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THE LION AND THE THRONE-The Life and Times of Sir Edward Coke (1552-1634), by Catherine Drinker Bowen; Atlantic-Little, Brown, 1956-1957. Pp. 652.

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relationship to freedom can become clear. Only thus can one say whether in the author's mind virtue would maximize or minimize freedom. But spelling it out is the same thing as committing oneself to it. Without faith there can be neither virtue nor liberty, and faith, as Calvin said, is part knowledge and part commitment.

Dr. Berns set a high, though not the highest, value on freedom. For that reason it is unfortunate that he used "libertarian" and "liberal" as interchangeable synonyms. It would have been better to have reserved the former to describe those who make liberty the ultimate value and the latter for those who value liberty because of its part in the fulfillment of the Greco-Roman idea of a good life or the Christian idea of the nature and destiny of man. Such a discriminating use of terminology would have saved him from those neo-conservatives who will mistakenly clasp him to their bosom in spite of what he said about them in his preface.

In conclusion, it is the considered opinion of the reviewer that *Freedom, Virtue, and the First Amendment* is a brilliant contribution to the political thought of our time. Its logical reasoning is superb, its thesis is sound and will invite other thinkers to embark in a new and much more promising direction, and its literary style is of the very finest quality in clearness and elegance. It is to be hoped that this book is only the first of several such contributions and will place the author on the side of those whose tolerance rests on conviction rather than indifference and whose liberalism is affirmative rather than negative.

*Rene de Visme Williamson**

THE LION AND THE THRONE—The Life and Times of Sir Edward Coke (1552-1634), by Catherine Drinker Bowen; Atlantic-Little, Brown, 1956-1957. Pp. 652.

Those members of the American Bar Association who were fortunate enough recently to witness the opening ceremony of the London meeting in Westminster Hall¹ were afforded a glimpse of the background of one of the most colorful and dynamic expounders of the common law. For in that great Hall, "the very work-shop of the law," Sir Edward Coke, as lawyer,

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1. For an interesting account, see 43 *A.B.A. J.* 883 *et seq.* (1957).

as Attorney General for Queen Elizabeth I, and as Chief Justice of Common Pleas, vigorously fought the important legal and political battles of his day — with results that have had a great part in the shaping of our Anglo-American system of law.

Author Bowen, who comes well-recommended through her excellent biography of Justice Holmes, has put together an exceptionally colorful account of Sir Edward Coke's career in the law, which was no less turbulent than the history of the England in which he lived — wrenched free of Rome's ecclesiastical authority, fearing conspiracies by France and Spain to depose the Crown and put a Catholic on its throne, and obsessed with its own internal security. Drawing from a vast store of materials (the bibliography and source references together fill 73 pages) Mrs. Bowen reconstructs the physical and political scene in such a way that full dramatic advantage is taken of the vigor and power that characterized Coke's life.

Remembered by lawyers chiefly for his monumental *Institutes* — covering the whole panoply of English law: land (a commentary on Littleton's *Tenures*), the ancient charters and other statutes, treason and other criminal causes, and jurisdiction and procedure; and his *Reports* — cases recorded by Coke over a period of forty years and constituting the most comprehensive collection up to that time and for long thereafter; Edward Coke is apt to be regarded solely as a scholar. That is not the half of it; ruthless prosecutor; zealous judge, and consummate parliamentarian are equally apt characterizations.

The Queen's Attorney General at 41, Coke relentlessly pursued the "Papist Traitors" — his critics referring to this apparent obsession as "the soft spot in Coke's head." Expediency at the price of principle was the rule, and pre-trial torture, while outlawed officially, was commonplace, Elizabeth's own warrants testifying to it even to this day. At the trial of Father Garnet, an aftermath to the great Gunpowder Plot of 1605, Coke's ruthlessness was exhibited by instructing the clerk, through marginal notations penned by Coke on the defendant's written "confession," to read only those sentences which were unfavorable to the prisoner. Other political prisoners fared no better when facing him in the dock before King's Bench. To the erstwhile court favorite, Dr. Lopez, accused of an attempt on the Queen's life: "Perjured and murdering traitor — worse than Judas himself"; to the great Raleigh: "To whom, Sir Walter, did you bear

malice? To the royal children? I will prove thee the rankest traitor in all England."

Appointed Chief Justice of Common Pleas at 54, "the most offensive of Attorney Generals (became) transformed into the most admired and venerated of judges . . . Attorney General Coke, sharp-driving tool of crown authority, put on the robes of judgeship and became to all appearances the champion of another cause": freedom of the individual, in his person and property, as against the prerogatives of the Crown. Common Pleas bench in Westminster was to be his sounding board. "The king . . . cannot take any cause out of his courts and give judgment upon it himself No person ought in any ecclesiastical court to be examined upon the cogitation of his heart or what he thinketh."

Zealously asserting the jurisdiction of his Common Pleas court, Coke let fly writs of prohibition against the ecclesiastical and chancery courts, steadfastly maintaining that the common law, and not the king's fancy, was determinative of the proper forum. King James' condescension ever to "protect the common law" was not enough for Coke: "The common law protecteth the King." To which King James, his fist raised against a Chief Justice down on all fours, screamed "Traitorous speech!" But Coke's prohibitions continued, even to the point of declaring that "when an Act of Parliament is against common right and reason, the common law will control it and adjudge such Act to be void."

Subsequently kicked upstairs to Chief Justice of King's Bench, Coke was finally sacked when James, at the insistence of Coke's arch-rival, Sir Francis Bacon, felt he could no longer afford the luxury of Coke's asserted independence of the Crown.

Coke's turnabout is ascribed by some to his greed for power; Bowen attempts to justify it on the ground of expediency: what was all right with Elizabeth is not all right for James, who early exhibited a desire to rule England as he had ruled Scotland — above the State and above the law.

Restored to the King's favor, Coke was elected to the Parliament of 1621 and assumed the chairmanship of the Committee for Grievances of the House of Commons, from which post he was to play the role of defender of freedom of speech and of privileges for the members of Parliament. Declaring that the

liberties, franchises, privileges and jurisdictions of Parliament are the ancient and undoubted birthright and inheritance of the subjects of England, and that every member "hath of right ought to have freedom," Coke, at 74 was hauled off to the Tower while James ripped the printed "Protestation" from the *Commons Journal*.

Probably the most dramatic episode in Coke's life is his final period of public service, as a member of the Parliament of 1628 — one of the most celebrated in English history. Its efforts were directed against the recent extraordinary attacks upon personal liberties, the most outstanding of which was imprisonment of Englishmen of high standing for refusing to be taxed with subsidies that did not have the sanction of Parliament. Lending his great prestige as keynoter for the stormy proceedings which were to culminate in the renowned "Petition of Right," Coke, ever the scholar, fashioned his argument out of the bed-rock of Magna Carta and pounded it home, point by point, to a determined Commons and to a reluctant, but in the end acquiescent, House of Lords: "No free man shall be taken or imprisoned or disseised of any free tenement or of his liberties or free customs, or outlawed or exiled, or in any other way destroyed . . . except by lawful judgment of his peers or by the law of the land."

"For this disease I will propound remedies," says Coke to Parliament assembled, and proceeds with words that seem to cry out to posterity: "It is a maxim, the common law hath ad-measured the King's prerogative, that in no case it can prejudice the inheritance of the subject. It is against law that men should be committed with no cause shown. I would not speak this, but that I hope my gracious King would hear of it. Yet it is not I, Edward Coke, that speaks it, but the records that speak it." Capitulating to a determined Parliament, King Charles at last uttered the sacramental words: "Soit droit fait comme il est desire."

"In his head, the English law lay outlined, a vast and intricate map." To complement the *Reports*, Coke was determined to leave a treatise, and to the *Institutes* he devoted his final years.

This book is meat for lawyers; Mrs. Bowen spares no detail in uncovering the encrustations on the legal and political thought of Coke's day. For Louisiana lawyers especially, whose formal

training is usually limited to the rudiments of the common law, one can hardly recommend a more stimulating account of the greatest advocate for that system of law which forms a part of the American heritage.

*Frank J. Peragine**

FIFTH ANNUAL INSTITUTE ON MINERAL LAW. Edited by Harriet S. Daggett, Professor of Law, Louisiana State University, Published by the Louisiana State University Press, Baton Rouge, 1957. \$3.00.

For the past five years, the Law School and the General Extension Division of Louisiana State University have cooperated in sponsoring and arranging a full two-day program of papers dealing with carefully selected and timely areas of oil and gas law. The large number of registrants at each of these annual Institutes has included not only attorneys having particular interests in oil and gas matters, but also a sizeable number of company land men, lease brokers, and other non-attorneys from various branches of the oil industry. The continuing interest in the program is a tribute to the vision and skillful planning of Professor Daggett, as the Institute's Director, and the others who have worked with her through the five initial years. Each year the topics selected for presentation have been of important and immediate interest to anyone who devotes any time to the varied and complex problems in Louisiana's most colorful and dynamic industry. The repeated attendance of these annual meetings by most of the oil and gas legal specialists in Louisiana, and also by a great many attorneys whose oil and gas practice is something less than full time has proved the value of the Institute, not only in providing an exchange of information in depth as to the developments and problems of this field of law, but also in presenting a current summary of mineral law sufficient to keep the general practitioner on speaking terms with recent decisions and new ideas.

The report of the proceedings of the Fifth Annual Institute printed by the Louisiana State University Press is supplied to all registrants and is available generally through order. The volume is bound in hard back covers.

The three papers dealing with the year's decisions in the

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