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HENRY WOLF BIKLÉ

1877-1942

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Few men in our generation have combined the work of a busy lawyer in important practice with that of a scholarly teacher and student of law so effectively as Henry Wolf Biklé, whose death on January 26th brings to a close a notably distinguished professional career. Whenever alumni who attended the Law School during the quarter-century of his teaching exchange reminiscences about their student-days, there is certain to be spontaneous reference to the clarity, incisiveness and breadth of Biklé's teaching and to its substantial value in after-life. The quality at the core of all his work, both as a teacher and practitioner, was a tireless steady striving for excellence which awoke a kindred aspiration in others. He was never satisfied with a job half-done, a problem half-analyzed, or a thought half-expressed. This striving was not accompanied by any outward signs of intellectual or emotional tension, which were abhorrent to his urbane and self-controlled nature, but proceeded with the greater force and persistence from the severe self-discipline to which it was subjected. While he expected so much of himself, he was generously ready to appreciate whatever was excellent in others, and constantly went out of his way to let his appreciation be known and felt. The high standard to which he held himself, so far from making him intolerant or impatient, had the opposite effect of causing him to sympathize with the difficulties of others as if they were his own. He treated all whose lives he touched with a consideration and fellow-feeling that expressed itself in the courtesy which springs from understanding. The thing

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† Professor Dickinson succeeded Professor Biklé as Professor of Law at this Law School on the latter's resignation in 1929, and also succeeded him as General Counsel of the Pennsylvania Railroad Company in December, 1941.

which most deeply impressed those who had contact with him was not so much that he was a wise and learned lawyer, as that he was in the finest sense a great gentleman.

Henry Biklé's sanity and strength of mind and character had their roots in the best kind of inheritance and early environment. Like Elihu Root and General Bliss, he was, if not "a child of the manse", that next best thing, the child of a professor in a small American college. Brought up in the country in a college town, he had the advantage of a home which combined simplicity with intellectual cultivation, qualities which never left him throughout life. In recent years he found pleasure in rereading the *Æneid*, and renewing the intellectual exercises of his youth. His father, long Professor of Latin and afterwards Dean of Gettysburg (then called Pennsylvania) College, was an outstanding figure in the local college community, and, like his son, was remembered by generations of students as a wise and helpful counsellor.

Henry Biklé received his Bachelor's Degree from that college in 1897, and then spent a year reading law in the office of one of the leaders of the local Adams County bar, William McClean. There, in addition to attending the courts, he read Blackstone's *Commentaries* several times through, and in recent years was fond of expressing his conviction of their still unrivaled excellence as an introduction to the study of law. He believed that, although Blackstone's history may have become antiquated in points of detail, and although his philosophy may not be capable of standing the test of critical analysis, there is no other work so well adapted to impress the beginner with the abiding spirit of the legal profession and with the scope and meaning of our legal system.

Biklé entered the University of Pennsylvania Law School as a first-year student in 1898, and had a distinguished career. He won honors and held a faculty scholarship in each of the three years of the course. His talent for legal writing was early awakened as one of the editors of the *American Law Register*, the predecessor of this REVIEW, and afterwards found expression on a more extended scale in the essay with which he won the Sharswood Prize in 1901. This essay, "The Constitutional Power of Congress over the Territory of the United States", was printed in the 49th Volume of the *American Law Register*, and inaugurated the long series of articles from his pen which for many years enriched the pages of our own and other law reviews.

Biklé was admitted to the bar in Philadelphia in 1901, and in 1905 became a partner in the law firm of Brown, Biklé and Jenks. Two

years later he became Assistant General Solicitor for the Pennsylvania Railroad Company, thus commencing the long connection of thirty-five years which in the end made him the legal spokesman for the Company and enabled him to win the position of outstanding leadership in the field of transportation law and practice which he held for many years prior to his death. In 1916 he became Assistant General Counsel for the Company; in 1922, its General Attorney; and in 1932, General Counsel and head of the Legal Department, a post which he filled until December, 1941, when he was made a Vice-President. His attitude toward his corporate client had the warmth and personal quality which characterized all his relations, and he was as solicitous to guide its conduct within the legal and ethical limits which were prescribed by his fine sense of moral values, as he was vigorous to defend it against anything that he regarded as an invasion of its rights.

Biklé joined the legal staff of the Railroad the year following the enactment of the Hepburn Act<sup>1</sup> (1906), which conferred greatly increased powers on the Interstate Commerce Commission. Far-sighted transportation lawyers, like George Stuart Patterson, then Assistant General Counsel for the Company in charge of its business before the Commission, recognized that the next stage in the development of transportation law would be concerned with the definition and expansion of the Commission's powers. It was the opening-up of this new field of legal work and the need for training lawyers to fill it that were largely responsible for Biklé's entering the Company's service; it was in this field of practice before the Commission, and in litigation incidental to the definition of the Commission's powers, that his work was mainly done for the next twenty years. Entering the field of Commission law, as he did, practically at its inception, he was a pioneer, and participated in many of the proceedings which have become landmarks for later generations of lawyers and for the Commission itself. His appearances before the Commission were so constant, and the variety of the issues they involved was so great, that it is impossible to do more than select for passing mention a few of the subjects on which he left his mark, such as the development of a uniform bill-of-lading,<sup>2</sup> the principles governing differentials between competing ports,<sup>3</sup> store-door delivery of freight by railroad carriers,<sup>4</sup> and the relations between railroads and terminal warehouses.<sup>5</sup>

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1. 34 STAT. 584 (1906), 49 U. S. C. A. §§ 1 *et seq.*

2. In the Matter of Bills of Lading, 51 I. C. C. 671 (1919).

3. Maritime Ass'n v. Ann Arbor R. R., 95 I. C. C. 539 (1925).

4. Pick-up and Delivery Service in Official Territory, 218 I. C. C. 441 (1936); Anacostia Citizens Ass'n v. Baltimore & O. R. R., 25 I. C. C. 411 (1912); Casassa v. Pennsylvania R. R., 24 I. C. C. 629 (1912).

5. Gallagher v. Pennsylvania R. R., 160 I. C. C. 563 (1929); McCormick Warehouse Co. v. Pennsylvania R. R., 148 I. C. C. 299 (1928), 95 I. C. C. 301 (1925).

In addition, he participated in most of the larger proceedings involving the eastern carriers as a group in connection with such subjects as divisions, rate increases and railroad consolidations.<sup>6</sup> His leadership at the bar of the Commission was so generally recognized that when the Association of Practitioners before the Interstate Commerce Commission was formed in 1929, he was chosen as its first vice-president, and, as its third president (1931-32), was the first individual named as president who had not previously been a Commissioner. His leadership at the Commission bar was further demonstrated by his selection as toastmaster at the banquet given in 1937 in celebration of the fiftieth anniversary of the Commission's creation.

Biklé's practice took him not merely before the Commission, but frequently before the courts as well, and, more often than most lawyers, before the Supreme Court of the United States. His first reported argument in a court of last resort was before the Supreme Court of Pennsylvania in 1910, in *Sensenig v. Pennsylvania R. R.*<sup>7</sup> Perhaps the case of most general application which he argued before that Court was *Force's Petition*,<sup>8</sup> in which the Court upheld his contention that a commissioner appointed by a court of another state to take testimony in Pennsylvania may not have the aid of the Pennsylvania courts to compel testimony beyond the scope of written interrogatories accompanying the commission. Naturally, most of Biklé's cases in the United States Supreme Court concerned interpretations of the Interstate Commerce Act and its amendments. Among the most important of these may be cited *Central R. R. of N. J. v. United States*,<sup>9</sup> where the Court sustained his argument that a carrier cannot, merely because it participates with a connecting carrier in a joint rate, be held guilty of discrimination by reason of something done by the connecting carrier.

Henry Biklé's outstanding characteristic as a practitioner before both the courts and the Commission was his absolute thoroughness of preparation. This resulted in his being able to present his cases with commendable brevity and exemplary clarity. There was no fumbling or lost motion. He was never satisfied until he had reduced complex propositions and states of fact to language which could be understood by an ordinary mind unfamiliar with the subject. In this particular he set a standard of excellence which caused "the clarity of a Biklé" to become a by-word before the Commission.

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6. Consolidation of Railroads, 185 I. C. C. 403 (1932), 159 I. C. C. 522 (1929); Fifteen Per Cent Case, 178 I. C. C. 539 (1931); New England Divisions, 126 I. C. C. 579 (1927), 85 I. C. C. 482 (1924), 66 I. C. C. 196 (1922), 62 I. C. C. 513 (1921).

7. 229 Pa. 168 (1910).

8. 265 Pa. 228 (1919).

9. 257 U. S. 247 (1921).

During all the years when Henry Biklé was forging to the front as a leader of the transportation bar of the country, he was busily engaged in law-school teaching. His graduation from the Law School occurred just as William Draper Lewis was rounding out the great faculty which included George Wharton Pepper, Francis H. Bohlen, William E. Mikell, George Stuart Patterson and Owen J. Roberts. The promise implicit in Biklé's scholastic record caused him at once to be appointed a "teaching fellow" in charge of some of the quiz-classes then conducted in connection with the lecture-courses, and to the end of his life he expressed his belief in the value of this method of instruction for both student and teacher. In 1904 his title was changed to "lecturer"; in 1909 he became assistant professor; and from 1913 he was a full professor, until his retirement in 1929. During the years of his teaching, his courses were as follows: Carriers, 1901-1923; Code-pleading, 1902-04, 1906-11; Pennsylvania Law, 1905-15; Constitutional Law, 1913-29.

Biklé was a constant, although not a prolific, writer for the law reviews. His fastidious insistence on thoroughness, completeness, adequacy of analysis and entire clarity of expression exerted a restraint on the urge to publish, which became in later years almost too restrictive. For example, he declined to publish a deeply-pondered and carefully-elaborated address on "The Debate over the Constitution" which he delivered before the Wharton School of the University of Pennsylvania, on January 12, 1937. It did not satisfy him because it was not sufficiently technical. In all, seventeen published articles have been found extending over thirty-nine years (1901-1940). Apart from a few early items on scattering subjects, all relate either to some phase of the regulation of railroads under the Interstate Commerce Act or to a few of the broader issues of constitutional law. Among the railroad articles the one of most general interest is undoubtedly "Mr. Justice Brandeis and the Regulation of Railroads", which he contributed by invitation to the issue of the *Harvard Law Review* published in honor of the Justice's seventy-fifth birthday.<sup>10</sup> Among the constitutional articles the three most notable are: "The Commerce Power and *Hammer v. Dagenhart*",<sup>11</sup> "The Silence of Congress",<sup>12</sup> and "Judicial Determination of Questions of Fact Affecting the Constitutional Validity of Legislative Action".<sup>13</sup> All three of these articles applied a powerful analysis to subjects that had already been much worked over, and resulted in a definite clarification of basic constitutional concepts.

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10. (1931) 45 HARV. L. REV. 4.

11. (1919) 67 U. OF PA. L. REV. 21.

12. (1927) 41 HARV. L. REV. 200.

13. (1924) 38 HARV. L. REV. 6.

One quality which rendered Henry Biklé's thinking so fruitful both in scholarship and at the bar, and which made him so effective as a teacher, was a rare open-mindedness, a willingness to learn from anyone who appeared to be honestly thinking about a subject, a habit of viewing himself as simply one of a company engaged in a quest for light and truth. This not merely enabled him to learn much from those with whom he differed and to find many points of contact with them; but it purified his mental processes from any least element of arrogance, while it in no way lessened the strength of his convictions or his forcefulness in expressing them.

All that Henry Biklé did fitted together. His writing fitted into his teaching, and his teaching into his practice. He was an integrated personality. He presented no idiosyncracies or angularities, no crossness of grain. In consequence, he was not the kind of man about whom anecdotes gather. He did not find himself in situations where the incongruous breeds the humorous. For all his independence of judgment, concerning which he never left anyone in doubt, he regarded it as an obligation of good manners to function unobtrusively and without friction in the environment where he had cast his lot.

Within that environment through the years his strength steadily and quietly made itself felt, and his stature grew. This element of continuity and congruousness in his life, this freedom from sudden breaks and new departures, he recognized as a law of his being when he was approached a few years ago with the opportunity to become the head of an important law school in another part of the country. After careful consideration—for he did nothing without consideration—he put the opportunity aside as involving the kind of reorientation of his life to which he felt that he was not fitted.

Being what he was, his center had to remain where it had always been; but he had the satisfaction of knowing that his quality was recognized elsewhere and his influence felt ever farther afield. His contributions to legal scholarship were signalized by his election as a Fellow of the American Academy of Arts and Sciences; he was called upon to serve as Chairman of the Advisory Committee to the President's Committee on extending civil service requirements to government lawyers; his own and other institutions of learning conferred honorary degrees upon him. He was broadening out into a new kind of public usefulness when the end came—a usefulness which, from his own craftsman's point of view, he perhaps undervalued, and which he deprecated by saying that he would have to "watch his step to keep from becoming a ————— stuffed shirt".

The thing about Henry Biklé's career which would doubtless have surprised him most is that he made so many friends who regarded him with a feeling of warm personal affection. Living a life which was so deliberately devoted to purely intellectual pursuits, which was so dominated by reasoning and reasonableness, and by the application of rational standards to conduct, he never paused to think how many human hearts were drawn to him in affection no less than admiration by the modesty, the candor, the absolute sincerity and the rigorous sense of justice which he displayed in every act of his life,—

“Cui Pudor et Iustitiæ soror,  
incompacta Fides, nudaque Veritas  
quando ullum inveniet parem?”

He himself would probably have preferred the more impersonal comment of his own Vergil:

“Stat sua cuique dies, breve et irreparabile tempus  
Omnibus est vitæ; sed famam extendere factis,  
Hoc virtutis opus.”