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Simpson's Leading Cases

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LEADING CASES IN THE COMMON LAW. By *A.W. Brian Simpson.* Oxford: Clarendon Press. 1995. Pp. xii, 311. $39.95.

The notion of collecting "leading cases," Professor A.W. Brian Simpson[1] informs the reader of this engaging and profoundly subversive book, emerged in the nineteenth century as a handmaiden to the ideal of legal science. The cases gave a method of learning law not as a hodgepodge of precedents but as a coherent body of principles. A few cases provided exceptionally clear applications of the principles, and by concentrated study of these few the lawyer or law student could learn "how to tease out the principles from the cases, and how to apply them to the complex disputes which were presented to courts in litigation" (p. 5). Dean C.C. Langdell of Harvard put leading cases at the heart of his system of legal education. Although the ideal of legal science that the "case method" was supposed to inculcate has faded over the years, the method has spread to every law school in America, and with it the (remarkably durable) repertoire of famous cases that almost every student still encounters in the first year of law study.

Earlier in his career a distinguished historian of legal doctrine,[2] Simpson has more recently turned his formidable historiographical talent to something completely different: digging into the background and context of famous legal disputes, strewing the shards and fragments of his excavations[3] over the landscape, and reporting his findings in extensive and meticulous detail. In this new mode he has written book-length contextualizing studies of *Regina v. Dudley & Stephens,* in which two British sailors were condemned to death for eating their shipmates,[4] and of the nasty practice of the British government of detaining suspicious persons without trial during World War II.[5] Simpson's project in this book is to take on nine

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1. Charles F. & Edith J. Clyne Professor of Law, University of Michigan.

2. *See, e.g.,* A.W.B. SIMPSON, A HISTORY OF THE COMMON LAW OF CONTRACT (1975); A.W.B. SIMPSON, AN INTRODUCTION TO THE HISTORY OF THE LAND LAW (2d ed. 1986).

3. The archaeological metaphor is Simpson's own. *See* p. 12.

4. *See* A.W. BRIAN SIMPSON, CANNIBALISM AND THE COMMON LAW 247 (1984). The sentence was almost immediately commuted to six months' imprisonment. *See id.*

5. *See* A.W. BRIAN SIMPSON, IN THE HIGHEST DEGREE ODIOUS: DETENTION WITHOUT TRIAL IN WARTIME BRITAIN (1992).

more of these English "leading cases," six from the nineteenth century, two from the eighteenth, and one from the sixteenth,[6] all still studied in Anglo-American law schools, all landmarks of a formalist legal science that he approaches in a decidedly antiformalist spirit. Simpson starts with the legal records and ranges outward from there, to the judges and lawyers, the litigants and their families, the biographical, genealogical, political, social, economic, and technological background of the dispute; then to the aftermath, the actual consequences for the parties and society; and finally to the part played by the case in the later history of legal dogmatics, the process of its canonization as a "leading case." If there is a more painstaking and ingenious researcher of local knowledge, a shrewder and more avid excavator of miscellanies, than Brian Simpson, I have never run across him: Simpson seems to have dug up pretty nearly everything that seems even remotely relevant to understanding his cases, and a great deal more besides. Indeed, so overwhelming is the mass of contextual detail that the reader is rescued from psychic inundation only by the inherent fascination of much of the background and Simpson's seductive charm as a storyteller. This is a very funny book.[7]

Even so, the reader (this reader anyway) finds himself murmuring a running commentary as the flood of detail rises higher and higher — "fascinating . . . extraordinary . . . I had no idea . . . hilarious . . . amazing . . . *but what's the point?*" Sometimes Simpson's method looks like legal realism run amok, the piling up of incidental particulars, *les faits pour les faits,* context for context's sake. To be sure, readers who have this reaction ought to reflect that this irritable reaching for a "point" is a deformity of the legal mind, which is absurdly impatient to find a rule or "holding" or practical outcome for a client or a policy audience, incapable of keeping still for a moment to smell the flowers or listen to a good yarn. There doesn't have to be a "point" to a good narrative save that of setting the scene, reconstructing the smell and feel of the situation as contemporaries lived it.

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6. The cases Simpson addresses are: *Carlill v. Carbolic Smoke Ball Co.* (1893), *Regina v. Keyn* (1876), *Rylands v. Fletcher* (1868), *Tipping v. St. Helen's Smelting Co.* (1865), *Raffles v. Wichelhaus* (1864), *Priestley v. Fowler* (1837), *Jee v. Audley* (1787), *Keeble v. Hickeringill* (1707), *Shelley's Case* (1581).

7. A tiny sample of its innumerable funny bits: "[I]n 1130, one Luilph de Audley prudently murdered the local Saxon thane, and thereby established himself as the local potentate." P. 80. "Following the Oxford college tradition of always violating trusts if at all possible . . . ." P. 86. "[I]n 1886 Gerard B. Finch . . . extolled the virtues of the Langdellian system [of case-law instruction], which he attempted to introduce into Britain. He had absolutely no success; the sturdy individualism of English law students, or, if you like, their innate idleness, made it impossible to introduce so authoritarian and disciplined a system." P. 161. "[N]o human orifice was safe from the assaults of Victorian medical science . . . ." P. 275.

Still, when legal writers go in for contextualization they usually *do* want to make a point. Consider some of Simpson's fellow-travelers in the thick-description game. There's a long legal-realist tradition of "gap" studies, showing the difference between the "law on the books" and the "law in action" by narrating what happens before and after cases are decided. Some of these, like Richard Danzig's studies of contract cases, dramatize what he calls the "capability problem"; that is, the limited capacities of appellate courts to comprehend the real stakes at issue in a dispute and, above all, to frame remedies that will effectively address the parties' interests.[8] Realist legal historians like James Willard Hurst and Lawrence Friedman have used similar methods to criticize the overvaluing of appellate doctrine, to show that court decisions are usually a relatively minor agent of the legal system compared to statutory and executive action, and that legal causes and effects of all kinds are often swamped by other social variables.[9] Similarly but more emphatically, Gerald Rosenberg reconstructs the context of the *Brown* decision[10] invalidating racial segregation of Southern schooling to argue the more general thesis that courts, even courts deciding great cases, have little causal importance as motors of social change.[11] In a related tradition, writers unearth what "really" happened in a case to demonstrate the absurdity and irrelevance of the doctrinal categories and analyses that judges employ.[12] Other writers have the sharper political aim of revealing a dark subtext of politics and power beneath the legal ideology of neutrality and the rule of law. Simpson himself mentions probably the best-known example, E.P. Thompson's history of the infamous Black Act of 1723,[13] which Thompson exposed as a landed elite's new weapon in the long struggle between gentry and commoners over use rights to the forests. "Outsider" scholars, concerned with the ways in which dominant legal discourses "silence" or "marginalize" subordinated groups such as women and racial and ethnic minorities, have hoped to find in contextualizing narratives or "storytelling" a means to restore suppressed perspectives, experiences, and normative longings as participants in a dialogue on the legal system.[14] Ironically, more

8. *See* RICHARD DANZIG, THE CAPABILITY PROBLEM IN CONTRACT LAW (1978).

9. *See, e.g.*, LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW (2d ed. 1985); JAMES WILLARD HURST, THE GROWTH OF AMERICAN LAW: THE LAWMAKERS (1950).

10. Brown v. Board of Educ., 347 U.S. 483 (1954).

11. *See* GERALD N. ROSENBERG, THE HOLLOW HOPE 39-169 (1991).

12. *See, e.g.*, THURMAN W. ARNOLD, THE SYMBOLS OF GOVERNMENT (1935); JEROME FRANK, COURTS ON TRIAL: MYTH AND REALITY IN AMERICAN JUSTICE (1949).

13. P. 9 (citing E.P. THOMPSON, WHIGS AND HUNTERS 250 (1st Am. ed. 1975)). The Black Act enacted 50 new offenses carrying the death penalty.

14. *See generally* LAW'S STORIES (Peter Brooks & Paul Gewirtz eds., 1996); Symposium, *Legal Storytelling*, 87 MICH. L. REV. 2073 (1989).

conservative legal writers have recently discovered the same contextualizing techniques as aids to their enterprise of demonstrating the futility or counterproductive perversity of state interventions into the autonomous normative orders of local communities or markets[15] and exposing the special-interest, "rent-seeking" political motives behind legal measures nominally adopted in the general or public interest.[16] And finally, in its own unique niche, there is John Noonan's powerful and moving, if not always entirely convincing, use of stories about the lives of litigants in famous cases to remove the veil of illusion, the "masks" of formal legal categories and procedures that cloud legal actors' ability to perceive the humanity of the real persons whose disputes they must decide, and to help us see them face to face.[17]

Simpson doesn't have a consistent agenda, like most of these other writers, or any singular ax to grind. His are the Muses of Complexity and Understatement, to whom it gives pain to point out too explicit or too simple messages and morals. Still, he is out to make, if not one point, then several points, as well as to tell some good stories. I would roughly categorize the points as follows:

1. *Antitheory, or the absurdity, reductive over-simplification, and futility of legal science.* Simpson's most consistent targets — the people he thinks most in need of re-education (or, if that fails, mockery) by historical contextualization — are the high theoretical mandarins of the law: the Langdellian doctrinal scientists of the nineteenth century, trying to reduce and rationalize the common law into a system of abstract principles; and modern jurisprudential thinkers like Ronald Dworkin and law-and-economics theorists like Ronald Coase, essentially attempting the same thing.

Their special hubristic vice is ignorance of and disdain for messy reality. Sometimes this vice is expressed as the "rigid application of legal doctrine without regard to purpose or common sense" (p. 79), as in the case of *Jee v. Audley,* in which a will was held to violate the Rule against Perpetuities because a contingency might occur — that is, that a woman might bear a child, even though she was already beyond childbearing age when the will was drawn, and in fact known to have died without children when the will was interpreted. This wholly insignificant case — whose report, as Simpson shows, thoroughly mangled the facts it was supposed to be based on — rose to fame when the legal scientist John Chipman Gray, trying in the service of "economy of principles" to reduce the whole complex law of perpetuities to a rule of thirty-two words and to make the

15. *See, e.g.,* ROBERT C. ELLICKSON, ORDER WITHOUT LAW (1991).

16. *See, e.g.,* Geoffrey P. Miller, *Public Choice at the Dawn of the Special Interest State: The Story of Butter and Margarine,* 77 CAL. L. REV. 83 (1989).

17. *See* JOHN J. NOONAN, JR., PERSONS AND MASKS OF THE LAW (1976).

rule exact and certain by applying it "remorselessly" and without regard for its purposes, "however silly the result . . . needed a really silly case to illustrate this"[18] — hence, the elevation of *Jee v. Audley* to a "leading case."

Raffles v. Wichelhaus, the famous case of the two ships *Peerless* familiar to every contracts student, is another case that was quite insignificant in its original context, promoted to leading-case status because it supported a jurist's theory — or rather, many different theories, for the case stood for something different for every theorist who cited it.[19] As nineteenth-century thinking about contract became dominated by increasingly abstract theory as to how a contract represents mutual agreement or a joinder of wills, the case provided fodder for the jurists' argument over whether agreement had to be actual or "objective," "a debate of considerable intellectual interest but of virtually no practical importance" (p. 161).

Simpson's critique of law and economics is in a similar spirit: "Quarrelling neighbours and common lawyers, engaged in the process of dispute resolution at the margins of a largely traditional system of property law, inhabit one world, which is real and very untidy. Economists inhabit another world. Between them a gulf seems to be fixed" (p. 194). The chapter that dramatizes the gulf concerns the Victorian nuisance case, *Tipping v. St. Helen's Smelting Co.* In that case, the House of Lords upheld — with many vague qualifications — a landowner's suit for damages against a neighboring copper-smelting operation that produced sulfuric acid, rejecting the "public good" defense, which English courts had occasionally adopted and which provided that the injury was privileged if it furthered valuable economic interests. In this chapter, Simpson actually begins not with the case but with a discussion of the ideas of the welfare economist A.C. Pigou and Coase's extension and criticism of Pigou's ideas in his famous article on *The Problem of Social Cost.*[20] In addition to reconstructing the background of *Tipping* and other nineteenth-century industrial-use cases, Simpson uses their complexity to criticize Coasean theory. Simpson offers four points of critique. First, Simpson observes that Coase dislikes "state intervention" as a solution to the problem of social cost, preferring contracts in markets. But when a factory pollutes a neighbor, laissez faire is not an option; some authority, like the courts,

18. P. 97. Simpson adds, presciently, that with respect to the childbearing capacities of older women, "the waters have been further muddied by the invention of the sperm bank." P. 99.

19. The one thing it was never taken to stand for was the tiny pleading point it actually decided: Once it appeared there was a latent ambiguity in the term *Peerless* in the contract, the plaintiff's demurrer had to fail. The court never had to decide what would have happened had the buyer meant one ship and the seller another.

20. R.H. Coase, *The Problem of Social Cost,* 3 J.L. & Econ. 1 (1960).

must decide one way or another (p. 168). Second, the legal allocation of property rights and liability rules in Victorian Britain was extremely unclear because the legislature had left the copper industry unregulated and common law courts, being understandably unable to resolve their general schizophrenia about whether to favor the sacred rights of landowners or the interests of industrial development, had arrived at contradictory answers. Among other effects of this lack of clarity was to make litigation necessary to resolve disputes over rights, which was prohibitively expensive for all but the richest parties. Coase, says Simpson, gives no clue as to how his theory would resolve these problems (p. 193). Third, attempts to resolve disputes over conflicting uses by contract — for instance, by one party's paying the other not to pollute, or for the privilege of polluting — are often not practically possible and indeed failed in this case, perhaps because Tipping was more interested in "devoting himself to eccentric behaviour, litigation, and farming" (p. 191) than in making deals with his neighbors (p.191). Finally, neither in this situation nor in other similar ones could anyone have performed the kind of cost-benefit analysis that Coasean theory seems to call for — that is, estimating the costs to employment or to the local economy of shutting down the works, or moving the smelter or landowner, and so forth.[21]

I am predisposed to Simpson's general point of view in these antitheory passages. But I can't help thinking he overdoes them. Of course theorists ignore messy realities; but it's their reductive simplicity that make the theories powerful. And sometimes very influential, too: The weakest parts of Simpson's arguments, I think, are those in which he suggests that real-world litigants, lawyers, and judges simply go about their ordinary daily work uncontaminated by the dreamy theorizings of High Boffins. Simpson's own work provides many counterexamples, such as the reorganization of the common law of contract in the nineteenth century around the powerful simplifying conceptions of civilian treatise writers and jurisprudes,[22] and the influence of general conceptions of freedom and fairness on nineteenth-century judges.[23] And only a very reckless antitheorist would try to deny the influence of Chicago economists such as Coase on legal policymakers and even on common law judges — some of whom are legal economists themselves — in the present time.

21. Pp. 193-94. This element of the critique echoes that of a powerful article of Mario J. Rizzo, *The Mirage of Efficiency*, 8 HOFSTRA L. REV. 641 (1980).

22. *See* A.W.B. Simpson, *Innovation in Nineteenth Century Contract Law*, *in* LEGAL THEORY AND LEGAL HISTORY: ESSAYS ON THE COMMON LAW 171 (1987).

23. See, for example, his treatment of the views of Bramwell. P. 215.

Nonetheless, it's hard not to cheer Simpson's demolition jobs on the more pretentious versions of legal science, all the more effective because they are usually — the chapter on Coase is an exception — so inexplicit and indirect. No one has ever drawn better than Simpson the contrast between the confidence with which judges and jurists assert the certainty, consistency, and uniformity of legal principles and the determinacy of legal science, and the extreme casualness in their manner of actual practice and decisionmaking — in which law and facts are repeatedly miscited, and holdings transferred unthinkingly from one context to another and shamelessly distorted in the transfer. No community of real scientists could behave quite like that — not consistently anyway. It's a confidence that has to depend on a social setting in which nobody can contradict you — nobody you care about, anyway.

2. *The political subtext.* Like many other thick-describers in the Marxist, realist, and (more recently) conservative public-choice traditions, Simpson is sometimes concerned to "follow the money," or winkle out other underground political influences on the decisions — though unlike most of them he does not have any fixed views on what these influences are likely to be in any particular case. In his book on the *Dudley & Stephens* case, *Cannibalism and the Common Law,* the main influence was the desire of the English legal elite to avoid publicizing the embarrassing fact that sailors of the world's most civilized society still adhered to customs justifying their eating one another in cases of necessity, which led to the orgy of hypocrisy involved in their trial and (initial) condemnation to death. *In the Highest Degree Odious* is Simpson's most overtly polemical work, an indignant exposure of the ugly, arbitrary realities of Britain's system of wartime detention without trial and of the ineffectual and hypocritical pretenses of judges to be upholding the Rule of Law while not actually asserting much authority to try to control the executive.

Leading Cases has fewer political subtexts than these other books, but it does have some. The main examples here are chapter 2, discussing the rule in *Shelley's Case*, and chapter 9, discussing *Regina v. Keyn.* The decision in *Shelley's Case* — another of those cases, like *Jee v. Audley,* lifted out of context to supply a rigid and contrapurposive rule of interpretation, then perpetuated after its repeal for no other motive than sadism in pedagogy (pp. 40-41) — originally arose out of conflicting property claims of an uncle, Richard, and nephew, Henry. The subtext here is religious politics: Richard was a Catholic recusant, and from Simpson's story it appears quite likely that the judges' ultimate decision in favor of Henry was rendered under pressure from Queen Elizabeth and her Privy Council to punish Richard (pp. 29-31, 35). *Regina v. Keyn,* by way of contrast, was overtly a case in which the judges upheld the

ideal of the Rule of Law by refusing to yield to popular clamor to convict the master of a German ship that negligently struck an English ship and steamed away without picking up survivors (pp. 233-35). The courts ultimately decided they had no jurisdiction to try Keyn (pp. 240-41). Simpson reports this case as one perhaps partly influenced by extralegal pressures — considerations of diplomatic expediency and the desire for good relations with other maritime powers (p. 253). But ultimately the "politics" of *Keyn* was to use the occasion to demonstrate the law's autonomy from politics — "an expression of self-control under the pressure of powerful emotions, and the triumph of the intellect over the passions which, to the Victorian mind, represented the acme of civilization" (p. 254).

3. *Expansion of the Frame.* Finally, much of Simpson's work here is in the spirit of Hurst, Friedman, and Rosenberg: It uses an enlarged conception of legal history to try to expand the views of lawyers and others about how legal systems work. Traditional lawyers' and legal historians' work — including Simpson's in his prior incarnation as a doctrinal historian — locating cases in a historical chain of precedent and dogmatic reasoning implies that the legal governance of society is a matter of applying the principles developed in previous cases to social facts. The social history of law tends to demote cases, even leading cases, to bit players of relatively minor and marginal roles. This is the message, or rather one of the messages, of what I think are the two most interesting and valuable chapters in the book.

Priestley v. Fowler is known as the origin point in English law for the fellow-servant doctrine, that an employee may not hold his employer vicariously liable for another employee's negligence (p. 109). When Simpson gets through expanding the frame to take in the whole social-support system for injured servants at the time the case was decided, *Priestley* looks entirely different. He describes a world in which two traditional mechanisms for caring for sick and wounded laborers were falling apart: the master's duty to support his servant for the remainder of his one-year term of hire and the poor law, the obligation of parishes to care for casual labor (pp. 113-27). Both were undergoing erosion, the first from the spread of employment at will (p. 116), the second from "reforms" tightening up on poor relief (pp. 123-25). The *Priestley* case was a freak, an almost completely isolated instance of an employee's suing his master, made possible here only because the plaintiff's father, a substantial farmer, financed the suit that may eventually have bankrupted him (pp. 132-33). The case was also remarkable because although it denied recovery to the plaintiff, it also "conceded, for the first time, that there might be circumstances which entitled a servant to sue his master for loss caused through an accident at

work" (p. 108). The case "can be seen in retrospect as a first step towards a world in which tort law became a candidate for the job of replacing the older mechanisms of support" (p. 127).

Simpson reaps similar rewards from looking at *Rylands v. Fletcher* from the perspective not simply of the history of tort doctrine, but of overall legal regulation of a particularly destructive kind of happening: the bursting of reservoirs and consequent inundation of the inhabitants below. In the history of tort doctrine, *Rylands* appeared to many contemporaries, such as the young Holmes, as an anomaly — a departure from what jurists liked to think was the emerging general principle of no liability without fault. Actually, as Simpson shows, the fault principle itself was contested at the time, with many judges, including the notable Bramwell (the Richard Epstein of his day), taking their stands for strict liability, albeit strongly laced with contributory negligence and assumption-of-risk defenses. But the actual case, like *Priestley v. Fowler,* was a freak: Thomas Fletcher was the only plaintiff (and a most undeserving plaintiff he seems to have been) who ever benefited from the rule in the case. Why? The answer is that any reservoir of significant size and importance was regulated by the special statutory acts setting up the companies (p. 219). After a major dam disaster (the Holmfirth disaster of 1852), companies setting up waterworks were required to compensate anyone who was hurt by their failure (p. 206). The judges in *Rylands* were most probably taking their cues from these statutory provisions (p. 218).

Sometimes Simpson cannot find much interesting to say about the legal context of his cases, even by expanding the frame. When that happens, he relates instead the history of a subject of which the case might be said to be a part, a history that is more interesting than the legal context. Thus, in the chapter on *Keeble v. Hickeringill* (chapter 3) we are treated to a long excursus on "duck decoys," which turn out to be enormous artificial pools of Dutch invention built to attract ducks to hunters; in that on *Raffles v. Wichelhaus* (chapter 6) to a discussion of speculation on cotton contracts in Liverpool during the Civil War cotton shortage; and in that on *Carlill v. Carbolic Smoke Ball Co.* (chapter 10) to a minute description of the operations of the famous Smoke Ball and to a history of "quack" medicines generally, which were exceedingly difficult to distinguish at the time from orthodox medical remedies. These histories of incidental detail are often instructive and invariably amusing, even when they do not seem to have much to say about law, except as further comment on the social unimportance of many of the questions that chiefly agitate lawyers. *Carbolic Smoke Ball,* for instance, attracted a formidable array of legal talent and subsequent commentary (pp. 272-74), despite the fact that the decision could have had almost no impact at all on sellers of quack

cures, except those reckless enough to promise a reward if the cure failed.

In a very interesting recent lecture, Simpson has divided the world into "Legal Idealists" and "Legal Iconoclasts."[24] Legal idealism is an old dream, the dream that the ideal of the Rule of Law can be achieved by means of a comprehensive and coherent science of principles. But legal iconoclasm is just as old, the mocking and trashing of the ideals of legal science as self-deceived and unattainable. In his lecture, Simpson criticizes both positions: Both, he says, "make much the same serious mistake about the nature of ideals, and much the same mistake about the relationship between human conduct and the concept of rationality."[25] The legal scientist thinks there must be in principle a right answer to every legal question; the trasher thinks that idea unattainable and hence futile. The idealist is obviously wrong — for all the kinds of reasons spelled out at length in Simpson's *Leading Cases* and other books: The law never has had or could have that kind of determinacy and cohesion, and those who claim it does and can may do so only by ignoring the most evident facts of history and experience. But the iconoclast is also wrong, because judicial decisions are not arbitrary or normless; they follow conventions, often strong ones, usually conventions infused by ideals. So both the "idealists" who think that law can achieve a sort of scientific clarity and predictability and the "iconoclasts" who think that it can't are engaged in venerable, but fundamentally pointless, argument.

This formulation of the conflict and Simpson's solution to it seem a shade too complacent, as if Simpson were suggesting that not much is at stake in whether the decisions of courts are silly or sensible, close to the underlying facts in dispute or wholly remote from them, consistent and uniform or wandering all over the lot — because lawyers and judges, like other folks, muddle through according to the conventions of their trade rather than trying to achieve scientific rigor and because they will get things approximately right if their muddle is informed by a sort of striving toward ideals, even inconsistent ideals.

But I think Simpson's own historical work betrays this rather laid-back-Anglican attitude of mind. The ordinary realities of legal systems as he describes their operations in his contextualizing books such as *Leading Cases* are only occasionally what one could call an amiable muddle; more often they are a much more unsettling muddle, a haphazard muddle of indifference, vanity, incompetence, cruelty, ruling-class hypocrisy, and professional self-deception. The lawyers and judges are not getting it approximately

24. A.W.B. Simpson, *Legal Iconoclasts and Legal Ideals,* 58 U. CIN. L. REV. 819 (1990).
25. *Id.* at 842.

right, nor do they usually appear to be paddling in the approximate direction of realizing ideals. The Simpson of these historical essays is a social satirist with an old-fashioned radical sensibility. Under the ironic flourishes and comic effects, the echoes of Trollope, Wodehouse, and a touch of Monty Python, one catches a glimpse of the moralist; when Simpson describes the lives of the poor, one hears the voices of Dickens (in satirical rather than sentimental mode), Balzac, and Orwell, and sometimes, when he describes the attitudes of their social superiors, the savage irony of Swift. To be sure, Simpson, though a critic, is no kind of nihilist; he believes in common sense, honesty in dealing with facts, fair play, and sympathy for the underdog. Law can never make the kind of sense the High Boffins of the system want it to make. But law *should* make sense, be true to facts, protect the weak from the powerful, and do justice. Yet one does not emerge from Simpson's narratives, funny and illuminating as they are, with much conviction that a whole lot of justice is being done, except for those few who can afford it.