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**'Oh Man of Learning! Victorian Public Education in Matters Legal**

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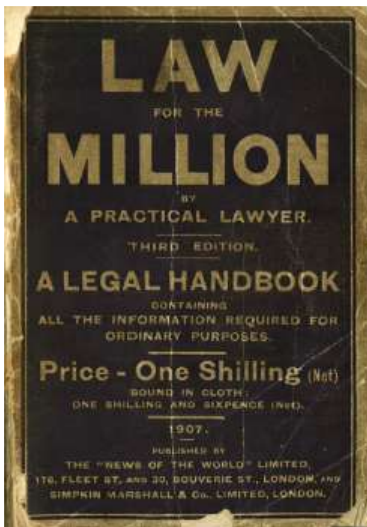
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**‘Oh Man of Learning!’**  
(with apologies to Gilbert and Sullivan’s  
*Trial by Jury*)  
**Victorian Public Education in  
Matters Legal**  
**Kim Stevenson**

### **Needing to Know the Law**

With the unremitting expansion of legislation enacted during the nineteenth century together with the prolific development of the common law, the Victorians faced an explosion of legal initiatives that were continually altered and extended: ‘so many new jurisdictions and tribunals have been created during the reign of the present Sovereign’.<sup>1</sup> It became apparent that there was a need for this new body of law to be published and disseminated to the widest possible audience. Ignorance of the law was no defence to a criminal charge and everyday transactions were increasingly regulated by a host of legal rules and requirements. The principle, *ignorantia legis non excusa* is identifiable in the eighteenth century<sup>2</sup> but hardened substantially in the nineteenth century. The maxim emanated largely from the criminal law<sup>3</sup> but it applied equally to disputes under the civil law including matrimonial suits,<sup>4</sup> breach of contract,<sup>5</sup> and disputed wills.<sup>6</sup> Justice Blackburn confirmed, ‘The rule is that ignorance of the law shall not excuse a man, or relieve him from the consequences of a crime, or from liability upon a contract.’<sup>7</sup> It was expected that everyone should *know* the substantive law at least if not the finer points of

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<sup>1</sup> *Everyman’s Own Lawyer: A handybook of the Principles of Law and Equity* by a barrister (London, Crosby Lockwood 1880) p.v.

<sup>2</sup> *Jones v Randall* (1774) Lofft. 384 Per Lord Mansfield

<sup>3</sup> *R v Bailey* (1800) R & R 1

<sup>4</sup> *Noble v Noble and Godman* (1869) 1 P&D 691

<sup>5</sup> *Waugh v Morris* (1873) 8 QB 202

<sup>6</sup> *Lemage v Goodban and Others* [1861-1873] All ER 1364

<sup>7</sup> *The Queen v The Mayor, Aldermen, and Burgesses of Tewkesbury* (1868) 3 QB 629

legal procedure, '... it would be too much to hold that ordinary people are bound to know in what particular court such and such a practice does or does not prevail.'<sup>8</sup>

To meet this demand there was an explosion in the numbers of texts, volumes, tracts, treatises and compendiums published on a whole range of legal topics, criminal and civil, which necessitated regular updates as the law continually changed and developed. Most of these publications were written by practising lawyers, primarily 'barristers-at-law', often without identification, who sought to not only inform their readership about the law but to educate and advise them on it too. Typically they presented the law and the legal process at a theoretical level that today would be targeted solely at a professional rather than a public readership. There was a keen market demand for such information and a genuine desire on the part of the public to understand the law and its mechanisms and a willingness to engage with it.

### **The Expansion of Law**

Today the creation of law through Acts of Parliament is the political norm but in the nineteenth century the legal revolution was only just beginning, and it was an unknown quantity. The expansion of empire and industrialization, and the shift from individualism to collectivism, precipitated major societal reforms which required formal recognition and authorization. The rise of respectability and associated moral agendas led to reform of the criminal law reinforced by its need for greater police powers and penal strategies. The civil law of obligations (contract and tort) was invoked with the expansionism of manufacturing and trade, and as property rights and interests were dissipated more widely legal protection became increasingly important. Thus the efficacy of the law was fundamental to Victorian society, law's authority depended largely on public confidence and respect for the legal process, something that in turn depended on the successful education of the masses on matters legal.

At the beginning of the nineteenth century the relationship between the law and the general public could hardly be described as one of mutual respect. The enforcement of the criminal law relied on private prosecutions; victims were expected to apprehend and investigate violations perpetrated against them or engage the services of prosecutory

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<sup>8</sup> *Martindale v Falkner* (1846) 2 CB 706 per Justice Maule

societies.<sup>9</sup> The masses used the law when they could, or at least those parts they knew and could afford, but there was little social consensus about its legitimacy.<sup>10</sup> Inevitably the inherent class bias of the criminal law, and to a greater extent, the civil law, meant that 'The Law' was only really available to those wealthy enough to pay for its complexities and inequities. The 'common' law denied the common people access to its courts as James Stewart highlighted in an article in 1842 about the need to significantly reform the 'dark ages' of the common law:

How can we induce those who are not lawyers to take an interest in the subject we are about to consider?... all laymen look upon it as so fenced up in a labyrinth of unintelligible forms, and wrapped up in a jargon of incomprehensible phrases, that they turn for it at once with nausea and loathing.<sup>11</sup>

Many today would no doubt hold a similar opinion as the law has always tended to shroud itself in mystification. The development of the parallel jurisdiction of the Courts of Equity mitigated this to an extent with its inherent principles of fairness but the approach was haphazard. However, by the time the two systems were integrated with the reforms of the Judicature Acts 1873-75, and certainly by the end of the Victorian era, the vast bulk of law had become more comprehensible for the greater part of the populace and many had been induced to take an interest in it. So how did the Victorian legal system encourage such popular enthusiasm?

Three key factors provided the catalyst. Firstly, as society became more complex and industrialized there was an increasing realization that the law, more than at any time previously, inevitably intervened in and regulated everyday lives, both personal and professional. Thus people needed to not only 'know' the law but know how to *engage* with it. Secondly, the lawyers themselves needed to maintain a regular supply of clients willing to seek legal advice and engage in litigation in order to economically sustain their practices and lifestyles. To achieve this the law needed to be *demystified* so that people were less fearful of it. Thirdly, the rise of the print press and immediate conveyance of real-life events, particularly criminal acts and high profile cases, enthused the public's demand for legal sensationalism and drama epitomized in the literature and theatre of the day. Law was therefore *sensationalized* in a way that not only engaged the public

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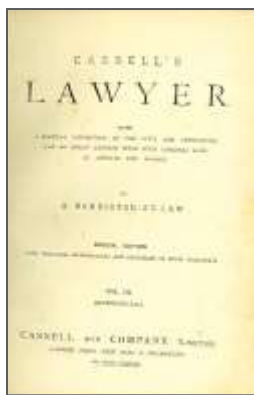
<sup>9</sup> See D. Hay and F. Snyder, *Policing and Prosecution in Britain 1750-1850*, (Oxford: Clarendon Press, 1989).

<sup>10</sup> D. Hay, 'Prosecution and Power,' in Hay and Snyder eds *Policing and Prosecution in Britain 1750-1850*, (Oxford: Clarendon Press, 1989) pp.394-395.

but demystified some of its impenetrable and archaic practices. Both directly and indirectly the law and the legal system harnessed these drivers culminating in an extensive legal education programme that the vast majority unwittingly but willingly subscribed to, and one that would bear some comparison at least with the formal study of a range of subjects studied on a law degree today.

### Everyman's own lawyer

From the mid-nineteenth century general household guides and manuals to understanding and using the law started to appear such as *Everyman's Own Lawyer, By a Barrister*,<sup>12</sup> *What's the Law? Law for Laymen, A barrister at*



*law*,<sup>13</sup> *Lloyd's Lawyer Legal advice for all Alphabetically Arranged, A barrister*<sup>14</sup> etc.. Written by lawyers, primarily barristers-at-law,

these texts contained considerable legal detail and analysis with reference to reported case decisions, statutory provisions and extracts of judicial reasoning. Such publications were intended for a non-professional lay audience. Their authors assumed no prior knowledge on the part of the readership but exposed them to quite difficult and complex legal concepts. The public readily bought and

read such texts regarding them as an essential addition to any personal library. The frontispiece of *Everyman's Own Lawyer: A handbook of the principles of Law and Equity* confirms that it provides the opportunity to everyone to place 'upon his book-shelves a key to the laws of his country' providing a reference point on all manners of legal queries.<sup>15</sup> *Everyman's Own Lawyer* was a highly popular legal compendium, updated and reprinted annually it ran to its centenary edition in 1962. In their prefaces, these barristers-at-law make no distinction between their legal and non-legal readership asserting that they are writing for everyone but their protestations of not being definitive, exhaustive or learned belie their true legal intellect and egos. As Shirley, author of *The Criminal Law* confirms:

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<sup>11</sup> J Stewart, 'Recent and Future Law Reforms', no76 *Westminster Review*, (London 1843)

<sup>12</sup> *Everyman's Own Lawyer* (London: Crosby Lockwood, 1880)

<sup>13</sup> *What's the Law? Law for Laymen*, (London: George Routledge, c.1910).

<sup>14</sup> *Lloyd's Lawyer Legal advice for all Alphabetically Arranged*, (London: Edward Lloyd, c.1910).

<sup>15</sup> *Everyman's Own Lawyer* (London: Crosby Lockwood, 1880).

My object has been simply to give the reader a sketch of those elementary principles of the criminal law and practice with which not only every law student, but *every intelligent citizen*, ought to be familiarly acquainted.<sup>16</sup>

The author of *Everyman's Own Lawyer* assures us that in:

...the pages of this little Treatise...[he]... has been careful to make the work intelligible to all, [as] concise as possible; consistent with the view of producing, at the smallest cost, a complete Epitome of the Laws of England.<sup>17</sup>

Shirley also cites Mr Justice Foster's preface to *Discourses on Crown Law*: 'The learning touching these subjects is a matter of great and *universal* comment. It merits for reasons too obvious to be enlarged on, the attention of *every man living*' and expresses his 'surprise and regret' that the principles of criminal law are not taught in 'our public schools and other educational establishments'.<sup>18</sup> Harris in *Before Trial: What Should be done by Client Solicitor and Counsel* confirms,

I am not writing for lawyers only, but for all ranks and conditions of men who may have occasion to employ them .... It is pretty obvious that my book is intended for a large number of readers

He goes on to acknowledge that 'the more accessible the law is the more will clients benefit by it, and the more will lawyers benefit by clients...'<sup>19</sup> a premise that perhaps modern lawyers should consider?

Of course, barristers and solicitors had a vested interest in the public engaging with the law as their livelihoods and salaries depended on the public seeking their advice. The cover page of *Everyman's Own Lawyer* proclaims, 'No more lawyer's bills! Six-and-eightpence saved at every consultancy' reinforcing the tome's objective of enabling individuals 'to help themselves to the law' without needing to seek out, or pay for, professional legal assistance and advice.<sup>20</sup> The author is clearly seeking to protect his own interests albeit acknowledging that legal, like medical, advice is a necessary evil. Feeding off public concerns about the perception of overpaid and 'wealthy' lawyers he justifies his own position, as does a similar publication *No More Lawyer's Bills*,<sup>21</sup> both of

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<sup>16</sup> W Shirley Shirley, *A Sketch of the Criminal law*, (2<sup>nd</sup> ed London: Stevens and sons, 1889) p.v.

<sup>17</sup> *Everyman's Own Lawyer*, p.vi.

<sup>18</sup> Shirley, *A Sketch of the Criminal law* p.v.

<sup>19</sup> Richard Harris, *Before Trial: What Should be done by Client Solicitor and Counsel*, (London: Waterlow bros and Layton, 1886).

<sup>20</sup> *Everyman's Own Lawyer* p.v.

<sup>21</sup> *No More Lawyer's Bills*, (London, Crosby Lockwood & Son, 1893).

which are dismissive of their solicitor colleagues reassuring readers that it is they who in fact will be deprived of their fees.

## What every respectable middle class paterfamilias needed to know

As the entrepreneurial spirit infiltrated the middle classes and their domestic households became micro employment empires so their legal responsibilities and liabilities increased. *Letts Household Guide to Family and Civic Rights, Duties and Responsibilities* provides pertinent legal advice on all 'domestic and social interests' including matrimony, children, master and servant relationships, landlord and tenant and payment of rates and taxes.<sup>22</sup> Not only did the paterfamilias need to know his legal



position in respect of his employees, domestic and professional, but increasingly this was extended beyond the confines of the home as the *Householder's Legal Rights and Duties with Respect to his Neighbours, the Public and the State*<sup>23</sup> indicates. And if he needed to instigate any legal proceedings or understand how the court process worked he could read the useful articles published regularly in *Cassell's Saturday Journal* such as 'How it is Done: A County Court' and 'How it is Done: in the London Law Courts.'<sup>24</sup> As a truly respectable pillar of society he would, of course, be unlikely to need *Reforms to Marriage and Lawful Wedlock or Husband and Wife, and the Married Women's Property Act, 1882* with its

detailed discussion on this major Act and its implications. With, perhaps, relations posted abroad or lofty ambitions, he might have been interested in the expansion of empire and colonialism as explained in *Colonial Criminal Law*,<sup>25</sup> or *Colonial Laws and Courts*,<sup>26</sup>

<sup>22</sup> W A Holdsworth, *Letts Household Guide to Family and Civic Rights, Duties and Responsibilities* advertised in the *Illustrated London News* 15 Feb 1873 p.151; also see *The Laws of England and the Practice of Parliament relating to Marriage and Divorce* (G J Palmer, London 1854. )

<sup>23</sup> J A Slater Barrister at Law, *Householder's Legal Rights and Duties with Respect to his Neighbours, the Public and the State*, (Pitman's Modern Library of Practical Information c.1904)

<sup>24</sup> As published in *Cassell's Saturday Journal* Oct-Sept 1888-9 pp.436-7; pp.920-921; pp.122-34

<sup>25</sup> Clarkson Tredgold, *Handbook of Colonial Criminal Law, being a Compendium of the Common and Statute Law of the Cape of Good Hope with Regard to Crimes, and of the Procedure Incident thereto*,( Cape Town: C. Juta & Co, 1897).

either of which would have been used by interested colonial layman or new magistrates to the colonies. Or for a broader cultural understanding of the impact of English law, *Cases Illustrative of Oriental Life and the Application of English Law to India*<sup>27</sup> or *The History and Constitution of the Courts and Legislative Authorities in India* – a series of lectures intended for Indian and British readerships.<sup>28</sup>

The print press also played a significant role in keeping the public up to date on legislative developments. The *Daily Telegraph* maintained a regular item under the byline 'New laws' summarizing the key provisions of recently enacted statutes and detailing their changes and impact upon existing legislation. Such information could be broadcast very quickly. For example, on 1 January 1875 the paper informed its readership about the implementation of three newly enacted provisions: the Prosecution of Offences Act, Summary Jurisdiction Act and Habitual Drunkards Act, as well as alerting its readers to the repeal of the Juvenile Offenders Act. The next day readers were reminded about the immediate operation of the Summary Jurisdiction Act as the newspaper explained that a case had been dismissed by Bow Street magistrates on New Year's day because the statute had already come into force and transferred their jurisdiction to the police court (*Daily Telegraph* 1 January; 2 January). Not only is this a pretty impressive and instantaneous feat even by today's electronic delivery standards but it also highlights the level of detail the public received in terms of the procedural aspects of the law. Five years later, in relation to the sentencing provisions of juveniles under the Act, the *Pall Mall Gazette* commented that the 'Home Office appears to have misinterpreted the Summary Jurisdiction Act on this point, but fortunately it has the means of setting itself right by a short Act the next session (*Pall Mall Gazette*, 14 September 1880), Thus not only did the media inform and educate the public but gave itself the authority to educate the politicians too.

### **And for further reading and delectation...**

The public were encouraged to read not just textbooks on the law but also legal journals. In its first issue, *The Law, a Monthly Magazine of Legal Matters for the Profession and*

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<sup>26</sup> A Wood Renton & George, *Colonial Laws and Courts, with a sketch of the legal systems of the world and tables of conditions of appeal to the Privy Council*, (London: Sweet & Maxwell, 1907).

<sup>27</sup> Erskine Perry, *Cases Illustrative of Oriental Life and the Application of English Law to India* (London: Sweet & Maxwell, 1853)



*the Public Conducted by Members of the Bar*, stresses that it will deal with 'legal topics in a way to interest both the profession and the public.' This not only demonstrates the desire on the part of legal practitioners to engage with the public but an expectation that as potential or actual clients members of the public will have some general understanding of the legal issue confronting them. The editorial reassures the lay readership that its writers 'will appeal to them as intelligent members of a community deeply interested in the laws under which they live' confirming that the law – however complex and complicated, can be made accessible without the modern need to 'dumb it down' but hinting indirectly that they have no choice but to be 'interested' in embracing the law and follow it as a necessary obligation. Specialist features appeared each month focusing on specific issues such as advising traders on aspects of commercial law.<sup>29</sup> The First edition covers a wide range of subjects from notes on the current status of Parliamentary Bills including the Assaults Bill and Sale of Food and Drugs Bill; an article on the Law for the Punishment of Drunkenness, to commentaries on the reform of the jury system and costs in county courts. Interestingly these are all live issues today but it is unlikely that many members of the intelligentsia would seek to read about them in the equivalent legal journals of the Bar and Law Society such as the *Law Society Gazette*, *Solicitor's Journal* or *Counsel*. Periodicals generally, both those aimed at more elite or educated reading audiences such as *The Fortnightly Review*, or *Nineteenth Century*, and those with a more popular readership, such as *Cassell's Saturday Journal* or *Windsor Magazine*, also regularly featured articles on criminal matters for example. In addition, specialist publications such as the *Justice of the Peace* mulled over particular cases and pronouncements of magistrates, judges and barristers.

The Victorians realized that for law to be properly understood it needs to be contextualized, and offered as a form of 'edutainment'. Further educational comment was transmitted in a less overt way via works of non-fiction including memoirs and biographies. Many lawyers and judges kept journals throughout their legal lives and would invariably share their legal experiences and reminiscences through autobiographical collections,<sup>30</sup> updated editions<sup>31</sup> sketches and anecdotes. Novels and

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<sup>28</sup> Herbert Cowell, *The History and Constitution of the Courts and Legislative Authorities in India*, (London & Bombay, Thacker Spink & Co., 1894).

<sup>29</sup> Preface vol 1 (Nov 1874-April 1875) (London: Lockwood & Co.).

<sup>30</sup> Richard Harris KC ed. *The Reminiscences of Sir Henry Hawkins, Baron Brampton* (London: Thos Nelson and sons, 1909); Superintendent Bent, *Criminal Life, Reminiscences of 42 years as*

short stories where narratives involved criminal or murder mysteries, and featuring outlines of police work and trial scenes, were another means of indirectly promoting and engaging the public in legal issues and scenarios offering ordinary advice about often everyday and mundane affairs. Popular 'sensation' novelists like Mrs Henry Wood and Wilkie Collins detailed depictions of court scenes and how the police operated to explain the ordinary process of the law with a very high degree of accuracy. It was possible, in the pages of such works, to recognize figures or plot lines in real *cause célèbres* such as the Constance Kent murder, but much of the detail reflected the workings of the summary courts and the more 'usual' ways in which readers might be engaged with the law. Dickens, a former solicitor's clerk cum journalist, in his preface to *Bleak House* assures us that everything that takes place in the Court of Chancery is 'substantially true, and within the truth' citing an ongoing case in August 1853 that had been running for 20 years, involved some 30-40 counsel, and incurred costs of over £70,000. Thus the Victorian public could know what to expect when they encountered the legal process; such ordinariness can be starkly contrasted with today's more 'extraordinary' crime fiction of complex and complicated scenarios invariably involving murder, which was and remains a relatively rare crime in comparison to burglary and other theft, or lesser forms of criminal violence. Bringing this short survey back to the beginning, is former barrister W.S. Gilbert's libretti from the popular operetta *Trial by Jury* and his engaging commentary on the law and its procedures in relation to Angelina's action for breach of promise against Edwin - Legal 'edutainment' at its informative best .

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a *Police officer* (Manchester, John Heywood, 1892); Alfred Chicele Plowden, *Grain or Chaff, The Autobiography of a Police Magistrate*, (London: T Fisher Unwin, 1903); Edmund Purcell, *40 Years at the Criminal Bar. Experiences and Impressions*, (London, T Fisher Unwin, 1916)

<sup>31</sup> Mr. Serjeant Ballantyne, *The Old World and the New. Being a Continuation of his Experiences*. (London, Richard Bentley & Sons, 1884); Montagu Williams, *Leaves of a Life, being the Reminiscences of Montagu Williams*, (London, Macmillan, 1890); *Later Leaves, being the Further Reminiscences of Montagu Williams*, (London, Macmillan, 1891); Mr. Serjeant Robinson, *Bench and Bar Reminiscences of One of the Last of an Ancient Race* (3<sup>rd</sup> ed Containing a Series of Further Reminiscences (London: Hurst and Bracket, 1891).

