



PennState
Dickinson Law

DICKINSON LAW REVIEW
PUBLISHED SINCE 1897

Volume 38
Issue 4 *Dickinson Law Review - Volume 38,*
1933-1934

6-1-1934

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Recommended Citation

Zaidee E. Green, *Sir Edward Coke-A Gentleman of Rare Distemper*, 38 DICK. L. REV. 255 (1934).
Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol38/iss4/3>

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SIR EDWARD COKE—A GENTLEMAN OF RARE DISTEMPER

ZAIDEE E. GREEN*

2. *Clown.* But is this law?
1. *Clown.* Ay, marry, is't; crowner's quest law.
Hamlet

It is likely that Mr. C. W. Johnson, the earnest biographer of Sir Edward Coke, did not see the possibility of humour in his description of the death of the famous jurist:

"If his last hours were disturbed by the efforts of faction, if his pillow was not smoothed by the attentions of his wife, they, on the other hand, were not embittered by the stings of conscience."¹

It may well be, of course, that the conscience of this renowned seventeenth-century legal figure had suffered demise anterior to the peaceful passage of the physical lawyer, which is thus touchingly pictured by his biographer. Otherwise, we might be justified in expecting that some slight memory of the jurist's injustice to Raleigh and to Bacon, some recollection of the sacrifice of his daughter, of the offense to two wives, some regret for his rancour in public office might have remained with him and disturbed, to some extent, the peace of the jurist's last hours.

But this biographer is but one of the multitudes who have revered the name of Sir Edward Coke. Even Ben Johnson (often parsimonious in his praise) extolled the integrity of the jurist, and to the legal profession of the present day his name is sacred.

All of this seems strikingly singular—that one lawyer should have been able to mystify so many others. It is true, of course, that some historians have villified Coke, have called him "harsh, avaricious, and narrow . . . one of the most brutal prosecutors who ever served the Stuarts."² But few writers, it seems to us, have estimated accurately the nature of this man—have revealed him; that is to say, neither as a benign and disinterested protector of the people's rights, nor as a pure legal fury, but as one who gained all of his prominence through applications of the salve of sycophancy.

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¹*The Life of Sir Edward Coke*, p. 87.

²Cross, Arthur L., *History of England and Great Britain*, p. 293.

Inordinately vain, he was yet without pride, elated at being able to combat showily the opinions of his monarch one day (much to the titillation of his professional associates), but, upon another occasion, willing to prostrate himself upon his monarch's boots to entreat pardon for a rash and offensive observation. But it was not often that Coke did or said a really rash thing. His was generally the majority opinion, the majority opinion having been ascertained in advance. His febrile declamations in defense of the common law were neither reckless nor especially courageous; for he knew exactly where he stood most of the time, and in general ventured to leave this protected spot only when he was certain of a noisy "Yea!" barrage from his followers.

Bacon held, even while Coke made many of his startling legal pronouncements, that the latter was often not uttering "good law"; and other contemporaries of the famous jurist realized that Coke was his own authority. Inasmuch, however, as we have profited by the results of his flamboyant speeches relating to the common law, and by his snapping of his legal fingers under a monarch's nose, it is perhaps ungrateful to condemn his behaviour in these connections, and reference is made to them only because they betray the same vainglory and bad temper (beneath an obsequious exterior) which are reflected in his legal writings and which were exhibited in his conduct of cases.

In 1628 appeared Coke's now famous *Institutes of the Laws of England*, the first part of which we have come to know as *Coke Upon Littleton*, but which the author entitled *A Commentary Upon Littleton—Not the Name of the Author Only, But of the Law Itself*. By explaining that the tome did not represent a discussion of the *name* of a famous predecessor, but of the *law*, Coke would seem to have entertained doubt of the clarity of his production. Well he may have, for the work was as unnecessary as his commentaries are frivolous. Once again Coke was simply waving a flag which another had planted in the spot many years before. Sir Thomas Littleton's famous treatise on tenures, published in 1481 (and translated into English before the birth of Coke), had been recognized for many years as a brilliant exposition of the laws governing real property. It pleased Coke to add a few "commentaries" to this famous work in order that he might derive new prestige from the association. The difficult task of bringing the work up to date did not, apparently, appeal to him—it was simpler to limit his activity to superfluous additions, such, for example, as the giving of etymologies of common legal terms.

"Logick" and language were such a fetish with Coke that he took less delight in Littleton's learned exposition of the law than in his "syllogisms, inductions, and other arguments; and his definitions, descriptions, divisions, etymologies, derivations, significations" The death of Littleton he regretted because "all of this learning" (apparently the syllog-

isms and significations) had to go with him. Concerning the *legal* value of Littleton's work (and the jurist would likely have smiled to see Coke ignoring the law and plucking only the rhetorical flowers), Coke's praise is as general as it is unnecessary. Having declared that the work is "the ornament of the common law," Coke goes on to say in his preface that he has assigned himself the task of maintaining "against all opposites whatsoever that it is a work of absolute perfection in its kind." Needless to say, this championship of the famous treatise was as superfluous as the champion's additions thereto.

Curiously enough, however, *Coke Upon Littleton* has enjoyed a remarkable reputation, but this it must have won from those who praised without reading. Such are not to be censured, for one would need several pairs of eyes and a relish for monotony to enjoy a work which runs on for hundreds of pages in this fashion :

BOOK I, Chap. I, Sec. II

<p>Et nota, que home ne poit aver plus ample ou plus griender estate denheritance, que fee simple.</p>	<p>And note that a man cannot have a more large or greater estate of inheritance than fee simple.</p>	<p>This doth extend as well to fee simples conditional and qualified, as to fee simples pure and absolute. For our author speaketh here of the amplenesse and greatness of the estate, and not of the perdurableness of the same. And he, that hath a fee simple conditional or qualified, hath as ample and great an estate, as he that hath a fee simple absolute, so as the diversity appeareth betweene the quantity and quality of the estate.</p>
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There are very few people, we believe, who would find themselves enlightened by the tiresome and needless discussion of the phrase "fee simple." The average reader would very likely be quite content with the translation of Littleton's Norman French.

But, as we have said, Coke liked words more than he liked law, and in moments of violent distemper his oral activity was both energetic and unethical. His utterances at the trial of Raleigh seem more like a *Strange Interlude* recording of the *thoughts* of a rabid jurist than like actual, verbal calumny. Having labeled Raleigh "monster," "the notorious traitor that ever came to the bar," "viper," and adorning him with other reptilian epithets, he replies to the latter's inquiry of why he must suffer the indignity of these opprobrious names with a leering, "Have I angered you?"³ Holding the center of the ring, Coke was once again showing off for his audience by tormenting his victim. Even on this occasion, however, we do not agree with some of his enemies that Coke's conduct was Mephistophelian. He was ever, in our opinion, a sort of melodramatic villain, who liked the trappings which went with the role, just as he liked display of any sort.

Sir Edward Coke, then, is in our opinion, a jurist who has enjoyed during some centuries an honored reputation to which he is not exactly entitled. A mere pettifogger compared to Bacon, a jurist who employed acrimony rather than reason (or adulation rather than honesty when the occasion seemed favorable), and an inferior author, who wrote his name in the great work of a famous predecessor, he is, nevertheless, one of the most interesting personalities of the seventeenth century. A Mr. Puff, who generally blew hot, though he could blow cold, his name should be written large in success literature. No office that offered remuneration was too humble for him, no possibility of influential social connection to be ignored. In a material way, he prospered in practically all that he did. His legal activities were a financial success; and so was his marriage. He died exceedingly wealthy.

³Howell: *State Trials*, Vol. 11, p. 10.