PLATE XVII

STANLEY DE SMITH

STANLEY ALEXANDER DE SMITH

1922–1974

I

STANLEY ALEXANDER DE SMITH, Downing Professor of the Laws of England at Cambridge, was at the height of an outstanding career of legal scholarship and authorship when he died at the early age of 51. In his short but active life he had made a notable mark with his published works throughout the British Commonwealth, as also in many other countries. He had become the leading figure in the sphere of constitutional and administrative law, and his books had given a new and fresh look to both of these subjects, greatly to the benefit of students, teachers, and practitioners alike.

II

Stanley de Smith was born on 27 March 1922, the son of Joseph de Smith and Jane Alexander. He was educated at Southend High School and St. Catharine's College, Cambridge, where he took his B.A. degree in 1942 with a double first. For the next four years he served with distinction in the army with the 77th (D.O.L.Y.) Medium Regiment, R.A., taking part in the war in France and later in intelligence work in Germany. He was mentioned in dispatches and in 1946 was awarded the Order of Leopold II, Croix de Guerre with palms. In the same year he was demobilized with the rank of Captain. He was married twice: first in 1946 to Catherine Joan Natley, by whom he had two sons and two daughters (the marriage was dissolved in 1965); and secondly in 1967 to Barbara Lillywhite, herself an academic lawyer and Fellow of St. Anne's College, Oxford, by whom he had two daughters.

De Smith went straight from the army to be Assistant Lecturer in Law at the London School of Economics and Political Science, thus setting his feet to the road of law teaching and legal authorship in which he was to make his name. Here he worked for twenty-four years, being promoted Lecturer in 1948, Reader in Public Law in 1954, and finally Professor of Public Law in 1959. When the Downing Chair fell vacant at Cambridge in 1970 on the retirement of Professor Jackson, it was obvious that the electors could not do better than to invite de Smith to return to his old university. It gave him great pleasure

both to be back in Cambridge, with a Fellowship at Fitzwilliam College, and to occupy the chair which had been Maitland's. Maitland's work is *hors concours*, but de Smith's had high qualities of painstaking scholarship and felicitous expression which made him a worthy successor.

III

At first his colleagues at the London School of Economics had some difficulty in assessing the shy and reticent young man—for in those days his highly sensitive character was something of an inhibition to social intercourse. But he did not deceive Sir David Hughes Parry, whose knowledge and insight into human personality quickly divined the truth: immediately after de Smith's arrival he said 'You watch this young man, he is a flyer.' As happened throughout his life, it was by the written rather than by the spoken word that he made his mark. While in the army in Germany he had become interested in the political situation in Schleswig-Holstein, which was one of great complexity, and had written a paper about it. This he showed to some of his colleagues, and they saw at once that it displayed an intellectual power which they would not otherwise have guessed. Soon also he began to write for the *Modern Law Review* and other legal journals, and the impression was quickly confirmed. Clarity and neatness, combined with literary skill and occasionally with wry humour, were the conspicuous features of his writing, very much more so than of his oral expression. He was a born author, and of this talent he made industrious use.

Throughout his life de Smith had to bear the burden of his sensitive and introverted nature. Lecturing did not come easily to him, not because he was not master of his material but because fate had withheld from him the ability to project himself to his audience. His lectures written for publication were an exception, and made very good reading. As a teacher his effectiveness varied inversely with the number of students confronting him. He was at his best in supervising an able research student, and fortunate indeed were those whom he taught in this capacity. His reputation brought him a number of exceptional research students from overseas, and several valuable legal books resulted from the work which they did under him. He was quick to praise the work of others and he was a notably generous reviewer. His gentleness and kindness were the counterpart of his

shyness. Although far from uncritical, he was completely free from malice and from the *odium theologicum* into which academic controversy sometimes lapses. In his moments of vehemence he would hit the target hard and with pungency, but never with ill-nature. In general, however, he was a man of cautious and moderate views who steered away from controversy and acrimony but always had a clear mind of his own. He was a convinced agnostic. His whole temperament was antagonistic to taking anything for granted without probing and argument. This was one facet of the character of a true scholar.

IV

De Smith's first major work, and the one which first brought him renown, was *Judicial Review of Administrative Action.* This book was substantially the work for which he was awarded his Ph.D. in 1959, and was published in the same year. But it was far from an ordinary Ph.D. thesis. It was a pioneering work in administrative law, a subject which at that time was in the doldrums and badly needed the impetus which de Smith gave it. It is one of the oddities of legal literature that there had previously been no comprehensive work on the law governing the use of governmental powers, although the courts had been working out the principles for centuries and the subject is, for obvious reasons, absolutely central in any constitutional system which rests on the rule of law. In France there was an abundant literature on the rights of the citizen before the Conseil d'Etat, which had developed a highly sophisticated jurisprudence and, in particular, had widely extended the principle of state liability for injury caused by wrongful, and sometimes even rightful, official action. De Smith had set to work to remove the reproach that the corresponding English law, the basis of so much of the liberties enjoyed by Britons and their primary defence against governmental malpractice, had never been expounded as it deserved. His talent for the accumulation of detail was exceptional, and it was in the assembly and organization of a vast medley of case and statute law that he performed such a great service. There was little on which he could build, since at the time the academic literature was only of a general and sketchy character and the professional literature was of a very low standard, indeed on many topics non-existent. The amount of work required on such raw material is known only to those who have attempted it.

This book attained an instant success, for it filled a conspicuous gap. It is true that in England the courts and the profession were slow to recognize it. At the time when it was first published they had allowed administrative law to sink to the lowest level of effectiveness that it had reached for at least a hundred years, and they seemed to be ready to abandon the struggle to contain the powers of the state within legal bounds. One example was their failure to enforce the principles of natural justice as they had done in the past, so that the law no longer protected the citizen against unfair administrative procedure by which he might lose his rights or his livelihood without a fair hearing of his case. But when public discontent with inferior administrative procedure led to the Franks Report and the Tribunals and Inquiries Act 1958, the courts responded to the new mood and took up again with vigour their historic task of defending the citizen. In the next dozen years the subject was transformed. It was most opportune that de Smith's book was then available. It contained valuable chapters on natural justice, discretionary power, and judicial remedies, which furnished practitioners with just the ammunition that they needed when the renaissance began. It was in fact in the courts of the overseas countries of the Commonwealth, where the law had been upheld more effectively than in England, that the book was mostly cited in its early years. But now that decisions on natural justice and kindred matters come so thick and fast in the law reports, English lawyers have come to rely on de Smith and the courts have themselves cited him. The quickening pace of his recognition is shown by the longish interval before the second edition of his book in 1968 and the short interval before the third edition in 1973.

In some ways it was a misfortune that the book was written just at the time when administrative law in England was at an abnormally low ebb. The author's native caution and pragmatism disposed him to look somewhat pessimistically at his subject—a view which was justified at the time, but which affected the whole tenor of his text and which he found it difficult to shake off in later editions when the legal climate had changed dramatically. He tended to regard many areas of case-law as mere jumbles of contradictory decisions, even where there was some principle at work which could explain the apparent divergencies. Time after time the reader is discouraged, as he broaches a new topic, by a despairing exordium to the effect that the law is a tangle of inconsistency. De Smith chose to

confine his text for the most part to abstract propositions and discussion, saying little about the actual facts from which the problems arose but supporting his statements with massive footnotes. These demanded most assiduous and painstaking work, and although regular users of the book know that not all the cases justify their text, and that not all the references are right, the level of accuracy is on the whole remarkably high. The combination of abstract text and high-density footnotes means that the book is not easy going for the student. Of the text itself it must be said that it does not always resolve successfully the different analytical problems with which administrative law abounds. Nor in the later editions does it always take account of new decisions or developments, for example the progressive willingness of the courts to quash administrative decisions based on no evidence. But all books are open to criticism of this kind, and many of them are matters of opinion. A more arguable question is whether de Smith need have exercised such restraint in commenting on the state of the law which he expounded. His instinctive caution, allied to his scholarly objectivity, seemed to hold him back from offering criticism, for which there were certainly plenty of opportunities. His achievement was less that of a critic than that of a pioneer explorer. It is his path-breaking labour in pulling his subject together that has earned him the gratitude and respect of lawyers in such high measure.

V

The other major work on which de Smith's reputation will rest is his *Constitutional and Administrative Law*, first published in 1971 and rapidly followed by a second edition in 1973. The speed with which the second edition was called for is a telling proof of the excellence of this book, and it was fortunate that he was able to complete it before his death. It was an equally telling proof of his industry, in that he performed the almost superhuman task of bringing out the second edition in the same year as the third edition of *Judicial Control of Administrative Action*, even though much rewriting was needed in both books. *Constitutional and Administrative Law* was a work of his maturity, in which skill in marshalling and presenting an immense amount of detailed information was admirably displayed. In this country constitutional law must be pieced together from a motley collection of unrelated subjects which have no written constitution or fundamental law to bind them together. At the same

time, and in contrast to administrative law, it is placid and staid, offering few of the excitements which new decisions and legislation provide elsewhere, and relatively little scope for controversy about fundamentals. But of course it is of the highest importance, and in particular it must be taught to students at an early stage of their law course. The fresh look which de Smith gave it was exactly what it needed. Allowing himself a more relaxed style than in earlier works, and writing avowedly for students, he traversed in masterly fashion the wide territories of constitutional law, including even outlying fields such as race relations; and he added a skilful outline of administrative law, condensed into a hundred pages. This time the going for the student is easy throughout the book. The author's wide knowledge of interesting aspects of constitutions, both at home and overseas, provides plenty of concrete material, quite different from the abstractions of *Judicial Control of Administrative Action.* But, once again, he is sparing of critical comment. He mentions the body of opinion which favours an up-to-date Bill of Rights for the United Kingdom, but he does not say whether or not he himself adheres to it. Occasionally he breaks this self-denying ordinance, as where he very rightly advocates a proper legal procedure for the withholding or revocation of passports.

This book is published in the Penguin Education series *Foundations of Law*, and the student who obtains some seven hundred pages of valuable instruction for less than £2 can hardly complain that the printing and layout are unworthy of the material. This modest format conceals what is undoubtedly an outstanding contribution to the teaching and understanding of the British constitutional and administrative system.

VI

De Smith's interest in the constitutional affairs of the many countries of the British Commonwealth added another dimension to his work and added also to the variety of his life. At the same time as he was working on administrative law he found the energy to act as joint editor of the title on the Commonwealth and Dependencies for the third edition of *Halsbury's Laws of England*, published in 1954. In the same year he went to Uganda as secretary of the Buganda Constitutional Committee and Namirembe Conference, under the chairmanship of Sir Keith Hancock, and his skill as a lawyer and draftsman were of great service in the arduous work which paved the way for the

restoration of the Kabaka of Buganda. From 1961 to 1968 he held the part-time appointment of Constitutional Commissioner for Mauritius, in which capacity he gave much valuable advice, including the recommendation for the appointment of the local ombudsman. During these years he also visited Canberra as Visiting Fellow of the Research School of Social Sciences, Australian National University, and the Center for International Studies of New York University as Visiting Senior Fellow. These journeys enhanced his already world-wide reputation. While in New York he collected material for his book *Micro-states and Micronesia* (1970), an interesting account of the problems of minute territories such as some of the Pacific Islands. His major work on Commonwealth Law was *The New Commonwealth and Its Constitutions* (1964) a book which surveyed the kaleidoscopic constitutional changes resulting from the grant of independence to many Commonwealth countries of diverse character. This was a particularly courageous venture, since in the precipitate dismantling of the British Empire the speed of change was, on the constitutional time-scale, quite extraordinary, and it was obvious that many of the hastily contrived independence constitutions had a poor expectation of life. But the book is of permanent value, dealing as it does with basic principles and technique, and explaining the various modifications of the Westminster model with which the emergent countries were launched into their new life. It is not a collection of separate chapters on different countries, but a discussion of the elements of the new systems of government, using a variety of different countries for illustration and comparison in each chapter. Other writings on Commonwealth affairs were *The Vocabulary of Commonwealth Relations* (1954) and valuable chapters on constitutional law in the *Annual Survey of Commonwealth Law* (1965 and 1966).

An additional contribution to administrative law was the chapter on that subject in the fourth edition of *Halsbury's Laws of England* (1973), written in collaboration with Cambridge colleagues. This was an important undertaking, since it was the first time that *Halsbury* had given a title of its own to administrative law, which previously had been shamefully neglected. Shortly before his death he also undertook the editorship of the Cambridge Law Journal.

De Smith's stature as author and scholar, and the affection in which he was held by his friends, were suitably commemorated by Lord Diplock's de Smith Memorial Lecture, given in Cam-

bridge. Equally suitably, the lecture was devoted to recent developments in administrative law, the subject with which de Smith's name will always be so honourably associated.[1]

H. W. R. WADE

[1] I am indebted to Professor O. Kahn-Freund for his assistance in the compilation of this memoir.