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Timothy Tyndale Daniell, The Lawyers

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BOOK REVIEW

"THERE WAS A LITTLE (BOOK) . . ."

The Lawyers, Bicentennial Edition. By Timothy Tyndale Daniell. Co-published; *London: Wildy & Sons, Ltd.; New York: Oceana Publications, Inc.*, 1976. Pp. xii, 353. $12.00

So close to 1976 and all of the commercialized and kitschy hoopla about the American Bicentennial, only the most persevering reader would press on to consider a review of a book[1] purporting to have anything to do with that historical event. Fortunately, the main connection which this book has with that subject is that the author and publishers apparently thought 1976 a propitious time to offer for sale in the American market a much expanded version (with some references to American legal matters) of a very attractive little book that first appeared in 1971.[2] This makes some sense when one considers that American lawyers generally are Anglophiles—at least those are who care to concern themselves with the origins of our legal system and its traditions.

It is difficult to articulate one's feelings about the quality of this book. One may compare it to the "little girl who had a little curl . . ." and say that when it is good it is very, very good, but when it is bad it is horrid.[3] But the trouble is that THE LAWYERS is both good and "horrid" at the same time. It is, in a way, a good book badly written. It is clear that the author took great care to gather a large amount of useful information about the English legal profession, its history and its setting in "Legal London," but it is equally clear that he had no editorial assistance in preparing it for the reader. It seems that no one read the manuscript except the author and the typesetter. The bad respects of this book are so obvious and distracting that it would be best to attend to them first. In the interest of more effectively making my point, I will depart from the

1. T. DANIELL, THE LAWYERS (1976) [hereinafter cited by page number only]. This book should not be confused with M. MAYER, THE LAWYERS (1967), one of the best books written about the American legal profession.

2. T. DANIELL, INNS OF COURT (1971).

3. I trust that in these days when energy conservation and the recycling of resources are encouraged, my reader will forgive my reusing here an idea of my own. *See* my *Very, Very Good and Horrid*, THE CRESSET, March, 1969, at 19.

usual practice of signaling with "[sic]" errors in words or punctuation in the quotations to follow. My reader will understand the reasons for doing do, I trust, and may be assured that the quotations appear here exactly as they are in the original.

The Horrid

Although this book is offered as a second edition, it reads like a first draft. It is both over-written and under-written; for the most part, it is just badly written. One can understand why, in the "Preface to the Second Edition" (written on the Fourth of July, 1976) the author says, "I am asked to point out, and gladly do so, that the text as printed is my sole responsibility."[4] Examples of over-writing are many.[5] By way of illustration—and one is enough—on pages 64-65 he writes:

> The frontiers of the United States are formidable; were forged by the branding iron of the Common Law. When the Founding Fathers—and, perhaps their stalwart predecessors in Virginia—set their hand to the greatest modern state since Greece, they adopted that system of jurisprudence common to their heritage, the English Common Law as it stood in the seventeenth century.

To illustrate the ways in which this book is under-written (and I use this term a bit broadly), it would be best to divide one's criticism into more specific categories. The text is sometimes contradictory. On page 206, the author refers to Goldsmith's "simple gravestone" and implies that the Temple neglected him. On page 232, he says that Goldsmith's "tomb lies gloriously in the shadow of Temple Church" which implies something other than simplicity and neglect. Frequently, the text is redundant. At page 76, the author says, "It [the House of Lords] frequently amends Bills, but the Commons may and in its usual fashion usually does disagree." More often it is repetitious.[6] He frequently capitalizes nouns when capitalization is not appropriate.[7] Occasionally the reader encounters irrelevant interjections[8] or sentences wherein central ideas change

4. P. *v.*

5. *See, e.g.*, pp. 40-41, 46, 58 and 64-65.

6. *See, e.g.*, pp. 79 and 80, 81 and 82, 113 and 135, and 197.

7. *Passim.*

8. On page 231, when discussing the Old Post house in Middle Temple Lane, he says, "This site preceded the postal service which England pioneered and which has since been run down as is the wont of national interests." Perhaps we should forgive an Englishman's editorial comment on his failing public institutions.

midstream.[9] Serious stylistic errors abound.[10] Two illustrations should be enough. First, at pages 66 to 67:

> The American Judiciary follows a distinguished path steeped in legal alumni which began with the Puritan thinkers of the seventeenth century, and the finer traditions of legal scholarship. In the old days of course, the leaders in civil life were often the repositories of literary and academic knowledge, as by way of example was one of the first, Sewall, C. J., whose Diary remains a masterful work (1652-1730), or the eminent theologian, Dr. Jonathan Edwards, 1703-1758, sometime President of Princetown, where he in fact died. Of those in the law, mention may be made *inter alia* of Judges Marshall, Bushrod, Washington, Story, Kent, Ware, and Bradley to name but a few, though transatlantic admirers of Cardozo and his style of English prose perforce includes his name.
>
> Even below the Supreme Court, the true literature of the State and Federal judges may be found across every volume of the law reports, and although the major distinction with brethren across the Atlantic used to be that holders of judicial office at State and at Federal level were elected politically (unlike their English brethren), the practical consequences have merged in the common integrity, inherited in both systems of jurisprudence. The progress of both have brought the two sides of the Atlantic closer together than at any time in their histories—whether from the point of view of the judgments handed down in the Federal courts and taken cognisance of by the English courts—or from the views of the practitioners' bodies, such as in the field of negotiable instruments as also in the Employer's Liability, for example, where the American Bar Association leaned on British law.

We all remember Justices "Bushrod" and "Wade," neither of whom (as far as I know) was ever at "Princetown."[11] Even a mediocre

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9. *See, e.g.*, pp. 203 to 204.

10. *See, e.g.*, pp. 5, 6, 17, 19, 20-21, 26, 33, 53, 63, 64, 67, 90, 189 and 199.

11. With the single stroke of a careless comma, he split Justice Bushrod Washington into two justices. "Wade" is apparently one of Mr. Justice Waite's aliases. "Princetown," perhaps, is a quaint British way of spelling Princeton.

editor could have improved on that—or on the following sentence from page 199:

> The slumbering crusaders snore peacefully in full armour who from their labours rest, of all, the most comfortable looking is William Marshall, 4th Earl of Pembroke (died 1219), adviser to King John and Regent when Henry III came to the throne as a boy of nine.

The following illustrations from pages 17, 26, 180 and 185, respectively, employ a nicely balanced mixture of poor grammar and bad punctuation:

> Barristers receive a fee for each and every instruction he fulfills.

> Every barrister knows that the most formidable law unto himself is his clerk. A barrister may be made or broken by his clerk, although like his principal good wine, it is hoped, improves with age. Because barristers have no legal status as defined in any enactment, he cannot sue for his fees.

> Those persons who choose to "skip a visit" [to the Soane Museum] will be a foolish loser . . . .

> Their [the Knights Templars'] English branch, founded in 1128, was first established in the parish of St. Andrew, Holborn, but sold it about thirty years later to move to a larger site . . . .

All of the above, as well as Mr. Daniell's habit of using "alumnae" in place of "alumni,"[12] embolden an American to criticize an Englishman's English (and Latin).

There are also some factual inadequacies or erroneous implications. On page 13, discussing "the law student," Daniell says:

> In England, a student may decide (or it may be decided for him), to go up to university and read law before he embarks on a career. However, if he wishes to read for the Bar, either as a fresh young scholar or as a young gentleman with a degree, he will enrol for admittance to an Inn of Court . . . and "eat his Dinners," and quality successfuly in the Bar Examinations.

12. Pp. 164, 228 and 256.

As a result of the Ormrod Report[13] and subsequent reforms in English legal education,[14] very soon it will be impossible for a student to enroll in an Inn of Court as "a fresh young scholar." At least some university education will be a prerequisite, and no meaningful discussion of legal education in contemporary England can safely ignore the significant changes which are taking place.

On page 65, in a discussion of the American inheritance of the Common Law, the author states:

> The various States however, acting within their own jurisdiction, and empowered under the Constitution to regulate and advance their own jurisprudence have carried forward the Common Law in original jurisdiction with scarce exception (e.g., Louisiana, New Mexico, Texas, Missouri, Arizona and the Pacific States) . . . .

To treat Louisiana and "the Pacific States" as if they were similar in their departure from the Common Law is misleading. Probably all American readers are aware of the significant Civil Law influence in Louisiana. But California, probably the most "Civil" of the "Pacific States," while it *is* a code state and reflects some civil law influence (e.g., community property principles), at one time in its history seriously considered the options and came out strongly in favor of the Common Law.[15]

Perhaps all of this is overkill, but it seems a necessary way of expressing a reader's frustration in digging for gems in a midden. I

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13. REPORT OF THE COMMITTEE ON LEGAL EDUCATION, CMND. No. 4595 (1971). This report is popularly referred to as "The Ormrod Report" because the committee was under the chairmanship of Sir Roger Ormrod. For an analysis of this report, see Thomas and Mungham, *English Legal Education: A Commentary on the Ormrod Report*, 7 VAL. U.L. REV. 87 (1972).

14. *See, e.g.*, Green, *Legal Education in England*, 28 J. LEGAL ED. 127 (1976); Parker, *Whatever Happened to Ormrod?*, 13 J. SOC'Y. PUB. TCHERS. L. 199 (1975); Thomas and Mungham, *supra* note 13; and Wilson and Marsh, *A Second Survey of Legal Education in the United Kingdom*, 13 J. SOCY'Y PUB. TCHERS. L. 239 (1975).

15. *See* REPORT ON CIVIL AND COMMON LAW. In Senate, February 27, 1850, 1 Cal. 588 (1850). Reproduced in S. KIMBALL, HISTORICAL INTRODUCTION TO THE LEGAL SYSTEM 311 (1966). The committee which produced this report, incidentally, recommended that in California "the courts shall be governed in their abjudications by the English Common Law, as received and modified in the United States; in other words, by the American Common Law." *Id.* at 314-315. I wish to thank my colleague, Louis F. Bartelt, Jr., for calling this source to my attention.

hasten to point out that much of the fault really is with the publishers; an author often is blinded by his own prose. This book has *two* publishers, and it seems that neither of them offered or required editorial assistance.

The Good

But now to the good, and there is much of it. In the first third of the book, a considerable expansion of material dealt with in eight pages of the 1971 edition, Mr. Daniell devotes four chapters to "The Lawyers," "The Common Law," "The Courts," and "Legal London." The reader is given a view of legal education in England, the peculiarities (to us) of a divided bar (barristers and solicitors), "taking silk," i.e., becoming Queens Counsel,[16] the origins of the common law, the doctrine of precedent, the adversary system, the structure of the courts and other aspects of the legal system and its institutions as they exist in that country; and an occasional reference is made to the significance of English law for American Independence. There is material of value and of interest here, generally worth struggling to read.

Chapters five and ten are concerned with the Inns of Court as was practically the entire first edition. The high plateau of the Inns' role as centers of legal education was from the middle of the sixteenth to the middle of the seventeenth centuries. Their significance is fading[17] but the law journals still reflect a lively interest in them.[18] Mr. Daniell's treatment of the Inns is far better than are the earlier parts of the book. He did a masterful job of research here. His text is filled with interesting anecdotes, literary references (he is not, as a lawyer, ashamed to admit to a knowledge of poetry), accounts of the involvements of Shakespeare, Johnson and others in the lives of the Inns, discussions of the plays, masques, parades and "command performances" at Whitehall Palace, all occurring in or originating at

16. Anyone interested in such matters may wish to read also H. CECIL, BRIEF TO COUNSEL (New Edition, 1972). *See* Hiller, Book Review, 8 VAL. U.L. REV. 181 (1973). For a more scholarly study of the British legal profession (though now ten years old), see Q. JOHNSTON AND D. HOPSON, JR., LAWYERS AND THEIR WORK: AN ANALYSIS OF THE LEGAL PROFESSION IN THE UNITED STATES AND ENGLAND (1967).

17. *See* notes 13 and 14 *supra*.

18. *See, e.g.*, Fisher, *Thomas Cromwell, Dissolution of the Monasteries and the Inns of Court, 1534-1540*, 14 J. SOC'Y. PUB. TCHERS. L. 103 (1977); Hammer, *Bolts and Chapel Moots at Lincoln's Inn in the Sixteenth Century*, 11 J. SOC'Y. PUB. TCHERS. L. 24 (1970); and Meagarry, *Inns Ancient and Modern*, 7 L. SOC'Y. GAZETTE 11 (March, 1973). *See also* note 20 *infra*.

the Inns,[19] and descriptions of such customs as "eating dinners" or "keeping terms."[20]

In addition to the above, and of special interest to American lawyers, are his occasional references to such matters as the role of the American Bar Association in helping to rebuild the Inns after the World War II bombings.

Mr. Daniell is at his best, substantively, when he is discussing the history of the Inns, their construction, destruction and reconstruction, their past occupants, their architecture and artistic components, their churches, gardens, courtyards and surrounding lanes. There is an extraordinary amount of valuable and sensitively gathered material here. And here, even his *writing* is at its best. The book is worth its price for this alone and would be a good companion for anyone who wished to visit and study this part of "Legal London"—lanes and buildings and areas of which Charles Lamb said, "A man would give something to be born in such places."[21]

And, Again, Not So Good

The book begins to deteriorate once again in Chapter 11, "Epilogue," which Mr. Daniell wrote "to acquaint the reader with London's famous gateway [The Temple Bar], which it is hoped will be returned to the City before it falls down."[22] (The return of this historic gateway is a pet project of Daniell's.) But even here are valuable history and a feeling for architecture and tradition, a feeling which generates his concern for the gateway.

In an apparent attempt to cultivate an American audience, the author has added to his own work Chapters 12 and 13, "Anglo-American Essays," two tiring and pedestrian essays written by a Professor John M. Crawford. They reflect an obvious lack of understanding of both American and British legal education; he seems unaware of certain dimensions of each. Perhaps the most interesting part of these essays—at least to an American who has studied and taught in both legal systems—is his praise for the facility with which the American lawyer, as distinguished from his British counterparts, may move in and out of various roles in the

19. The best account of this may be found in A. GREEN, THE INNS OF COURT AND EARLY ENGLISH DRAMA (1931). The French Law Societies had a similar history. *See* H. HARVEY, THE THEATER OF THE BASOCHE: THE CONTRIBUTION OF THE LAW SOCIETIES TO FRENCH MEDIEVAL COMEDY (1941).

20. *See* Gary, *Courtesy and Custom in the English Legal Tradition—On Dining at Gray's Inn*, 28 J. LEGAL ED. 181 (1976).

21. P. 231.

22. P. 281.

profession—from the practice, to teaching, to the Bench, to other government service, back to the practice, etc. This flexibility, he suggests, enriches the American law, its practice and its practitioners; its absence, he says, tends to make the British Bar parochial and insular. I doubt that the difference, though it does exist, is as great as he suggests.

In these last two essays, we find another reason to fault the publishers. It seems that no one read proof once the type was set. Two examples suffice. At page 315, we find:

> When the *Report* of 1846 appeared with its voluminous testimony by Benchers, Treasurers, and visiting scholars, the ferment and dissatisfaction with what had been the case and optimism caused the four Inns of Court to come together (and that was and is no mean feat) and, by means of joint resolution, to empowered and found the Council of Legal Education.

And, finally, at page 345 we read, "What we need at the present time is to return to the roots of the common law and try to make a system available to more equitably so." It sounds like Newspeak.

A few other points deserve mention. The book is ornamented by thirty-six pen and ink drawings, some appearing more than once in this volume; most previously appeared in the 1971 edition. They are attributed to "T.T.D.," presumably the author. Some are rather delicate and attractive. Many are heavy and unattractive—perhaps a result of the printing process. The cover is very attractive—bright red simulated leather with gold printing. It just goes to prove the old adage.

There is one other good thing about the book. That is the introduction by Leonard Caplan, Q.C. It is a three-page essay on the interaction of English and American Law, and it is the best written part of the book. Too bad it was not 353 pages longer.

In a "Publishers Postscript" on the dust jacket, it is stated that "the author is aged 28." If the reader is going to "Legal London" soon and is willing to read for information alone and not for literary style, he should buy and read the book. However, the author is young enough to encourage our hope for a third (edited) edition. I am waiting for that. It could be a very good book.

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