



E. C. S. WADE

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## EMLYN CAPEL STEWART WADE

1895-1978

### I

**E**MLYN CAPEL STEWART WADE, the eminent constitutional lawyer, died on 28 April 1978 at the age of 82. In his generation he was the leading academic authority on constitutional law in this country and his writings had widespread influence. He was Downing Professor of the Laws of England at Cambridge from 1945 to 1962. He made important contributions to law reform through his membership of Government committees. Although primarily a scholar, he had a practical bent and was a shrewd man of affairs.

### II

Emlyn Wade was born on 31 August 1895, the son of C. S. D. Wade. He was educated at St. Lawrence College, Ramsgate and Gonville and Caius College, Cambridge, the College of which he was to be a Fellow for most of the remainder of his life. He came of a legal family and read law throughout, becoming a scholar of the College in 1920 and Whewell Scholar in International Law in 1922, and taking first classes in both parts of the Tripos. After being called to the bar he practised for a while in London and Newcastle, and he also began his teaching career in the latter city at Armstrong College. Later he became Vice-Principal and then Principal of the Law Society's School of Law in London. But in 1928 he came back to his true home, Cambridge, as a Fellow of St. John's College and University Lecturer. In 1931, when Arnold McNair resigned the Senior Tutorship of Caius, Wade's old College took the opportunity to secure his return as Fellow and Tutor, and he remained a Fellow until his death. In 1924 he married Mary Esme Cardew, who survives him, and by whom he had four daughters.

Wade served in both world wars. In the first he was with the Royal Garrison Artillery with the British Salonica Force, and also in France. In the second he was a Brigade Major in the London anti-aircraft defences until 1942. He was then transferred to the War Cabinet Secretariat, and later to the Home

Office, where his skill in constitutional law and practice was valuable. His election to the Downing chair in 1945 brought him back to Cambridge, where he was to remain for the rest of his working life, except for a year in the United States in 1962-3 as Visiting Professor at Johns Hopkins University, Baltimore. He was a loyal and active member of the University and of his College, and he served a term on the Council of the Senate from 1936-40. When he ceased to be professor he retired to live at Fakenham in Norfolk.

### III

Wade's name is best known, and will long remain so, for his comprehensive textbook on constitutional law, 'Wade and Phillips'. Originally joint author, he was for later editions the principal author, until for the 8th, 9th, and 10th editions he was helped by the collaboration, and finally by the editorship, of Professor A. W. Bradley. From its first publication in 1931 this book took the leading place in its field. Modern and matter-of-fact in its approach, it was a better tool both for students and for professionals than any earlier work. Its great virtues were its wide range of subject-matter, its methodical organization, and its clear and straightforward style. It brought within the boundaries of constitutional law wide areas of the law of civil liberties and of administrative law. In the absence of a written constitution, the precise extent of constitutional law is always a matter of degree, and to some extent of taste. 'Wade and Phillips' pioneered the wide view of the subject which quickly came to be accepted as the correct one. It was largely thanks to this book that students were led into the spheres of law which in other countries are the subject of constitutional guarantees and bills of rights, and were taught to see the connection between the sporadic case law of the English courts and the basic principles of civil liberty. Now that fundamental human rights are so much to the fore, and there is such active discussion of a Bill of Rights for Britain, the value of the foundations laid by Wade's work can be appreciated. His writings also helped to activate the study of administrative law at a time when that subject cried out for more attention. Generations of law students were brought up on his book, much to their advantage. Although with the passage of time it seemed to take on a somewhat staid character, it was always kept up to date with new editions and it could always be relied upon for solid and accurate information.

Another important piece of work was Wade's editorship of Dicey. There could hardly be more two different textbooks on the same subject than Dicey's *The Law of the Constitution* and Wade and Phillips' *Constitutional Law*. Dicey's famous work, based on his lectures at Oxford, was a discussion of the broad principles of parliamentary sovereignty, the rule of law and constitutional convention, with much literary and other embellishment but with very little legal detail of the kind which Wade packed densely into his own book. Dicey was first published in 1885 and had not been edited since 1915. Appreciating that its contrasting style and method made it a valuable counterpart to his own work, Wade bravely took it in hand and published two new editions in 1939 and 1959. For these he wrote a new introduction of some 200 pages, providing an up-to-date commentary on Dicey's theories and reassessing them in the light of later developments. He also helped to correct Dicey's misguided views of administrative law in France by providing an appendix from the pen of a distinguished French expert. These editions did much to keep Dicey's work alive and to enable students to see its continuing relevance in contemporary constitutional law.

#### IV

Wade's outside activities included membership of government committees on the Law of Defamation, Limitation of Actions, and Electoral Law Reform. He was also a member of the Lord Chancellor's Law Reform Committee from 1952-63. It was this Committee which undertook the systematic study of law reform and which still exists, despite the subsequent creation of the Law Commission. Wade made an important contribution to its labours in a particularly significant period. In 1948 he had accompanied Dr Hugh Dalton to Paris as one of the Government's constitutional advisers at the Committee on European Unity. He also advised and assisted in the presentation of the United Kingdom's case at the International Court of Justice in The Hague, where in 1952 there was friendly litigation with France over the Channel islets of Minquiers and Ecrehos, a task demanding deep historical and constitutional research. In 1951 he gave an important opinion to the Government of South Africa on the legality of the Separate Representation of Voters Act 1951, which in a famous judgment of the Supreme Court was later held to be unconstitutional. The opinion was published by the South African government, and though it did not predict the actual result of the case it won

considerable respect and has become a useful piece of source material for study of the problems of legal sovereignty.

Wade was essentially a practical, accurate lawyer, not given to flights of fancy, theorizing or any form of extravagance, intellectual or other. This made him an excellent teacher, if not always an exciting one. His style of lecturing was dry and dispassionate, but his matter was always clear and well organized. He was a magistrate in Cambridge and he took great interest in the work of the Bench, particularly in the juvenile court, and this won him many admirers in the city. He lectured also at the Inns of Court Law School, where he was Reader in Constitutional Law. His honours included an invitation to become Queen's Counsel, an Honorary Benchership of the Inner Temple, and an Honorary DCL at the University of Durham. He was elected FBA in 1958.

## V

An outwardly brusque manner and an element of austerity of character tended to inspire awe in those who met Wade for the first time. But if they knew him long enough, this feeling was soon followed by one of affection. He had a warm heart and he took pleasure in helping his fellow men, though he preferred to conceal his feelings if he could find means of doing so. He had liberal instincts and was usually more sympathetic to political and social changes than his conservative style of behaviour would suggest. He did much good work for the Law Faculty, for his College, and for the City of Cambridge up to the time of his retirement, and there was widespread regret that he chose to retire away from Cambridge. In Caius he had a proud position as the third of a triumvirate of outstanding lawyers, the others being W. W. Buckland and A. D. McNair. He had no consanguinity with his namesake, the author of this memoir, though he had almost every other connection with him: as teacher, college tutor, colleague, fellow-constitutional lawyer, and friend over many years. He has left behind a large fund of affection and respect among many who were similarly his pupils, colleagues, and friends.

H. W. R. WADE