1964

Bowen: Francis Bacon: The Temper of a Man

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Recommended Citation
Thomas L. Shaffer, Bowen: Francis Bacon: The Temper of a Man, 73 Yale L.J. (1964).
Available at: https://digitalcommons.lawyale.edu/ylj/vol73/iss3/9
In the absence of a systematic exposition by Holmes of the goals of a legal system, Professor Howe falls back on the suggestion that "stability" was the underlying thrust of Holmes's approach. A traditional label of this kind, however, aids chiefly in perpetuating the deception which this gifted thinker and judge was able to maintain during his long years of participation in the decision process of a body politic whose institutions and aspirations were in many ways unacceptable to his philosophy and incompatible with his character. In a scholar such a double life is not condoned. In a judge?

Professor Howe's volume deserves the accolade proper to an accomplished historian. His interpretations are carefully grounded; and his data are good enough to provide nourishment for alternative and supplementary ways of accounting for Holmes the thinker, the judge, and the man.

Harold D. Lasswell†

Francis Bacon: The Temper of a Man. By Catherine Drinker Bowen.

Francis Bacon, in a will afterwards revoked, gave his name "to the next ages, and to foreign nations."¹ The legacy has been distributed and redistributed; the curious thing about it is that nobody wants it. Bacon is repeatedly acclaimed as a giant in somebody else's specialty.²

In biographical outline he is above all a contradiction. He was a brilliant thinker, a scheming politician, a judge who took bribes, and a lawyer who disliked the practice of law. Even after impeachment for misuse of his judgeship, he was asked by the king for advice on legal reform.³ Carlyle found him earthy but beautiful,⁴ and his defenders, Mrs. Bowen says, have not been lawyers and judges, but "scholars, clergymen, whose lives were blameless and devoted."⁵ He kept his defenders and his royal favors after his disgrace, but he never had any friends.

Bacon admitted that his progress in the Elizabethan body politic came about by a "commixture of good and evil arts."⁶ The "good arts" he mastered included a book of euphuistic Elizabethan phrases, designed to embroider a vain monarch's pretentious court.⁷ The "evil arts" found expression in a dedicated

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1. P. 194.
3. P. 211; Bowen, The Lion and the Throne 431 (1957) [hereinafter cited as The Lion and the Throne].
4. P. 15.
5. Ibid.
6. P. 46.
7. P. 82. Bacon called this Promus of Eligancies.
(and voluntary) prosecution of his earliest supporter, Lord Essex; agitation for capital severity in the case of the harmless Dr. Lopez, whom even Elizabeth was disposed to spare; a lifelong, pathological desire to destroy Edward Coke; and an enormous reservoir of hate for his cousin, Robert Cecil, which found its most enduring expression in an essay, written after Cecil’s death, deriding his physical deformity.

Mrs. Bowen was more explicit in her description of Bacon’s evil arts when she was writing about Coke. A comparison of the present book and The Lion and the Throne reveals that Mrs. Bowen kept her sympathies close to her principal character in each work and, perhaps, because a favorable view of Coke almost demanded an unfavorable view of Bacon, was left with a lingering suspicion that she had been unfair to Bacon. At any rate, Bacon comes out of the present book a more attractive man than he appeared to be in the biography of Coke.

Bacon’s contribution to law was probably more than inconsiderable; his Maxims of the Law are of little modern utility but were used by English judges well into the 19th century, an apparent index to their practical utility as generalizations. His lectures on the Statute of Uses were considered brilliant in their day, and what is left of them have conceded scholarly merit. Although he disclaimed any interest in being a courtroom advocate, his arguments were recognized as brilliant when they were given.

He was instrumental in encouraging James I to make a coherent digest of English law, helped lay the constitutional basis for the union of Scotland and England, nearly a century before the event, and worked consistently for intelligent regulation of the English Bench. He was an active and prominent member of Gray’s Inn, and an instrumental part of its educational process. Most of his philosophical and scientific work was done in his quarters there. He proclaimed to the king, “The law is my profession,” but he was far from contented to be merely a lawyer, as Mrs. Bowen points out. However, because of the fact that his significance as a scientist and philosopher is confined, as he said, to being “a bell-ringer, which is first up to call others to church,” Bacon deserves, perhaps, to be regarded principally as a lawyer.

Bacon was a judge for only three years. There is no evidence that he was anything but a fair and diligent judge; but history continues to identify him as a judge who took bribes. His docket was kept uncommonly clear; he reformed Chancery practice and even limited the time advocates could spend in

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9. The Lion and the Throne 94.
12. P. 145.
13. P. 111.
14. Mrs. Bowen apparently does: “Bacon and Coke: the two greatest lawyers of England; some say the greatest that ever were in England.” Pp. 177-78.
oral argument. Before Lords, and in his later discussion of the impeachment and conviction, Bacon plausibly contended that the bribes he took did not sway his judgment. If there is evidence to the contrary, Mrs. Bowen does not discuss it.

Bacon pleaded no defense to the charge that he had accepted bribes, but, almost as an afterthought in his written confession to the Lords, begged his judges not to "forget that there are vitia temporis as well as vitia hominis." The "everybody does it" plea had a certain persuasion about it then, even more than it does now. In what Mrs. Bowen calls "not planned corruption but appalling inefficiency and confusion, ingrown, customary, accepted by society at large," most judges accepted from litigants gifts of some sort, and nearly every public official bought his way into office. The Chancellor had taken gifts "for his pains in hearing a cause" at least since the 15th century; James I, commenting on the high state of official ethics in Venice, told the Venetian ambassador, "If I were to imitate the conduct of your republic and begin to punish those who take bribes, I should soon not have a single subject left."

But Bacon tacitly admitted that his attempt to shift the moral responsibility for his conduct from his own shoulders to those of his age was cowardly when he appended it as no more than an afterthought to an otherwise abject confession of guilt. And the modern reader cannot avoid agreeing that "everybody does it" was and is a cowardly evasion of responsibility. Part of the judge's office, surely, is to rise above vitia temporis: to take, as Camus says, the part of the victims of society's moral pestilences, rather than that of the pestilences.

Bacon, unlike many officeholders, did not even need his ill-gotten gains. His legitimate income was uncommonly large for a judge in the 17th century, and his wife was wealthy. Bacon's lifetime, and the lifetimes close enough to his to provide him example, contain instances of judicial honor which were unusual, and conspicuous because they were unusual. Sir Thomas More, the first of the lay Chancellors, had the same offers Bacon had and managed to treat them with honorable firmness and even characteristic grace. Sir Robert Cecil, a Machiavellian in diplomacy and politics, was above reproach in this respect. In the year he became Lord Treasurer, he refused gifts worth at least 1,800 pounds, saying that he supposed them to be "some kind of bribes whereby he might wink at the corruption of officers."

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17. P. 180.
19. P. 190. See The Lion and the Throne 429.
22. For an account of More's successful defense to charges of bribery, see Reynolds, op. cit. supra note 18, at 191-92.
23. The Lion and the Throne 428.
Viewed in the legal context, Bacon's life has powerful moral significance for his professional descendants in the 20th century, and the modern lawyer benefits from pondering the moral paradox of a great and effective lawyer, teacher of law, and judge publicly confessing that he accepted bribes from suitors in his court. The moral lesson, though, cannot stop at laying open Bacon's weaknesses. The tragedy is that Bacon, as the legal profession sometimes does, fell short of a realizable ideal. Bacon's significance, if it is moral, depends upon understanding what happened to his professional vision decades before he took his first bribe in Chancery.

The comparison between Bacon and Coke is particularly useful in this respect. Coke was ruthless and personally vindictive; to some extent even he compromised what a modern lawyer would require as a minimum professional ethic. But Coke made a life's work, a personal sacrifice, out of the defense of his professional ideals. Bacon, who could have done what Coke did, and done it better, and even with less effort, became instead a professional failure. He used the grandeur of the law as a stepping-stone to royal favor, and he did it at the very time Coke courageously added his support to the edifice that was to become a proud and independent Bar, in support of a proud and independent Bench.

Bacon, unlike Coke, misused the trust he was given as an officer of justice, precisely because he saw the trust only in terms of personal profit; his passion for preferment got the better of him. There, I think, is Bacon's significance to the Bench and Bar of the 20th century. For his professional failure has a specific modern parallel. Dean Eugene V. Rostow, almost alone at first, has lamented the loss of professional independence in this generation, a loss which has already damaged the Bar and will surely damage the community. It tends to involve the potentially best products of our legal system exclusively in the defense of the powerful, to the detriment of individuals less powerful and, ultimately, to the detriment of the entire society. Is not the lack of professional dedication in this generation—the low estate of the criminal Bar for instance—much like the climate in which Bacon used his brilliant professional ability for narrowly personal ends?

This is Mrs. Bowen's fourth and least ambitious venture into legal biography. In fact, she denies that the present work, which was once partly in lecture form, is a biography. The reader may agree with her, but, in any case, he will concede that the book is brilliantly written, absorbing, and precise. She appears to have used mainly original sources, including substantial parts

24. Pp. 137-39 (Coke's almost pathological attacks upon Chancery), 158. See also THE LION AND THE THRONE 385-88 for Bacon's charges to the King of Coke's misconduct.


27. The others: YANKEE FROM OLYMPUS (Mr. Justice Holmes) (1944); JOHN ADAMS AND THE AMERICAN REVOLUTION (1950); THE LION AND THE THRONE (1957).
of the scholarship that went into her more extensive study of Coke. There are times when the reader feels that her appraisals of Bacon are naively in Bacon's favor, and there are small annoyances, such as the absence of documentation. But those are unimportant defects in a fascinating study of a puzzling man.

THOMAS L. SHAFFER


ONCE known as "The Gilded Age," the quarter of a century of American history following the Civil War has recently been undergoing reconsideration. Historians of a previous generation used to echo Vernon L. Parlington's stereotype about the "Great Barbecue," during which unscrupulous businessmen and political spoils-men used the national and state governments to prey upon poor farmers and oppressed laborers. In the last few years, however, young scholars have challenged this stereotype by pointing out that the business community of the 1870's and 1880's was itself badly split over ideology and economic policy, that the politicians often worked at cross-purposes from the "robber barons" for whom they were supposedly fronts, that farmers were comparatively well off, and that, except for a setback in the

28. For instance, she attributes Bacon's opposition to Coke as principally growing out of a loyalty to the idea of the philosopher-king, "whose reign, efficient and benevolent, would benefit art and education as well as the people." P. 141. This may not be entirely consistent with Bacon's efforts to have Coke's Reports suppressed, with his issuance of an information charging Coke with riotous behavior when Coke had a quarrel with his family, or with the elaborate and successful campaign Bacon mounted, when at the height of his power as Chancellor, to have Coke removed from office as Lord Chief Justice. Pp. 139, 158; THE LION AND THE THRONE 385-88, 396.

29. "To encumber such a book with scholarly apparatus seemed superfluous." Author's Note, p. 235. Mrs. Bowen's accuracy on legal details is usually amazing. One might, though, take issue with her statement: "Decisions in the common-law courts are still subject to review by higher authority . . . in the United States by the Supreme Court." Pp. 138-39. But this is the sort of quibble that should be confined to a footnote.

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2. PARRINGTON, MAIN CURRENTS IN AMERICAN THOUGHT 23 (1930).