

The Selected Writings of Sir Edward Coke

Steve Sheppard, ed. (2004) 3 Volumes. 1,569 pages. Paperback \$32.00, Liberty Fund, 800-955-8335

Reviewed by Thomas M. Moncure, Jr.

The common law of England, unless repugnant to the Constitution or altered by the General Assembly, has been adopted in §1-10 of the Code of Virginia. The common law is derived from decisions, customs and usage over time “whereof the memory of man runneth not to the contrary.” Enmeshed in the mists of history, the Virginia Supreme Court has cited both Edward Coke and William Blackstone as primary sources.

Edward Coke (1552-1634) is the first great expositor of the common law. Coke possessed undeniable stature in his career as solicitor general, attorney general, speaker of the House of Commons and lord chief justice. His professional career straddled the reigns of Queen Elizabeth and King James, when England made the transition from a feudal to commercial society. The widespread development in printing allowed Coke’s influence to eclipse the writings of his predecessors, John Fortescue and Thomas Littleton.

With the publication of *Selected Writings*, Liberty Fund has provided ready access to Coke. Volume I begins with fifty-eight cases between 1600-1615, starting with that most notable to first-year law students, “Shelley’s Case.” Coke’s collection and publication of cases during his lifetime contributed to regularity in the law and laid a solid foundation for judge’s decisions based on established precedent.

Volume II of *Selected Writings* contains extracts from his four-part “Institutes on the Lawes of England” and were based largely in name on Justinian’s “Institutes,” a studious recurrence to the Roman basis of English civil law. The first part was subtitled “Coke upon Littleton” and was his attempt to update Littleton’s treatise on real property. The next three parts of Coke’s “Institutes” contained in Volume II dealt respectively with statutes, crimes and courts.

It is Coke’s “Institutes” that provide his most enduring legacy. Legal education of Colonial Virginians rested on Coke, and the popular understanding of the meaning of common law was a function of his “Institutes.” Coke’s assertion of *Magna Carta* and the ancient constitution as binding on the prerogatives of the king had a particular resonance at our revolution. Those martyred heroes of English liberty—John Hampden and Algernon Sydney—based their arguments on Coke no less than did George Mason and Thomas Jefferson.

Volume III of *Selected Writings* contains Coke’s speeches. His willingness to bind the king to the law was a source of obvious conflict, and James, citing Coke’s “perpetual turbulent carriage,” removed him as lord chief justice in 1616. Most of the speeches in Volume III follow his removal and concentrate on the defense of liber-

ties. His speeches related to the Petition of Right, in 1628, are particularly critical to the intellectual underpinnings of American independence.

Selected Writings is ably edited by Steve Sheppard, who is a law professor at the University of Arkansas. Sheppard’s prior works include *The History of Legal Education in the United States* (1999) and *American Law: The Basics in Global Perspective* (2003). An historian’s perspective is evident in the annotations, notes and extensive chronology. Researchers who come across ancient English statutes without calendar dates will find the table of regnal years especially valuable.

Deference to well-established tradition has been a noted characteristic of the law of Virginia. Present §1-10 has its origins—and some of its language—in an act of the General Assembly passed during May of 1776. The Supreme Court of Virginia, as recently as January of 2004, reaffirmed that an act in derogation of the common law will be strictly construed. *The Selected Writings of Sir Edward Coke* provides the modern practitioner an insightful and definitive resource on our common-law inheritance.

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