or prevent the depression sometimes attendant upon close study." He acknowledged and lamented his bad temper.

Kent's *Commentaries* were but a small part in the busy life of the judge. We are told that the lectures upon which they were based were delivered to a very small assemblage of a few students and lawyers. In the winter of 1794-5 he delivered twenty-six lectures, two a week, to seven students and thirty-six gentlemen, chiefly lawyers and law students who did not belong to Columbia College, where he was Professor of Law. The next year only two students put in an appearance and to these he read thirty-one lectures.

Our author has given us a few pages of Kent's notes written upon his copy of Edward Livingston's *Penal Code* which show how Kent annotated what he read. This is both interesting and instructive.

Edward Livingston occupied many distinguished positions. As a young man he was elected to Congress. Shortly afterward at the age of thirty-seven he became Mayor of New York City, and United States Attorney for the District of New York by appointment of President Jefferson, and he held two of these offices, if not all three of them, at the same time. Later he became again a member of Congress and a United States Senator from Louisiana. President Jackson appointed him Secretary of State in 1831, and two years later he was appointed American Minister at Paris. He attained all this recognition notwithstanding the fact that his career was burdened through the defalcation of a subordinate in his office as Mayor of New York. He resigned his office of Mayor and accepted responsibility although none of the missing funds had passed through his hands. The debt was finally paid, principal and interest, but not until within a few years of his death. This misfortune led to his removal to New Orleans where his abilities were promptly recognized. While there he found time to prepare a Civil Practice Act which was adopted by the legislature in 1805. He was a member of a Commission to revise the Civil Code of the state, whose work for the most part was adopted by the legislature. But his great interest which oc-

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cupied him during his whole life was in the preparation of a penal code. This work challenged the attention of the foremost thinkers of the world and is his great monument. Although his penal codes were never formally adopted in the United States “they constitute a thesaurus from which the world has ever since been drawing ideas and principles.”

Professor Hicks’ book serves to remind us that the law offers fame of an enduring sort for scholarly and literary talent as well as for judicial eminence and brilliant advocacy. ❶