

FOWLER VINCENT HARPER

FLEMING JAMES, JR.*

FOWLER VINCENT HARPER was one of the outstanding American scholars and writers of this century in the field of torts. He taught torts throughout his law teaching career, which started in 1926 at the University of North Dakota. During that first academic year Fowler wrote for the first volume of the *Dakota Law Review* two book reviews, two comments, and two leading articles. These show the breadth and quality of his interests as well as his industry and energy. The books he reviewed were Frankfurter's *Case of Sacco and Vanzetti*,¹ and John B. Watson's *Behaviorism*² with its implications for the legal treatment of criminals. One comment dealt with the time from which a will speaks,³ and the other with the state's recent Judicial Council Act.⁴ The articles were entitled "Scientific Method in the Application of the Law"⁵ and "Ethical Bases of the Law of Defamation."⁶

Fowler's production during that first year gave an accurate forecast of what he was to do throughout his career. In all his many writings he was greatly concerned with the ethical values which he felt the law should serve, and with evaluating its rules in terms of social policy. It is hard today to realize how rare a thing this was among the law teachers and writers of that time. Men like Pound and Bohlen stood out from their generation, and it was these men who had great influence on Fowler's early development.

In 1933, when he was 36, Fowler published his *Treatise on the Law of Torts* which, as I well remember, filled a great need for student, teacher, practitioner, and judge. It was reviewed by most of the leading men in the field, generally with favor. Bohlen called it "the most satisfactory statement of modern tort law that exists,"⁷ and hailed the author's "extraordinary power of analysis."⁸ Shulman said it was the "best available modern short statement of the doctrine in the law of torts."⁹ Prosser thought it "much the best thing yet written on the law of torts; and if we have many more such books, we shall improve the law."¹⁰ Carpenter found the important opening chapter "one of the finest pieces of legal literature extant."¹¹

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1. Harper, Book Review, 1 *DAK. L. REV.* 148 (1927).
2. Harper, Book Review, 1 *DAK. L. REV.* 152 (1927).
3. Comment, 1 *DAK. L. REV.* 83 (1927).
4. Comment, 1 *DAK. L. REV.* 43 (1927).
5. 1 *DAK. L. REV.* 110 (1927).
6. *Id.* at 73 (1927).
7. Bohlen, Book Review, 47 *HARV. L. REV.* 556 (1934).
8. *Id.* at 560.
9. Shulman, Book Review, 43 *YALE L.J.* 859, 860 (1934).
10. Prosser, Book Review, 19 *MINN. L. REV.* 257, 259 (1935).
11. Carpenter, Book Review, 10 *So. CAL. L. REV.* 250, 251 (1937).

The treatise was much influenced by the thinking of the men — and Fowler himself came to be one of them — who produced the Torts Restatement. The book, in turn, did a great deal to promote the wide acceptance which the Torts Restatement has had by courts and torts teachers.

Many years later, after he had come to Yale, Fowler asked me to join with him in writing a more extensive treatise on torts,¹² and we have both been gratified by the response to our joint product. Fowler also edited two editions of Bohlen's Cases on Torts¹³ and a two volume collection of Readings on Torts.¹⁴ His articles in the field are many and valuable.

Fowler's work was by no means confined to torts. He had great and long-standing interest in the conflict of laws and wrote a good many leading articles in that field. He was coeditor of two casebooks on conflict of laws.¹⁵ After he came to Yale, he also compiled and edited an imaginative set of materials on family law.¹⁶

I have mentioned Fowler's interest in the ethical content of law. This was by no means only an abstract and intellectual interest — rather it represented deep feelings that were part of the core of the man. Fowler had great warmth and a passionate attachment to the ethical values he cherished. Liberty and justice were high on the list of these during all his professional life. When he reviewed Cardozo's *Paradoxes of Legal Science* in 1929, he was troubled by that great judge's willingness to have liberty "bend somewhat or modify" to fit constitutional dogmas of property or even of liberty. Fowler wrote: "Is this another intrusion of the 'higher law'? Are we to offer up a living conception of liberty which social science is constructing out of the very experience of human beings, a sacrifice to a static and uncompromising dogma?"¹⁷

Fowler's passion for liberty and justice was an intensely personal thing. He was deeply concerned with the *people* who were affected by injustices and denials of liberty. He had a genuine sympathy for people in trouble, and this sympathy led him to take practical steps to help them, often at great cost to himself in terms of time and effort. Few men I have known have been as willing to carry out the uncomfortable and burdensome implications of their ethical principles. I think perhaps he is the most truly altruistic and compassionate man I have ever known.

The combination in Fowler of lively and broad-gauged intellectual interests and of warm and fine human qualities made him a great teacher of law. And by this I mean far more than a good classroom teacher. His life and his writings stand as the best sort of example of the use of law to attain moral ends.

12. HARPER & JAMES, *LAW OF TORTS* (1956).

13. BOHLEN, *CASES ON THE LAW OF TORTS* (4th ed. 1941); *Id.* (5th ed. 1953).

14. HARPER, *READINGS IN TORTS* (1941).

15. HARPER & TAINTOR, *CASES AND OTHER MATERIALS ON JUDICIAL TECHNIQUES IN CONFLICT OF LAWS* (1937); HARPER, TAINTOR, CARNAHAN & BROWN, *CONFLICT OF LAWS: CASES AND MATERIALS* (1950).

16. HARPER, *PROBLEMS OF THE FAMILY* (1952).

17. Harper, Book Review, 8 ORE. L. REV. 212, 213 (1929).



