



W. W. BUCKLAND

WILLIAM WARWICK BUCKLAND

1859-1946

WILLIAM WARWICK BUCKLAND, who became a Fellow of the Academy in 1920 and died on 16 January 1946, was born on 11 June 1859 at a house called 'Moor Park' in Aller near Newton Abbot in Devonshire; he was a twin, the other, a boy, dying early. His father, Frank Buckland, was the owner or manager of an estate there. His mother, whose surname was Mortimer, died when he was aged three. He was one of ten children. His father met with some financial reverse and moved to Edmonton, Middlesex, and later to Thornton Heath, Surrey, and practised as a Surveyor. He married again, and William's life as a child is said to have been an unhappy one. At an early age he was sent to school at Guines near Calais. It is believed that he spent only eighteen months there, but this experience probably laid the foundation of the good French that he spoke and of his love of France. He spent the years 1874-6 at St. John's College, Hurstpierpoint, and then, intending to become an engineer, went to the Crystal Palace School of Engineering for a time, was top of his year, and later went for a year to some engineering works. About this time he met with an accident which turned his thoughts in a different direction, and in October 1881, at the age of twenty-two, he was admitted to Gonville and Caius College.¹ So far he had, to a large extent, educated himself by means of scholarships, but he was too old to compete for an entrance scholarship.

He was placed first in the First Class in the then undivided Law Tripos in 1884 and received the Chancellor's Medal for Legal Studies in 1885. He became a scholar of his college in 1884, a fellow in 1889, and a college lecturer in 1895. He was called to the Bar by the Inner Temple in 1889. Soon after completing the Tripos he had begun to teach law in his own and other colleges and to coach, but at that time very few fellowships and lectureships were available for law, and money was earned ubiquitously and earned hard. Nevertheless, in 1890, after a very long engagement, he married Eva, the daughter of Christopher M. Taylor of Exeter, and began a perfect married life which ended with her death in 1934. There was one child, a daughter, Mrs. Heigham. Few realize what

¹ His college owns an excellent portrait by James Gunn, R.A.

his wife meant to him in the troubles that lay ahead. The first crisis arose from the failure of a bank in New Zealand which involved him in serious loss; whether or not the shares carried unlimited liability it has not been possible to ascertain. His college helped him financially at this time. It is believed also that he was engaged in liquidating some family debts which in his judgement imposed a moral obligation upon him. Then in 1900 he was attacked by tuberculosis and compelled to spend a year or more in South Africa and the Canary Islands with his wife and daughter. At this time he underwent an operation, and in 1905 there was another operation and another visit to the Canaries. Then, after a long spell of precarious health, a change took place, and, though he could never be called robust, he had very little further trouble and attained the age of eighty-six, somewhat deaf but with mind alert and memory excellent, and working until four days before the end. This transformation in health should be a lesson and an encouragement to many. When one of the writers of this notice made inquiries in 1906 as to the best teacher of law in Cambridge the answer was that 'if you are prepared to gamble on Buckland's precarious state of health you can't do better than go to Caius'.

Thus the first forty to fifty years of his life were marked by bad health, *res angusta domi*, worries, and incessant labour. Though these years made their mark in a shortness of temper, which disappeared as the pressure upon him was reduced, there was no ill will or bitterness or meanness, though for a long time his friends had to handle him tenderly. It was only his great spirit and tenacity and the devotion of his wife that enabled him to emerge from these early struggles undamaged in spirit.

In 1903 he became a tutor of the college (in the Cambridge or 'guardian' sense of the term) and he was senior tutor from 1912 to 1914, when he was appointed by the Crown to succeed Dr. E. C. Clark as Regius Professor of Civil Law. His services to the college in teaching and administration and as a life member of its Council, can only be fully realized by Caius men of the generations covered by his period. In 1923 the Master and Fellows elected him President of the College, an office which made a strong appeal to him and enabled him to show his affection for the college and his interest in every aspect of its welfare. He was at his best in his relations with the younger members of the Combination Room and in his reception of their guests. During the First World War he served for a time in the controlled establishments division of the Ministry of Munitions.

We must now attempt an estimate of his work. As tutor he was rarely demonstrative in his solicitude for his pupils, perhaps concealing it overmuch, but his men all knew that they could not have a more vigilant and unsparing custodian of their interests. The fact that he had interests of his own, and great gifts to devote to them, might have been for a smaller man an excuse, if not a justification, for taking his administrative duties more lightly. As a Tripos lecturer he was more noted for the matter than for the manner. His lectures were as full of meat as an egg, not a word was wasted, and in the years which preceded the publication of his text-books every word was worth its weight in gold to the Tripos candidate. In a small class of advanced students where he could provoke discussion he was at his very best, and those who were able to appreciate the quality of his mind were tremendously stimulated. As a college supervisor, not merely in Roman law, he was excellent for the better men; he never professed to know all the latest decisions of the English courts, but he could teach two things pre-eminently well: the underlying principles of law, which he knew both historically and scientifically, and the legal habit of mind or mental approach to a problem, which he had acquired from long saturation in the *Digest*. It has been erroneously asserted that in legal approach the Roman lawyer and the English lawyer are at opposite poles—the former deducing his conclusions from principles and the latter inducing them from a mass of decisions. Buckland insisted that there was a remarkable kinship between the Roman lawyer of the classical period of law and his English colleague, and that, if they had found themselves together in the same chambers writing and discussing opinions, though their materials were different, their methods of handling them would have had much in common. Buckland had such a good legal mind that almost any lawyer would benefit from stating to him a set of facts and the rules of law which appeared to govern them. He would not always know the rules of law, but he would detect a flaw in your argument or point out some inconsistency with legal principle, which would make you think again. His was an *anima naturaliter legalis*.

He had a wide appreciation of the English classics, profound in the case of Dickens, but we at any rate never heard him express interest in any Roman lay writer except for any light that he might throw on Roman law. Though he had spent the greater part of his life amongst Roman institutions, he had none of St. Paul's desire to see Rome and never visited it until, late

in life, he was invited to Palermo by Riccobono. He hardly ever referred in conversation to Rome or Roman life. He had no interest in music nor in theology, though a regular attendant in the college chapel, and keen on the maintenance of a proper standard in its services. He had read a considerable amount of philosophy but it seemed to be for him mainly an opportunity for sharpening his wits and exposing fallacies. He was not what he once described as a 'Jurisprudence-addict', but he had read widely in the literature and was astute in the detection of verbiage and sloppy thinking, while esteeming highly a book like Dr. C. K. Allen's *Law in the Making*.

His was the rare case of a legal scholar whose early education had not been predominantly classical or historical, and this fact was reflected in his style, which was not always conducive to clarity. His very quick mind sometimes made him elliptical both in speech and in writing. In short, he had a rational rather than a literary mind and his main interest lay in the application of logic to legal material. Anyone who described the law to him as one of the 'social sciences' would meet with a chilly response. This rather severe and restrained outlook was confined to things of the mind, for he was a warm-hearted man without a trace of meanness in his character, and with a great capacity for affection, an observing eye, and a sense of humour which made him a delightful companion, especially when travelling abroad.

In politics he was more a Liberal than anything else, but he was too much of an individualist to make a good party man. Few politicians won his respect and he could say some hard things about them, while as a scholar he was extraordinarily fair in argument, written or spoken, and always ready to modify his views. In that world he was a different man; there 'to him all facts were free and equal' and he had no cranks or hobby-horses. If he had practised at the Chancery Bar and risen to the Bench, he would have made a great Equity judge and he would have been at his best as a member of the Judicial Committee, but as an advocate he would have been too quick and rather intolerant of slower minds, either on the Bench or below it.

Before turning to his published work something must be said of his friendship with F. W. Maitland, who was a man after his own heart. Maitland was nine years older than Buckland and had enjoyed a more generous youth. There was a common friend in W. J. Whittaker of Trinity and Lincoln's Inn, a

robust and rather picturesque figure unlike either of them, who made a strong appeal to Buckland. Whittaker had been a pupil of Maitland and edited some of Maitland's posthumous work. Whether he played a part in bringing Maitland and Buckland together, is not known to us, but they nourished a common affection and reverence for Maitland. The struggle for health, much of it contemporaneous, Maitland's a failure, Buckland's a success, was a link between them, and Buckland was certainly influenced by Maitland's uncomplaining courage and by his unrelenting pursuit of the scholar's aim in the too short time that lay ahead. His death at the age of fifty-six was a serious blow to Buckland. One of the most charming and illuminating descriptions of Maitland ever spoken or written is to be found in a paper read by Buckland, partly to the Society of Public Teachers of Law and partly to the Cambridge University Law Society, and published in volume 1, pages 279-301, of the *Cambridge Law Journal*. It is partly based upon a visit of some months' duration to the Canaries in search of health when they and their wives were close neighbours and companions. Buckland once remarked that he thought he would have become a historian of English law if he had known Maitland earlier.

As an authority on Roman law, Buckland was the greatest that England has produced. Of his predecessors in office, Sir Henry Maine was more famous and Sir Thomas Smith was more versatile; but they both vacated the Civil Law chair before they were thirty-five years old, and Maine's fame rests on his work in historical jurisprudence, Smith's on his *De Republica Anglorum*. Buckland's earlier writings were recognized abroad, as in England, to be the work of a thorough scholar, but did not arouse a great deal of comment. *Slavery* was more respected than read; but this respect ensured a welcome for the *Text-Book* from those best qualified to judge it. In his later decades he produced a number of articles which threw light from new angles on some burning problems of the day; and these articles brought his name more prominently into the limelight, and caused him to be acclaimed generally as one of the great masters of the time.

Buckland wrote two big books and five smaller, and collaborated in three others, besides writing a chapter of the Cambridge Ancient History and a number of articles. During the nineties he was contributing to legal periodicals, and in 1896 he collaborated with R. T. Wright of Christ's College in a second edition of Finch's *Cases on Contract*. But his first book, which placed him at one bound in the front rank of civilians, was *The*

Roman Law of Slavery (1908). The subject had been neglected in those lands where other parts of Roman law were still of practical importance, though it could not be ignored, since, as Buckland says, 'there are few branches of the law in which the slave does not prominently appear'. He describes his work as 'an attempt to state, in systematic form, the most characteristic part of the most characteristic intellectual product of Rome'; and in 723 large pages of close print he sets out all that is known about the law affecting and affected by slaves, and discusses patiently, acutely, and authoritatively, the diverging views of modern scholars. It was already clear that, while recognizing the presence of many 'interpolations' in the *Digest*, he was not in sympathy with the radical critics who at that time maintained that most of the doctrines in the *Digest* were invented by Justinian's compilers. A sentence on the last page might have stood as his motto throughout life: 'After all there is a presumption in favour of the genuineness of a text even in the *Digest*.' In 1908, that was heresy; by 1946 it was widely recognized; it will soon be a commonplace, unless the pendulum swings again.

Slavery was followed in quick succession by *Equity in Roman Law* (1911) and *Elementary Principles of the Roman Private Law* (1912), both packed full of legal intelligence, both most stimulating and instructive to a fit reader, and both too close packed to make easy reading. What Buckland said about the jurist Paul is true of himself: 'for some he is lucid, for others obscure, but only from compression, for others, simply obscure.' When he allowed himself enough space, he could be as clear as anyone, and he was pleased when an Italian reviewer called him 'limpido'; but it cannot be denied that many readers find him obscure, if only from compression. *Equity in Roman Law* is not about Roman ideas of what was just and fair in general, but about the Roman equivalents or analogies of the rules and remedies introduced into our law by the Chancellor and the Court of Chancery. It contains the substance of three lectures delivered at University College, London, under the auspices of the Faculty of Laws of the University of London, and presupposes a knowledge in its readers of English law and not of Roman. The professed object is 'to show the essential kinship, not of the Roman and the English law, but rather of the Roman and the English lawyer'. At the end are 'appended some remarks on the study of Roman law, which will probably not meet with general acceptance'. These remarks make

explicit what the choice of Slavery as a subject had suggested, that, in Buckland's opinion, for teaching, 'those subjects will be the best in which the Roman lawyers were most active'. He was more interested in the arguments of the greatest Romans than in the rules they discussed or the influence of those rules on later systems.

The *Elementary Principles* is not a book for beginners. When a pupil once complained of being misled by the title, Buckland explained that the principles discussed were elementary, though the treatment was not. It is 'designed for students who have read their Institutes but little more'—i.e. for those who have studied Roman law for a year and a half and are likely to get a place in the First Class. Its object is 'to suggest and stimulate rather than to inform', and to demonstrate that 'our knowledge of the Roman law is but the knowledge of a track in the wilderness'. What is known and straightforward is passed over lightly and all the emphasis is on questions which, though obviously important, are yet unanswerable, or have not yet been answered. It is a bewildering maze to the unwary, but a chain of beacons to lead on the alert inquirer. On one of the 'topics which give students special difficulty', concession is made to human weakness; and the twenty-five pages on *bonorum possessio* are probably the clearest account of it in any language.

'Information' was to come in 1921. *A Text-Book of Roman Law from Augustus to Justinian* is Buckland's greatest book, and the amount contained between its covers is quite astonishing. There are excellent books covering much the same field in other languages; but when a student seeks to know what was the Roman rule on any point, it is rare indeed for another book to give a better answer than Buckland's. Often and often you may read pages and pages of French, German, or Italian, and then find Buckland has all and more than all in a ten-line footnote. The compression is extreme, but controlled by genius; and though its bulk is formidable, the *Text-Book* is the easiest to read of all Buckland's books. It was soon crowned by the Harvard Law School by the award of the Ames prize, and it is named with respect today by all who write on Roman law in any language; although it is charitable to suppose that not all who name it have read it through, since they so often produce as new and original ideas that Buckland discussed and accepted or rejected. The Second Edition, in 1932, was thoroughly revised and brought up to date, though the increase in size was only from 739 pages to 744.

The *Text-Book* was too big for most undergraduates, and in 1925 Buckland published his *Manual of Roman Private Law* (Second Edition, 1939), the most read and least interesting of his books. It is a workmanlike statement, on a convenient scale, of the main rules; but discussion of problems and disputes is kept to a minimum, and Buckland was never quite at ease when confined to following the 'track through the wilderness' in blinkers. It is a very useful book, especially for the Law Tripos, and, of course, it is authoritative; but some undergraduates find it hard to follow, and it does not fire the imagination. A jurisprudential introduction is of great interest to jurists, but bewildering to freshmen.

Much more characteristic is *The Main Institutions of Roman Private Law* (1931). This was 'intended to replace' the *Elementary Principles* and was similar in scope and purpose; but the raids into the wilderness are not made at the same points as before, and the demonstration of pioneering and woodcraft is more attractive and exhilarating than ever. In the preface he avows again the belief, which has since won many adherents, even from the ranks of Tuscany, that 'the period from A.D. 180 to A.D. 250 was far more constructive, and the "Byzantine" age far less constructive, in private law, than is commonly supposed, that most of what it is now the fashion to call Byzantine is Western, and that much of this is not post-classical, but late classical'.

In the Michaelmas Term of the same year, Buckland gave a most interesting course of lectures to a small audience, largely of his colleagues, on *Roman Law and Common Law*; and this developed into a book with the same title by Buckland and his former pupil A. D. McNair. It is described as 'a comparison of some of the leading rules and institutions of the two systems' and as 'examining the independent approach of the two peoples and their lawyers to the same facts of human life, sometimes with widely different, sometimes with substantially identical, results'. A second edition is being prepared by Professor F. H. Lawson.

Buckland also collaborated, but for once in a subordinate role, in a stately volume entitled *Studies in the Glossators of the Roman Law: newly discovered writings of the Twelfth Century, edited and explained by Hermann Kantorowicz, with the collaboration of W. W. Buckland* (1938). This was a long way off his usual beat, but he kindled to the enthusiasm of Kantorowicz and astonished him by his knowledge and understanding of twelfth- and thirteenth-century lawyers.

About two months before his death he published *Some Reflections on Jurisprudence*, a short and characteristic book full of common sense and realism, which has caused many to think again upon dogmas which had long slept tranquilly in their minds, and continues to be in strong demand. A volume containing a selection of his contributions to periodicals is under consideration.

From the nature of his work it was more widely and more accurately appreciated on the Continent of Europe than in England. He received honorary degrees from Oxford, Edinburgh, Harvard, Lyons, Louvain, and Paris, and he was a member of many foreign learned Societies. At the same time his merits were fully recognized in the United States of America, where he had some warm friends and many admirers. He spent the Lent and Easter terms of 1925 lecturing at the Harvard Law School.

As a man he was devoted to his family and his friends; simple in his tastes, and intensely human; courageous in the face of many obstacles; tenacious of his object and on lawful occasion pugnacious; mercilessly intolerant of cant and sham and sloppiness; and while he had a fine intellect and knew how to use it, he was entirely modest, hardly ever mentioned his own work and had not the faintest trace of priggishness.

Dr. Johnson remarks in his essay on Sir Thomas Browne that: 'A scholastick and academical life is very uniform; and has indeed more safety than pleasure. A traveller has greater opportunities of adventure. . . .' Buckland had a hard struggle before he won any degree of academic safety, but he had great pleasure in his home, his college, and his work. He did not seek adventure in the material sense, and the law does not invite to intellectual adventure in the manner of the physical sciences. But he had an original, powerful, and fearless mind; he was one of those who give 'counsel by their understanding', he opened up new paths, and he made an outstanding contribution to the knowledge of one of the greatest intellectual products of our civilization—the Civil Law.

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