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LORD COKE, THE COMPLEAT STUDENT OF THE COMMON LAW

Today as hundreds of students struggle through the Langdell system of studying the common law it might be of interest to them to take stock of some of the methods and habits of study of a man who did much through these methods and habits of study to fix the character of the common law in a time in which the future of that system was not a little uncertain.

Sir Edward Coke (1552-1633) the man in question lived in that transitional Renaissance-Reformation period during which the medieval Europe receded and the modern Europe bursting over with intellectual and literary activity swung into place. A contemporary of Johnson, Shakespeare and Bacon, he was not overshadowed by their tremendous intellects and attainments. Just as the statesmanship of the Tudors fixed the form and shaped the course of the development of the English state so did the work of Coke fix the form and shape the development of modern English law. For a profound knowledge of the common law of England, he stands unrivalled.

“Coke’s books,” says Maitland “are the great dividing line and we are hardly out of the Middle ages till he has dogmatized its results.” His career as a judge and in Parliament was of immeasurable importance in securing the supremacy of the common law. Not only did he uphold the supremacy of the common law over rival bodies of law, but also over all forces and persons in the state, save Parliament. And even in the case of Parliament, in *Bonham’s case*, (8 Rep. 118), he says that “When an act of Parliament is against Common Right and Reason, or repugnant, or is impossible to be performed, the common law will control it, and adjudge such Act to be void, etc.”

“His writings” says Holdsworth “form the starting point of the modern as distinct from the medieval common law because in them medieval rules are so harmonized with the modern additions that they fitted the Common Law to guide the future legal development not only of England, but also of the many dominions which Englishmen were to found beyond the seas.”¹

His great work is his *Commentary on Littleton*, which might be said to contain the whole Common Law of England as it then

¹ Holdsworth, *A History of the English Law*, Vol. 5, pp. 424-425.

existed. This is the work which Carlyle dubs "tough old Coke upon Littleton, one of the toughest men ever made."² His Reports were of equal scope and importance. Even his perennial enemy Lord Bacon concedes as much.

"To give every man his due," he says, "had it not been for Sir Edward Coke's Reports, which, though they may have many errors, and some peremptory and extrajudicial resolutions more than are warranted, yet they contain good decisions and rulings the law by this time had been a ship without ballast for that the cases of modern experience are fled from those that are adjudged and ruled in former times."³

Coke did these tremendous tasks in addition to his laborious occupations as Attorney General and Chief Justice. He was an indefatigable worker. The first three parts of his Reports were published in 1601, the fourth and fifth in 1603, and the following six parts between 1606 and 1616.

". . . in the days of Elizabeth and James I," Maitland says, "Sir Edward Coke, the incarnate common law, shovels out his enormous learning in vast disorderly heaps."⁴ That paints him as well as anything. He is always at it, either burrowing away in the smouldering records of the older days in search of the ancient custom, or writing it down for preservation and use.

"Out of the old fields comes the new corn," he says, and it is in the old field that he spends his long life of hard, exacting labor so that its product might be made available to the profession. Once he discovered the law he wrote it down.

"Nothing," he said, "is or can be so fixed in mind, or fastened in memory, but in a short time it may be loosened out of the one, and by little and little quite lost out of the other. It is therefore necessary that memorable things should be committed to writing (the witness of times, the light and life of the truth), and not wholly left to the slippery memory, which seldom yieldeth a certain reckoning."⁵

This is a slow, painful process. But Coke was not one to avoid a task because it was unpleasant or difficult. That was his great asset, his capacity for hard, dogged, unremitting labor. As a student of the Inner Temple from 1572 to 1578, his daily

² Maitland and Montague, *A Sketch of English Legal History*, p. 113.

³ Butler's *Reminiscences*, Vol. 1, p. 115.

⁴ Maitland and Montague, *A Short Sketch of English Legal History*, p. 113.

⁵ Coke's Reports, Part I, pp. 25-26.

routine was said to be something like this: At three in the morning he would arise in the winter season, lighting his own fire. Until the courts met at eight his time was spent in reading Bracton, Littleton, the Year Books and the folio Abridgement of the Law. Then he betook himself to Westminster, where he heard cases assigned until twelve. After a short meal in the Inner Temple Hall, the afternoon was spent at readings and lectures. If these did not take up the full afternoon, he spent the remaining time in private study.

After the supper hour was over the moots took place. It was then that difficult questions of law were propounded and discussed. After this was concluded he went to his room and put into his notebook under proper headings, the information he had acquired during the day. At nine o'clock his day was over. This left no place in his schedule for amusement, literature, or the so-called "good things" of life. These things never did play an important part in the life of Coke. He was absorbed in the law and lost in consequence many things of value.

To know the law, one must work. "In troth," he says, "reading, hearing, conference, meditation and recordation, are necessary to the knowledge of the common law, because it consisteth upon so many and almost infinite particulars: but an orderly observation in writing is most requisite of them all; for hearing without reading is slippery and uncertain, neither of them yield seasonable fruit without conference, nor both of them together without due and orderly observation."⁶

Acknowledging no royal road to learning for himself, his suggestions to the student of the law contains no easy detours to a knowledge of the law. In the preface to his work on Littleton, he says:

"Mine advice to the student is, that before he read any part of our commentaries upon any section, that he first read again and again our author himself in that section, and do his best endeavors, first to himself, and then by conference with others (which is the life of study), to understand it, and then to read our commentary thereupon, and no more at any one time than he be able with delight to bear away."

Not only must the student know what he knows thoroughly but he must know a great deal. "I would our student to be a

⁶ Coke's Reports, Preface.

complete lawyer," he says. To be a "complete lawyer" he would have him to be on familiar terms with the law of the past as well as the law of the present. His own mind was photographic and distinguished by his ability to keep fresh and clear the picture once he had secured it. The scope of his knowledge was tremendous. No detail was too unimportant or trivial to escape his consideration. He would have the student of the common law to follow the same course.

In reporting a case, his method was marked by the same exhaustive thoroughness. He would permit himself no economy of time or space. In Calvin's case (8 Coke's Reports) he gives us an idea of his system of reporting, "Now that I have taken upon me to make a report of their arguments, I ought to do the same fully, truly and sincerely as possibly I can; howbeit, seeing that almost every judge had in the course of his argument, a particular method, and I must hold myself to one, I shall give no offense to any if I challenge that which of right is due every reporter, that is, to reduce the sum and effect of all the arguments the reporter thinketh to be fittest and clearest for the right understanding of the true reasons and causes of the judgment and resolutions of the case in question."

Long, tedious, methods, these. Nothing in them to strike a sympathetic response in this age of rush. Speed and ease of accomplishment, which we value so much, had no place here. Lord Coke did not learn in ten easy lessons. His results were obtained by virtue of long, grinding hours. Whatever we may think of the methods he used, we must value them highly, if we are admirers of the common law.

Sir James Stephen brings this home to us. "Coke's Institutes," he says, "have had a greater influence on the law of England than any work written between the days of Bracton and Blackstone." "When the older learning became obsolete," he continues, "Coke came to be regarded more and more as the second father of the law behind whose works it was not necessary to go." If it were not for him we would have to go through the veritable wilderness of cases found in the Year Books for our knowledge of the older law, or else go to the valuable but inadequate abridgements of Stratton, Fitzherbert, and Roll.

¹ Stephen's *A History of the Criminal Law of England*, Vol. II, p. 205.

Perhaps this fact might justify the method and time spent by our Lord Coke with his common law. Let us hope so, at least, for his arduous labors were not accomplished without denial on his part. Like many workers who toil in the field of literary production, he had to drive himself to his labours. There came many times when he felt discouraged and envious of those who worked with more tangible materials.

He gives expression to this feeling in the following paragraph: "Whilst we were in hand," he says, "with these four parts of the Institutes, we often having occasion to go to the city, and from thence into the country, did in some sort envy the state of the honest ploughman and other mechanics; for one, when he was at work, would merrily sing, and the ploughman whistle some self-pleasing tune, and yet their work both proceeded and succeeded; but he that takes upon him to write doth captivate all the faculties and powers, both of his mind and body, and must be only attentive to that which he collecteth, without any expression of joy or cheerfulness whilst he is at work."⁸

Consolation for many may be found in this statement. Toiling on some particularly difficult problem, a moment's contemplation of this plaint of Lord Coke may bring renewed vigor. For if this hardy old veteran of the common law had his moments of weakness, then it is clear that to be a "compleat student" of the common law, everyone must experience some discouragement.

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⁸ *Life of Sir Edward Coke*, p. 283. Campbell's *Lives of the Chief Justices*.