

The Rise and Fall of The Legal Treatise: Legal Principles and The Forms of Legal Literature

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Abstract: The scarcity of legal treatises taking the form of anthologies dealing with the several branches or sections of the law is one of the peculiar aspects of the development of Roman law up to the time of Justinian. In terms of the character of Roman legal science, Fritz Schulz clarified the lack of treatises, which he saw as an endeavor that "eschewed legal history, law reform, and legal philosophy, laid stress mainly on case law and difficulties and was only vaguely interested in system and abstraction." This explanation may well have been written regarding common law, but no doubt one would like to wish to qualify it in some respects. Eventually, however, the common law system developed and preserved a treatise literature, and the typical style of legal writing became British and American treatises in the nineteenth century. In Britain, this is indeed so, but it is notable that the tradition of writing treatises has deteriorated dramatically in the United States.

Keywords: Legal, Literature, Principles, Treatise, Science, Fiction, Practices.

INTRODUCTION

Developing the practice of the treatise in the common law system and drawing on a concept implied but not completely established by Schulz's study of the literary practice of ancient Roman lawyers: the near association between the types of legal literature and the ideas of lawyers on what they are doing, and the proper way to conduct for jurists. More dramatically, I would contend that such literary styles are closely linked to ideas of the very essence of law, and that this is particularly true of the treatise. Therefore, the writing of treatises flourished in conjunction with a certain form of legal philosophy, and the tradition declined in importance as that theory fell out of favour [1]. Multiple types of legal literature may be meant by the word "treatise"; what in mind has been specifically defined by Plucknett in his Early English Legal Literature for present purpose:

It starts with a description of the subject matter and continues to cover the entire area through logical and structured phases. The consequence is that the statute is framed in a purely deductive sense, with the presumption that principles prevailed in the beginning and that those principles were found to include a significant number of cases deductible from them at the end. Also, certain subsidiary functions need to be noticed. The first is that the treatise is a monograph, purporting to deal only with a certain branch of the law that is thought of as having a certain consistency of unity; treaties are not exhaustive, like administrative books, although in some ways they are identical. Thus, in my sense, Bracton's De Legibus is not a treatise; the second is that the treatise mainly includes substantive concepts, and I remove certain works whose form is primarily determined by procedure. Glanvill is also not a treatise, although it is Stephen on Pleadings. The third is that the distinction between a good treatise, a poor treatise, and anything that is not at all worth considering as a treatise is indefinite; the treatise is an ideal sort, and I would not be concerned with noticing all works that might, arguably, be considered as treaties of a kind in what follows [2].

The common law system created barely any treaties at all for significant stretches of its existence. Littleton's Tenures, a work whose origin is obscure, is the only one of any importance in the medieval period; it is probable that it originated in lectures, but there is no evidence of this. The Tenures were scarcely more than a tract, containing about 80,000 words of French-law text. It is worth pausing to discuss this extraordinary book, which has yet to gain complete scholarly consideration, but my primary concern is with a later date.

Dividing the subject matter into three books, the fundamental concepts, values, and distinctions constituted by the substantive law of real property are set down in a structured structure. "Second with tenures, and the third, which is much longer," and much more complicated and advanced, deals with "the rest," loosely connected to

what we might term "the idea of title." While in the third book there is some minor mention of uses, although their defense was fairly well known by the 1480s, the books are normally restricted to common law. There is no way in which the work simply systematizes or digests cases; the philosophy that helps the reader to grasp "the arguments and the reasons of the law." is what the books purport to offer [3].

Littleton claimed that he recognized the "common learning" of the small coterie of lawyers whose opinions comprised common law. Real cases are seldom discussed, although there are numerous hypotheticals, and the author is rather uninterested in offering authority for his ideas, a characteristic that separates the Tenures from many later treatises. In the fifteenth or sixteenth century, Littleton had no imitators, in spite of the immense popularity it achieved. The inability of the work to create a tradition indicates that, as far as is understood, it was anomalous and had little link with the daily exercises of readings and moots developed in the Inns in the late fifteenth century.

There was a significant increase in the volume and variety of legal literature in the long time between the release of the Tenures and the beginning of the eighteenth century. This advancement was assisted by the invention of publishing, along with the increase in the size of the legal profession, although the printing of common law books was artificially limited under the royal patent regime for most of the time. But though efforts to compose treatises were made, virtually little was accomplished. Coke's tumultuous writings, in fact, did not fall into this group, and their popularity relied not on their prose style, but on their exceedingly educated author's personal authority [4].

Of course, lawyers and opponents were well conscious of the common law system's messy and unmethodical appearance. As the law was simply an oral tradition retained and passed down by those who taught in Westminster Hall, only long years of direct participation could create the illusion that the system was actually rationally coherent. The decline of the joint study sessions in the Inns in the seventeenth century, the growth in the scale of the legal profession, and the prevalence of non-authoritative written documents may only support the idea that the common law was little more than an ungodly jumble, as Cromwell is said to have defined the law of property as his key ornament. One answer to all this was realistic.

Lawyers have been striving to eliminate the unwieldy mass of legal materials from the fifteenth century onwards, often for their own personal use and sometimes cooperatively, by digesting it alphabetically under names organized for the lack of any better method. This created the abridgments and common-place texts, which until the nineteenth century were prevalent types of legal literature. Based on an interpretation of the abridged text, the systematizing efforts of the abridge compilers could make possible the development of treatise literature. This was a somewhat different method from that created by Littleton's Tenures, a work that is not connected to some sort of digest or abridgement. In a formal manner, Littleton stated the law; he imposed a logical arrangement on which there was no earlier model. On the other side, William Stanford saw the road from abridgement to treatise, and tried to follow it. There were and should have been less drastic moves down this path [5].

The natural next step, after the material is categorized under names, is to arrange the material systematically by content within each title, rather than by a spontaneous, linear, or stream-of-consciousness system. The realistic solution to the law's messy state, then, was to clean it up, to systematize it; there was no clear metaphysical view of the essence of common law involved. An alternate, and basically speculative, solution was to maintain that the legislation was already formal, although the uninitiated would seem impossible to make this assertion.

DISCUSSION

It was believed that certain maxims or values hold such special attributes. Second, they were supreme in that no other claims or rational demonstrations could help them; therefore it was idle to disagree with someone who questioned their legitimacy, and similarly idle to try to demonstrate a theory through authority

arguments. Second, clearly, they were considered to be self-rational. Third, they were often acknowledged, and so they were timeless attributes of a timeless structure.

Finally, while the detached application of principles could be carried out by only trained attorneys, even a layman could gain basic knowledge and comprehension of the law by learning the principles. The belief in values was the belief that there was always a correct solution, and the dispute between the judges in the fifteenth and sixteenth centuries was viewed not as a justification for voting, but as a reason for continuing the discussion before answers appeared; hence the constant argument over years of great cases.

Clearly, this view of the enterprise of methodologizing the law is incompatible with the tradition of the treatise, which places a special value on the undertaking considered "singularly fruitless" by Friedman; in taking this line, Friedman (whom I quote only by way of example) merely reflects a perfectly widespread school of thought. In both England and America, this school of thought, which takes a more pessimistic approach to the argument that common law consists of a body of standards and views common law adjudication as an arbitrary mechanism, has a long tradition. There is nothing really new about the American Realists' iconoclasm. What is recent, though, is the reception by lawyers of their notions, and in this context the great strength of the practical trend for legal history lies in the recognition that lawyers, and prosperous lawyers, can be had without law in the sense that law has historically been known. It is debatable whether this state of affairs should be regretted or accepted, but it is clear that the legal treatise gives little hospitality [6].

CONCLUSION

The systematizer was able to cope with bulk and flourish on variety by such a hypothesis. In the other hand, one might argue that the other accomplishment of Langdell, the case method of legal guidance, was likely to have the opposite effect. The case method provided a need for a form of literature that has been developed by generations of American scholars: the casebook, or the compilation of cases and materials today. It is quick to transform lectures into treatises; casebooks do not. But though the development of casebooks and the writing of law review papers came to consume a large output of creative energies after Langdell's time, the great American treaties-multivolume works; what seems to me to have had the greatest detrimental influence on the practice of treatise-writing in America is the movement of realism.

A doubt and even a cynicism regarding the importance of legal doctrine in the resolution of cases were involved in this revolution, ill-defined as it may have been, and it has deeply shaped the views of both those who practice law and adjudicate, and many of those who teach at American law schools. Judicial judgments cease to be viewed as the representation of a certain objective system of beliefs, but only as the substance to be used to explain and conceal, on other premises, the claims of respectability or conclusions drawn.

REFERENCES

- [1] A Collection of Some Prmncipall Rulas and Maximes Of The Common Lawes Of England.
- [2] Dworkin, The Model of Rules, 35 U. Cm. L. Rev. 14 (1967). See R. Dwo1kin, Taking Rights Seriously (1977), For A General Statement Of The Theory.
- [3] For Biographical Information, See 2 Dictionary of American Biography 295 (A. Johnson Ed. 1929). He Established His Reputation With J. Bishop, Commentaries On The Law Of Marriage And Divorce (Boston 1852). Bishop Wrote Extensively On A Wide Variety Of Subjects; His Best-Known Other Book Was His Commentaries On The Criminal Law.

- [4] The Scheme Of The Fourteenth-Century Tract, The Old Tenures, Which Littleton Claimed As His Model, See Littleton, *Supra* Note 10, At 340, Was Quite Distinct. See Generally Arnold, Introduction To The Old Tenures, C. 1515, And The Old Natura Brevium.
- [5] The Treatise On The Laws And Customs Of The Realm Of England Commonly Called Glanvill.
- [6] Bibliographic Information In This Article Is Derived From Personal Examination Of The Works Discussed, Or From J. Marvin, *Legal Bibliography* (Philadelphia 1847), And W. Maxwell & L. Maxwell, *Sweet & Maxwell's Complete Law Book Catalogue* (1925-57). The Orthography Of Authors' Names Conforms To The Dictionary Of National Biography.

1. Gagandeep Singh Narula, Dr. Vishal Jain, Dr. S. V. A. V. Prasad, "Use of Ontology to Secure the Cloud: A Case Study", *International Journal of Innovative Research and Advanced Studies (IJIRAS)*, Vol. 3 No. 8, July 2016, page no. 148 to 151 having ISSN No. 2394-4404.
2. Gagandeep Singh Narula, Ritika Wason, Vishal Jain and Anupam Baliyan, "Ontology Mapping and Merging Aspects in Semantic Web", *International Robotics & Automation Journal*, having ISSN No. 2574-8092, Vol. 4, No. 1, January, 2018, page no. 01 to 05 .
3. Gagandeep Singh Narula, Usha Yadav, Neelam Duhan and Vishal Jain, "Evolution of FOAF and SIOC in Semantic Web: A Survey", *CSI-2015; 50th Golden Jubilee Annual Convention on "Digital Life"*, held on 02nd to 05th December, 2015 at New Delhi, published by the Springer under Big Data Analytics, *Advances in Intelligent Systems and Computing* having ISBN 978-981-10-6619-1 page no. 253 to 263.
4. S. Balamurugan, K. Amarnath, J.Saravanan and S. Sangeeth Kumar, "Scheduling IoT on to the Cloud : A New Algorithm", *European Journal of Applied Sciences* 9 (5): 249-257, 2017.
5. S.Balamurugan et.al., "Smart Healthcare: A New Paradigm", *European Journal of Applied Sciences* 9 (4), 212-218, 2017
6. S.Balamurugan et.al., *The IoT and the Next Revolutions Automating the World*. IGI Global, 2019