

LIVES OF THE LORD CHANCELLORS 1885-1940

By R.F.V. Heuston

Oxford University Press, Reissued with Corrections 1987
xxiii, 608 and (table and index) 24 pp., \$123.75

LIVES OF THE LORD CHANCELLORS 1940-1970

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Equity is A Roguish thing, for Law wee have a measure know
what to trust too. Equity is according to ye conscience of him yt is
Chancellor, and as yt is larger or narrower soe is equity Tis all one
as if they should make ye Standard for ye measure wee call A foot, to
be ye Chancellors foot; what an uncertain measure would this be;
One Chancellor ha's a long foot another A short foot a third an in-
different foot; tis ye same thing in ye Chancellors Conscience.

John Selden¹

When Selden's famous reproach of Equity was first published in 1689, George Jeffreys was the Lord Chancellor of England. Lord Jeffreys of Wem achieved distinction in two ways: he remains the youngest person ever to be appointed to the Woolsack² and he is now generally regarded as the worst judge who ever disgraced the English bench with his presence.³ Although one of the Chancellors chronicled in Professor Heuston's volumes approached Lord Jeffreys' age record,⁴ none could be described with him as "drunken, coarse and brutal as a judge ..."⁵ or as a "monster in ermine [whose conduct] has rendered his memory justly odious, and made his name the most opprobrious epithet by which the bench can be assailed."⁶ All Chancellors portrayed at some length in these companion volumes

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- * Of the Manitoba bar; presently practising as an associate with the firm MacDonald Murray.
1. *Table Talk of John Selden*, Sir Frederick Pollock ed., (London: Selden Society, 1927) at 43. Although Selden wrote some twenty six books, including *A Brief Discourse touching the Office of the Lord Chancellor of England* (1671), the work for which he will most certainly be remembered, *Table Talk*, was compiled by his secretary, Rev. Richard Milward.
 2. As a result of making himself useful to James II, Jeffreys was appointed at the age of 43.
 3. See H. Montgomery Hyde, *Judge Jeffreys*, 2nd ed. (London: Butterworths, 1956) at 13-15 for a summary of how Jeffreys has been assessed by subsequent jurists and historians. Hyde is Jeffreys' most recent, and probably most objective, biographer. His manuscript does little, however, to dispel the notion that Jeffreys was the most wicked and most hated of English judges.
 4. F.E. Smith became Lord Chancellor (and Lord Birkenhead) at the age of 47: R.F.V. Heuston, *Lives of the Lord Chancellors 1885-1940* (1987) at 381 [hereinafter referred to as Vol. 1]. Lord Cowper may have matched Jeffreys' record when he became the first Lord Chancellor of Great Britain in 1707, but the date of his birth is uncertain.
 5. D.M. Walker, *The Oxford Companion to Law* (Oxford: Clarendon Press, 1960) at 661.
 6. [Burke's] *Extinct Peerage* (1931) 290; cited by H.M. Hyde, *supra* note 3 at 14.

were true gentlemen of the law, whose brilliant careers at the bar and on the bench are worthy of the laudable efforts of their biographer.

R.F.V. Heuston, formerly Regius Professor of Law at Dublin's Trinity College and presently Arthur Goodhart Visiting Professor at Cambridge, has endowed the legal community with a pair of books that are at once entertaining and educational. Although legal biographies and autobiographies often have the potential to become tedious reading to generations subsequent to that of their subject, Professor Heuston has entirely avoided the trap of filling page after page with filial piety.⁷ The biographical sketches are pleasant diversions for lawyers and others with historical interest; as such, these books are welcome additions to the growing list of lighter, legal literature.

The lives of the Lord Chancellors have, of course, received the attention of celebrated biographers in the past. Lord Campbell's now famous, multivolume set *Lives of the Chancellors*⁸ covered the period from earliest times to the reign of George IV. J.B. Atlay's two volumes⁹ followed Lord Campbell's lead and were published near the turn of this century. Professor Heuston has continued the tradition essentially where *The Victorian Chancellors* left off, although, like Atlay before him, he has canvassed the lives of two Chancellors already described by his predecessor. In all, Professor Heuston chronicles the careers of eighteen Chancellors, striking a fair balance between their personal and professional lives. This well balanced approach establishes Professor Heuston as a master of judicial prosopography.¹⁰ The place of the Lord Chancellor in legal history is an important one, and the author's manuscripts lend support to the proposition that "something of value may be learned from studying a group of persons in the context of their family and political backgrounds."¹¹

Notwithstanding the industry displayed by Lord Campbell and the felicity of Atlay, it cannot be doubted that Professor Heuston has at least equaled the efforts of his precursors. The biographies are models of clarity, rigour and style. The erudition displayed is remarkable.¹² These definitive works are a veritable mine of information, each containing a wealth of anecdotes and a good measure of sound legal and political instruction. They are supplied with thirty-seven black and white plates and useful indices, adding to their interest and utility.

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7. See M. Gilbert, *The Oxford Book of Legal Anecdotes* (Oxford [Oxfordshire]; New York: Oxford University Press, 1986) at viii-ix.
 8. Lord Campbell, *Lives of the Lord Chancellors and Keepers of the Great Seal of England*, 5th ed., in ten volumes (1868).
 9. J.B. Atlay, *The Victorian Chancellors* (London: Smith, Elder & Co., 1906-1908).
 10. See R.F.V. Heuston, "Judicial Prosopography" (1986), 102 L.Q.R. 90 for a further display of Heuston's prowess (especially at 99ff).
 11. *Ibid.*, at 90.
 12. The standard of proofreading in R.F.V. Heuston, *Lives of the Lord Chancellors 1840-1970* (1987) [hereinafter referred to as Vol. 2], on the other hand, is unimpressive: typographical errors are not uncommon. Such errors have been eradicated from Vol. 1, which was reissued with corrections.

Two factors may account in part for the success of these volumes. First, the very office of the Lord Chancellor is a captivating subject. Secondly, Professor Heuston has been fortunate in that the gentlemen who have occupied the Woolsack during the periods which he surveys have been, to one degree or another, men of real interest and accomplishment. It would be excessive and perhaps over-ambitious for a reviewer to offer a precis of the lives described in these biographies, but a brief sketch of some of the salient features of the office may be in order.

In the Introductions to each volume, Professor Heuston provides authoritative background material in respect of the office itself.¹³

The office of Lord Chancellor is one of great antiquity and dignity which dates back at least to the eleventh century. Since 1707, the full, official title is 'Lord High Chancellor of Great Britain.' During his tenure, the Chancellor is the most senior judicial officer in England and Wales.¹⁴ Indeed, the office is "the second highest which can be occupied by a subject of the Crown."¹⁵ There are, strictly speaking, no express qualifications required by law for the position. The Chancellor need not be a peer, a man, a member of the Church of England, one of Her Majesty's counsel or even a member of the English (or any other) bar. In practice, however, each Chancellor is made a peer upon his appointment (if he does not already hold such a dignity). Moreover, there has never been a female Chancellor; nor, since 1625, has a Chancellor not been professionally qualified. Nevertheless, in theory, the dignity of this Great Office of the Realm could be conferred (by the sovereign, on the nomination of the Prime Minister) on a lady, a Roman Catholic¹⁶ or a member of Scotland's Faculty of Advocates. The office of Lord Chancellor is peculiar to England. The Chief Justice of Canada, the Chief Justice of the United States and the Lord President of the Court of Session each have judicial powers and administrative duties similar to those of the Chancellor, but the holders of these offices concentrate their energies more narrowly: their functions remain primarily judicial. The province of the Lord Chancellor, on the other hand, is far broader. The Chancellor functions of course as a judge, but he acts also as the Speaker of the House of Lords and as a Cabinet Minister, thereby combining within himself all three branches of government. Since 1945, the judicial duties discharged by the Lord Chancellor have diminished, adding further to the political character of the office.¹⁷ A distinctive characteristic of the Chancellor's office which arises from its political nature is that, unlike his judicial counterparts in other countries (and, indeed, unlike the

13. The Lord High Chancellor of Great Britain has no official functions whatsoever within Scotland (Vol. 2, at 1 and 21), but he does appoint and remove Justices of the Peace for Scotland (Vol. 1, at xix).

14. Vol. 1 at xv - xodiii; Vol. 2 at 1-33.

15. Vol. 1 at 381. The Lord Chancellor yields precedence only to the Royal Family and the Archbishop of Canterbury and ranks before the Archbishop of York and the Prime Minister: Vol. 2 at 2.

16. Any doubts on this score were settled by the *Lord Chancellor (Tenure of Office and Discharge of Ecclesiastical Functions) Act 1974*, c.25, s.1 (U.K.).

17. Curiously, this historic change in the role of the Lord Chancellor came as a combined result of the architectural design of the House itself and wartime renovations and practices: Vol. 1 at xviii.

judges he appoints), the Chancellor holds office during the pleasure of the Prime Minister. By convention, he enjoys tenure only for so long as his party is in power, retiring upon their defeat. His power is therefore "temporary but immense."¹⁸ After retiring, the ex-Chancellor is entitled to a modest pension, but there is a constitutional convention, or at least a customary obligation, requiring him to assist in the hearing of appeals in the House of Lords when called upon to do so. Readers from outside the United Kingdom may not appreciate the extra-judicial nature of the appointment, and these books present a sterling opportunity for comparative study.

The Lord Chancellor's duties are truly myriad, placing him at the centre of England's legal system. It is to the Chancellor that aspiring junior barristers apply to become silks. After taking silk, barristers do not lose interest in the Chancellor, for he makes recommendations as to who shall become Lords Justices of Appeal, the Lord Chief Justice of England and the Master of the Rolls. More importantly, he appoints all of the puisne judges of the High Court, circuit judges and many subordinate legal officers, including Justices of the Peace for England, Scotland and Wales. The Chancellor has a general responsibility as well for England's vast system of administrative tribunals. Furthermore, since Lord Sankey set up the Law Revision Committee in 1934, the Lord Chancellor's duties in respect of law reform have expanded considerably, to the point where he is now the Cabinet member who is primarily responsible for it. Finally, it must be remembered that in earliest times the Woolsack was always occupied by an ecclesiastic, and a vestige of this era is the fact that the Chancellor still exercises substantial ecclesiastical patronage.

As members of a learned profession, lawyers and students of law spend a good deal of time reading: "the life of the lawyer is at its heart a literary one"¹⁹ Some of what one must read is drudgery. Some is necessary to lay the foundation for the understanding of fundamental legal principles. The law reports are, of course, required reading, as is what one might call 'black letter law'. The reading of certain other books, however, adds something to one's knowledge and appreciation of the history of the law and the traditions of the bar. The two volumes of *Lives of the Lord Chancellors* are such books. While these volumes will serve admirably as diversions, they are lighter reading of the first order, for they are both instructive and engaging. All those who care for the law will enjoy these books and will, by reading them, cultivate their understanding of the law, its institutions and the people who spend their lives in its service.

18 Lord Kilmuir, *Political Adventure: The Memoirs of the Earl of Kilmuir* (London: Weidenfeld and Nicolson, 1964) at 234.

19. J.B. White, *Heracles' Bow: Essays on the Rhetoric and Poetics of the Law* (Madison, Wis.: University of Wisconsin Press, 1985) at 77.

