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## Book Review [The World of Law]

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## Book Review

**THE WORLD OF LAW.** Edited by Ephraim London; New York: Simon and Schuster, 1960. 2 vols.: xix, 654, 750. \$17.50.

A criticism often directed at the legal profession is that though lawyers and judges are trained in the use of words few of them handle the English language with terseness and charm. This feeling of revulsion for lawbooks, especially prevalent among laymen who move about the periphery of the law, is analogous to a legal presumption and a perusal of any law library quickly establishes a *prima facie* case. With a view toward rebutting this presumption, Ephraim London recently edited a two-volume anthology, *The World of Law*, published last fall by Simon and Schuster.

London, a knowledgeable attorney conversant with literary art, contends in the introduction that "court proceedings, testimony, arguments, pleadings, and judgments, and the discussion of legal theories—all may be read as literature if the expression and thought are of a high order." London, therefore, takes on the mantle of literary critic and lawyer in offering the anthology as support, or "authority," for his argument.

The division of the material anthologized is twofold. Volume one, *The Law in Literature*, provides a selection of imaginative writing in which the action centers primarily around courts, trials, lawyers, judges, and litigants. In volume two, *The Law as Literature*, appear accounts of "notable and notorious cases," testimony, arguments, and judgments, together with "observations and reflections on the law." The overall survey is comprehensive, running the gauntlet of time from the Bible to Benchley, and from the Trial of Socrates to the Caine Mutiny court martial.

A general criticism of *The World of Law* is difficult to formulate. One reason for this is the diversity of the material which frustrates an adequate comparative analysis. Rarely, if ever, has Mark Twain (Samuel Clemens) or Lewis Carroll been combined in a single edition with Benjamin Cardozo and Felix Frankfurter. Nor is it common to find Holmes' dissenting opinion in *United States v. Schwimmer* or Brandeis' concurring opinion in *Whitney v. California* in juxtaposition with *The Cases Judged by Sancho Panza*, from Cervantes' *Don Quixote*. Beyond the general theme of law and a few obvious classifications, no common thread holds these works together. Style and content vary with the individual author, and the temper fluctuates between the high satire of Swift, on the Science of Law, from *Gulliver's Travels*:

It is a Maxim among these Lawyers, that whatever hath been done before, may legally be done again: and therefore they take special Care to record all the Decisions formerly made against common Justice and the general Reason of Mankind. These, under the name of *Precedents*, they produce as Authorities to justify the most iniquitous Opinions; and the Judges never fail of directing accordingly;

and the more clinical approach of Piero Calamandrei, as illustrated in *The Crisis in the Reasoned Opinion*, from *Procedure and Democracy*:

The legal scholar with little experience in the courtroom reading the intricate reasoning of a decision as reported in a law review may often suspect, from the dialectical contortions and subtleties that the judge

uses to justify his decision, that not even he was fully convinced by what he was writing, and that those arguments, couched in legal language, serve merely as a facade to hide from view the intrigue or partiality that was the true motivating factor of the decision.

Another reason the anthology frustrates criticism is the fact that the selections offered fail to convince the critical reader of the merits of the editor's argument; viz., that they are "each of such excellence that they may be described as literature." On the other hand, these works offered as "literature" have a definite legal and historical interest that is of great benefit and value to the average reader; inasmuch as the anthology combines, in a relatively short space, a large group of factual and imaginative exposition, description, and critical discussion which would otherwise not be available without painstaking research and effort.

From the point of view, therefore, of the law student or lawyer, or even the interested layman, the selections are generally thought provoking, illuminating, and, at times, diverting and relaxing. They may be read continuously or separately; they may be read once and forgotten, or they may also be a source for recurring reference. They tend to keep the reader well within the realm of law, broadening his legal perspective; yet, at the same time, providing respite from unavoidably insipid and stultifying reading that necessarily occupies much of his working or studying time. The litterateur, however, analyzing the contents in a different light, would not be likely to regard them as very worthy examples of literary art. He would undoubtedly find at the basis of this deficiency the editor's criterion: "Great literature should ignite or inspire . . . no other test was used in the selection of the material." He would concede that this truism expresses an incidental effect of some great literature, but he would also condemn it as a grossly oversimplified standard to apply to a given piece of writing for a determination of whether or not it deserves the distinction of that appellation. London's cross-mixture of talents in this respect does not stand him in good stead as a literary critic or anthologist. It would not be fair to say that a legal mind is incapable of adequately appreciating and understanding literary art, but when such a mind invades that field it must recondition itself to a realization that literature is neither tort nor crime but an art form. As such, no rigid formula can be applied to it, no really satisfactory definitions can be distilled from its study, nor is it divisible into certain identifiable and distinguishable elements.

Certainly what is great writing is not merely a matter of taste only, or of standing the test of time. There are some reasonably reliable criteria that may be used in arriving at an objective evaluation, but the test of inspiration and ignition lies at the bottom of the scale and is frequently immaterial to the final decision. Such a test exclusively applied to the works of Chaucer, Shakespeare, Browning, Dostoevski, O'Neill, or Eliot, to name but a few truly great writers and artists, would produce the most absurd results. It may fairly be said that as a guide to literary excellence, it more properly belongs to the field of political oratory.

One graphic example of an injudicious selection, prompted no doubt by the above standard, is the inclusion of Terence Rattigan's complete melodrama, *The Winslow Boy*. This play occupies a prominent and conspicuous position in the first volume. It is, however, a weakly plotted and superficial effort, totally lacking in dramatic effect, and it boasts the most complete cast of lifeless and stereotyped characters ever assembled for such a production.

The playwright, obviously and futilely trying to imitate Shaw and Isben, announces a worn-out and sophomoric thesis with the bold frankness of an amateur.

CATHERINE (*Quietly*): His innocence or guilt aren't important to me. All that I care about is that the people should know that a Government Department has ignored a fundamental human right and that it should be forced to acknowledge it. That's all that's important to me. (If ever the time comes that the House of Commons has so much on its mind that it can't find time to discuss a Ronnie Winslow and his bally postal order, this country will be in a far poorer place than it is now.

Many entries provide much reading pleasure but scant justification for their inclusion in a work that purports to hold them out as samples of great literature. Volume one contains numerous works that are merely of an anecdotal variety: e.g., Mark Twain's *Science v. Luck* or *An Act of God in Nevada*, or Theobald Mathew's *The Witty Judge and the Bronchial Usher*, Gilbert's *Trial by Jury*, and Benchley's *Take the Witness!* are inane and trivial. Volume two is largely composed of didactic and reportorial writing which, apart from its social, historical, or legal interest, can only be classified as able writing and craftsmanship, but never as literature. It concludes, furthermore, with W. H. Auden's trite and formless, *Love Like Law*.

On the other side of the coin, however, the editor has judiciously compiled for the reader capable discussion on topics of timely and practical interest. Capital punishment, the judicial system, and many questions of legal ethics receive full and interesting treatment. The art and science of cross-examination is ably presented and developed by several textual selections as well as excerpts from transcripts of actual testimony. An edifying example of the latter is the testimony of Joan of Arc given at her trial for witchcraft and heresy. Somewhat more entertaining is the testimony of Oscar Wilde given against the Marquis of Queensbury:

CARSON: Did you drink champagne yourself?

WILDE: Yes; iced champagne is a favorite drink of mine—strongly against my doctor's orders.

CARSON: Never mind your doctor's orders, sir.

WILDE: I never do.

CARSON: He sold newspapers at the kiosk on the pier?

WILDE: It is the first I heard of his connection with literature.

CARSON: Was his conversation literary?

WILDE: On the contrary, quite simple and easily understood. He had been to school, where naturally he had not learned much.

Also of special interest are lucid accounts of famous trials written by important and capable writers: e.g., H. L. Mencken's report of the Scopes Trial, Felix Frankfurter's critical analysis of the Sacco Vanzetti case, Emile Zola's *Open Letter on the Dreyfus Case*, or Rebecca West's literate, *On the Nuremburg Trial*.

*The World of Law*, therefore, is a reviewer's paradox: as an anthology of great literature—which the editor holds it out to be—it falls short of the mark; but as incidental reading to the study or practice of law, or even of general intellectual interest, it is a valuable asset, and, on that basis, can be unqualifiedly recommended.

Richard J. Kohlman.