

## *Author's Preface*

While I toiled amidst the dry-rot, fallen timbers, and primitive plumbing of a family home in southwest Nova Scotia in the summer of 1982, a telegram came to the Plympton post office, relayed by the postmaster to his mother, who phoned the neighbor across the road, who walked over to deliver the message. It was an invitation from Leslie Adams, Esq., of Birmingham, Alabama, lawyer and publisher of the Gryphon Library of Classics, to assemble an editorial committee to oversee a new venture, The Legal Classics Library. A few moments' thought, then I crossed the road and used the neighbor's telephone to respond to Les, settle terms, accept the offer, and choose the first half-dozen volumes. A second call directed Maritime Tel & Tel to install a telephone.

In 1783, my great-great-great-grandfather Nathan, a Loyalist, fled to these same acres from Waltham, Massachusetts. Before 1982, Plympton provided me a similar sort of refuge from Berkeley, California. There had been pastoral bliss in escaping for the summer, to labor tool-in-hand, research, and write without the interruption of modern communications. That evaporated. The telegram was cause and my response had its effect. Now the house, barn, and garage are festooned with cord and cordless phones, my study mounts fax and desktop, and the TV cable provides ISP.

In the quarter-century since that phone call, I have written ninety-nine introductory essays of some 20–25 printed pages, printed separately as pamphlets to accompany works reprinted in The Legal Classics Library. Chronologically, these “Notes from the Editors” ranged from Hammurabi’s Code to William Rehnquist’s *The Supreme Court: How It Was, How It Is*. Multivolume works demanded Notes to accompany each volume: the eight

essays for William Blackstone's and Chancellor Kent's respective *Commentaries* together totaled almost two hundred pages. English and American works I entered upon with verve, considering them less formidable than in the event they proved to be. The volumes on Plato, Greek trials, Justinian, Vico, Montesquieu, Beccaria, the *Code Napoleon*, Savigny, Tocqueville, and Kovalesvsky, were all unfamiliar territory, but they provided relief from Storrs Lectures. They also taught me a great deal about the history of law that I would not have learned in any other way. Notes for other volumes, particularly in Roman and civil law, international law, and jurisprudence, were supplied by distinguished colleagues from both sides of the Atlantic.

Both "Legal" and "Classics" were liberally construed. Included in the series were some less-than-legal work by lawyers, some works trenching on law by non-lawyers, and a few trials. "Classic," besides encompassing the conventional meaning of the word, also included significant, even recent, works touching the law.

Here are fifteen of the Notes, the first written in 1982 and the last in 1998. They are essentially vignettes of jurists, works, and events which over five centuries, 1188 to 1688—from Glanvill's *Tractatus de Legibus et Consuetudinibus* to the revolution the apprehension of which moved Sir Matthew Hale not to publish his *History and Analysis of the Common Law of England*—played a formative role in the making of the common law. Not every candidate for the distinction is here (alas, The Legal Classics Library never found available a worthy vehicle via which to present Bracton). Two subjects are avowedly obscure: William Hudson and Michael Dalton. Magna Carta and *The Book of the General Lawes and Libertyes of the Inhabitants of the Massachusetts* are both documents, but nonetheless, like the trial of Charles I, they are cardinal events which warrant their inclusion.

The Notes rested on the proposition that an important work of law is inscrutable if separated from the historical context that produced it and without an appreciation of the personality responsible for it. Ideally, connecting the text to its author and era involves a survey of the past on its own terms and a conscious disregard of the desire to draw connections to the here and now. With regard to the individual jurist, even when what can be known about the author is slight and the whole person irretrievable, the attempt to make a personal appraisal is necessary. A life-and-times level of understanding may be all that can be attained, but each writer and each law-book can be fitted into the particular epoch and its challenges. To a considerable extent, each reveals something of a *genius loci*, a presiding deity of the law, for its particular time and circumstances. Often the personal

can be inferred or intuited, or read outright in the force of the words on the page. Sir Edward Coke's almost mystic juristic zeal was unmistakable and inimitable. James VI & I was virtually transparent by the standards of the age—which proved a chief source of his difficulties as king.

In preparing these essays for this volume, I have not attempted to update them. Subsequent scholarship, some of which is referenced in Further Reading, may condition the portraits here, but does not radically alter them.

No agenda drove the enterprise. I did not seek to impose any continuity, which would have been impossible since the Library chose and printed works without respect to chronology. What coherence there may be among these essays comes from a guileless reverence for the achievement of these jurists and their books, and from a humble awe at the role played by historical events in the fashioning and development of the common law. From its origins as an amalgam of custom and command, the common law was continuously caught in the tension between king and subject. The climacteric between medieval and modern ushered in religious and political revolution. Although sorely challenged, the common law not only survived but more than any other English institution of Church or State was strengthened by the turmoil. In the process, the common law became the touchstone for English liberties in the New England.

Is this too Whiggish, lauding the common law as a river which despite silt and diversion flows on ever greater and clearer? Such a sentiment cannot survive intact Karl Nickerson Llewellyn's realist skepticism. Yet the resiliency and the adaptability of the common law have always served us well and will continue to do so. What we mean by the "rule of law" is, simply, the common law.

It is with gratitude that I acknowledge both the vision of Leslie Adams in launching The Legal Classics Library and the commitment of his successor, Rick Ritter, in sustaining it. From 1991 until 2007, Christine Valentine in New York was managing editor. A fellow Pittsburgher, and one whose love for France provided a harmony of endeavor that smoothed out the usual strains between editor and author. Her editing was gentle, her own prose sparkling, her literary command wide, and her professionalism incomparable. Notes from the Editor have owed more to her than to any other.

With this undertaking, as with everything else I've done over many years, I've had the assiduous help of my assistant at Boalt Hall, Chris Swain, and I thank him heartily. My thanks also to the editors of the Stanford University

Press responsible for this book. And to Allen Boyer, who is editor and commentator of this volume, this is my (literal) *indebitatus assumpsit*. It was his idea that it should be published and he made it happen. Some fifteen years ago he called me from Wall Street to say he was writing a biography of Sir Edward Coke and asked if I could help him. Thus began a friendship that did not bring us face-to-face until four years ago. I would be delighted to own him my collaborator, but he has taught me more than I have been able to assist him. I am deeply grateful.

Thomas Garden Barnes

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Berkeley, California