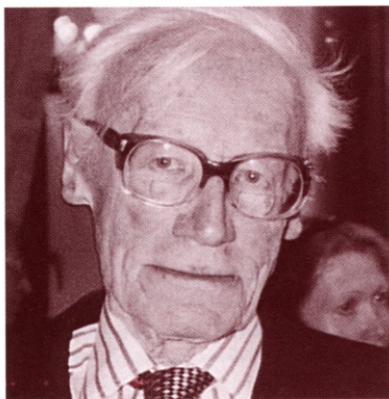


# Sir William Leonard Dale

## 1906–2000

An appreciation

by Sir Franklin Berman QC



Sir William Dale

With the death of 'Bill' Dale on the 8th February, in his 94th year, the arrival of the new century has robbed us of one of the most interesting and varied personalities of the last. His active professional life spanned three-quarters of the century from the time he first began to study law until his last illness very shortly before his death. Into that time he crowded a dazzling variety of activity. Whereas many of his counterparts in government service then and since would be pleased and proud if they were able to do well in two careers, one up to retirement and one after it, Bill Dale's apparently unflagging energy logged up such a series of successive occupations as to make it difficult to calculate just how many careers they amounted to.

Bill Dale's life revolved around three passions: the law, music and company (both male and female), and from his 60s onwards the domestic happiness brought by his third wife, Gloria, and not long thereafter by their daughter, Rosemary. He adored talk, and work, and had an extraordinary knack of getting on with people and of persuading them to do things for him – or, to be more precise, not for him but with him, in whatever interesting activity he happened for the moment to be busy with. This had much to do with the fact that, although he could be awkward, and difficult (in true

Yorkshire fashion), and was certainly self-willed, he had absolutely no prejudice, but collected people for what they were. This approach brought a ready response, especially (as he grew older) from younger people, to whom he was endlessly and gruffly kind, but also over the years from his contemporaries and those older than himself, all of whom found themselves intrigued by the mystery of this personage who was, quite simply, *different*, though quite in what way was not always easy to tell. One of his obituarists describes him as 'bohemian' in the eyes of the establishment, but 'establishment' to bohemians! I'm not so sure. The aphorism catches at least the fact that he moved easily amongst both worlds, in other words that he saw his own world as encompassing both, and most important of all that he saw neither as incompatible with the other. That made him a very human lawyer, and never stodgy. My own guess would be that he wanted to do establishment things, but if possible in a bohemian way. He would have liked to be a character in Anthony Powell's *Dance to the Music of Time*.

He has left us in his autobiographical sketch, *Time Past, Time Present*, published in 1994, an immensely entertaining and readable account of the accidental way in which he came to the law, which he mischievously suggests was by a process of elimination from amongst the four available professions. It was law the hard way, from the ground up, with no legal background to sustain him and no legal contacts to trade on. But whatever accident may have begun it, determination took over, epitomised by his switch from a solicitor's articulated clerkship to a London University external LLB and then to reading for the Bar. His intellectual curiosity clamoured, and its demand would be met. The autobiography also leaves us with a vivid picture of what it was like to get started

in the law in the 20s, and to get started by your own devices and on your own resources. Music – which by his own account he had seriously thought about as an alternative career – played its part here too, by providing an opportunity to earn a little as church organist to supplement first his Lincoln's Inn scholarship and later his first steps at the Bar in Hull and in London.

It could be said that it was accident also that took him first to the Middle East in 1933, to Palestine, to work as a barrister in the practice of an English solicitor in Jaffa. But it could just as well be said to be the willingness to change course and pursue an intriguing new opportunity, which seems in retrospect to have been one of the abiding characteristics of his life, and never more so than when the new opportunity had the touch of the exotic. But, like so many other things to which he turned his interest and his energies, once the Middle East had hold of him, he never allowed it to let go. Whether we count Libya as the Middle East for present purposes is a moot point, not requiring decision. But in Bill Dale's mind his three years in Tripoli as the legal adviser to the hardy-minted government of the newly-minted Libyan State was at least 'on the Mediterranean' and far enough east to be exotic, so that his willingness to drop his duties in the Colonial Office and volunteer his own services sounds very much of a piece with the translation to Jaffa some 20 years earlier. And then again much the same could be said of his immediate response to what he described as 'a surprise telephone call' from my then predecessor in the Foreign Office, tentatively enquiring whether he would be prepared to 'consider' trying for the post of General Counsel to the United Nations Relief & Works Agency for Palestine Refugees (UNWRA) in Beirut. 'Consider', indeed; it seems to have taken him no longer to decide on this

occasion, with a wife and a very young child in train, than he had in the 30s or in the 50s when all on his own. The five years that followed – and were brought to an end by the outbreak of serious fighting between Israel and Lebanon – were clearly an extremely happy and fulfilling period for both Sir William (as he had become a short while beforehand) and Lady Dale. Certainly the Arab-Israeli problem, which he reverts to at the conclusion of his Beirut chapter and describes as ‘no nearer to a solution’, seized hold of him, so that he came back to it again and again in his mind during his last quarter-century. It was the subject of one of the last projects he sought to launch: to put together a training programme for Palestinian judges and legal practitioners. And it stayed in his mind until the very end, so that in our last conversation two weeks before he died he mentioned with a gleam in his eye ‘some ideas’ he had been working on, and he told his wife that the failure to make real progress over the plight of the Palestinians remained one of his great regrets.

Was it also accident, or a deterministic Fate, that first nudged him in the direction of government service? His autobiography records only that the agent was a former chambers colleague, but not how the colleague (very much a private practitioner himself) came to be job-spotting for him or, for that matter, happened to light on the Colonial Office. Once again, though, the decision to go for it seems to have been more or less immediate, and had much to do with a mounting wish to re-connect with his family and his roots in England. He cannot, however, have had the faintest inkling that the move was setting off a chain of events that would see him offering his legal services in various and varying capacities to an astonishing six government departments: the Colonial Office, the Dominions (later Commonwealth Relations) Office, the Ministry of Education, the Law Officers’ Department, the Foreign Office and the Home Office (and his non-legal services to a seventh, the Ministry of Supply, in the war years). Nowadays it would not seem that strange for a successful career in the Government Legal Service to wind its way upwards through a series of cross-departmental moves, returning regularly to a central source. But that is only a very recent development, a world away from

the habits of the 30s, 40s and 50s in which the vast majority of civil servants below Permanent Secretary level gave their working lives and loyalty to ‘their’ department. Dale’s zig-zag course must have looked positively erratic, and never more so than when in 1954 he suddenly translated to the Ministry of Education, apparently (in another of those tantalising but unexplained asides with which the autobiography is peppered) at that Ministry’s invitation. Yet nothing amongst this can have compared with the shock effect of his announcement a few years later that, as there was not enough work to keep him occupied for a full day at the ‘Min of Ed’, he should spend the other half day helping out in some other government department! And so he did, for a while. It seems not to have been because he did not enjoy his work in education; the opportunity for a solid grounding in an aspect of British domestic administration was something he valued, and he clearly relished the side opportunity to get involved in UNESCO as the UK’s delegate in the negotiation of a Convention against Discrimination in Education (see UKTS No 44 of 1962), followed by the Protocol regulating its enforcement, and then by a report for UNESCO on its working. But he does mention the fact that Lord Hailsham became Minister of Education in 1957 and suggests the latter’s propensity (which rings all too true) for doing the ministry’s legal work on his own without seeking help. It is hard to imagine Dale taking kindly to that, and one can see the ingenuous suggestion that he occupy his half day’s idleness elsewhere as having rather more to it than just a device for occupying his unspent energies!

It would be equally hard to imagine him, on the arrival of his 60th birthday in 1966, settling himself down to a comfortable rural retirement – although he tells us that that was precisely what he contemplated doing. Instead, the liberated energy that took him off to Beirut in 1968 was still pulsing on his return in 1973, and he embarked on a range of new activities, which were to absorb him for a further quarter-century and more, and set up his long working relationship with the Institute of Advanced Legal Studies. They were all related to the Commonwealth in its widest sense. Although they sprang out of his earlier experiences at the Colonial Office and Commonwealth Relations

Office, it is they, more than his work within those ministries themselves, which represent his most enduring contribution to law and to administration. For the most part, there was a connection also with the Commonwealth Secretariat (which had been brought into being during his time in the Commonwealth Relations Office) and where he seems to have enjoyed an exceptionally fruitful working relationship with the then head of its Legal Division, Kutlu Fuad. The quality of their joint enterprises is reflected in the especially warm obituary tribute by the present Secretary-General of the Commonwealth, who singles out in particular Bill Dale’s founding work on a *Commonwealth Law Bulletin*, which has for many years now been an essential vehicle for communication between lawyers at all levels within the common law world.

That was an obviously worthwhile activity in its own right. It was not however what really captured Dale’s imagination. For the roots of that one has to go back to Dale’s time at the Commonwealth Relations Office and his realisation then that the swelling pace of independence in Britain’s colonial possessions would create a demand for trained government lawyers that the existing processes were not remotely likely to fill. That led to the Government Legal Adviser’s Course described below. But in the mid-70s Dale’s preoccupations came together with those of Fuad. Fuad was troubled by the shortfall specifically in the area of legislative drafting and came to Dale for help. It was characteristic of Dale’s originality of mind that he should raise the fundamental question of what style and approach to legislative drafting would best suit the needs of newly-independent Commonwealth countries, and would at the same time possibly make it easier to meet the needs by helping in providing the technicians. A lawyers’ conference led on to a comparative study, covering Continental as well as Commonwealth jurisdictions, and the final outcome of the study was the publication in 1977 of *Legislative Drafting: A New Approach*. There is no surprise in the fact that Dale came back from his comparative study convinced that a ‘new approach’ was the answer; one may readily suspect that that was the conclusion he set out to find. Some of his Colonial Office colleagues have expressed surprise at Dale’s passionate involvement

in the area; he had not, in the Colonial Office days, been one of the principal constitutional draftsmen, and the Commonwealth Relations Office never was a constitution-giving department. On reflection, though, the enthusiasm seems less puzzling. On one hand we have his perpetual zest for a new enterprise, on the other his well-established fascination for writing and the written word. Then again there is the fact of his being never a theoretician but very much a man who loved trying to make things work. Put all this together, and you find no surprise in his relish for the self-imposed challenge of finding ways to do the drafting task 'better'.

The book itself fits this picture: a brief, selective, sample study, a work of practical comparison, one which looks more closely at the product than at the process, and one which (when all is said and done) doesn't really offer a 'new' approach as much as say that the 'old' one is not as good as it's cracked up to be and that there are lessons to be learned from other systems so far as logical structure and elegance are concerned. From the outset the target was far wider than what would be best suited to newly-independent countries; Dale took conscious aim at the Mother of Parliaments. He was proud of the book and pleased with its message, which he broadcast assiduously from then on, entering into interesting partnerships, for example, with Sir David (later Lord) Renton and the Statute Law Society. He remained critical, in equal measure, of the English style of statutory draftsmanship and of the attitudes, governmental and judicial, which sustained it. He would admit only grudgingly to 'improvements' as new generations of Parliamentary Counsel put their own stamp on the profession, but nurtured secret hopes (one imagines) of the effect to be expected from grappling directly with the European Convention on Human Rights, and certainly approved of the way the draftsman found to frame the Human Rights Act.

The main vehicle for putting his precepts into practice remained over the years, however, the training Bill Dale provided for hundreds of government lawyers from the developing Commonwealth (and ultimately much further afield) through the medium of the Government Legal Advisers Course.

Its origins lay further back, in 1964, in the aftermath of Macmillan's 'wind of change' speech, and the idea behind its foundation was Dale's own. It was thus particularly appropriate that Dale himself took over the course on the sudden death of the third director, shortly after the Dales' return from Beirut. This was in 1976 – precisely at the time at which the work on *Legislative Drafting: A New Approach* was in full flight. The course had in fact always had a large element of drafting to its syllabus – the other two parts being International Law and Public Law – though that bald description conceals the fact that practical drafting permeated the International Law part as well. This was particularly noticeable in the model conference, a unique instructional invention culminating in a two-week facsimile international treaty negotiation in the Foreign Office, in which the course participants played the part of national delegations and went through the whole process of an international conference in miniature, but with as much realism as possible, under rules of procedure almost identical to those that would have applied at a conference under United Nations auspices.

More than a few of its former students, by then in positions of real authority in their national public service, confronted surprised Foreign Office legal advisers at real UN conferences with the greeting, 'But it was you who taught me everything I know about conferences on the Government Legal Advisers Course'.

Dale has left us an entertaining and informative account of the course's history (*Commonwealth Law Bulletin*, 1977), including the story of how it eventually found its home in the Institute of Advanced Legal Studies in 1980. The remarkable feature is the extraordinary galaxy of legal eminence that took part over the years, and by 'took part' I mean not the planning of the syllabuses, but in the actual instruction. There can have been very few courses anywhere in the world (and probably none) in which the participants were exposed, over half a year, to the influence at close quarters of such a collection and range of legal ability and experience – not to mention the pastoral care of Dale as their director and companion. Even Bill Dale cannot have anticipated that he would continue to run the course over a 20-year period and

more. But that made it, in the final phase of his life, the longest and most consistent of all of his legal activities, and one to which he brought such a degree of affection and patience that it must have occupied a very favourite spot in his heart. That makes it a double shame that in his last years the course fell upon hard times, not from a drying up of demand but owing to the waning enthusiasm of its former patrons and financial providers in the British Council and Overseas Development Administration (as it then was), and virtually ceased to exist. But Dale was philosophical about it, and the course refused to expire entirely as there continued to be a demand from particular countries for specialised training programmes with a more limited compass, which once again Dale laid on.

Under the circumstances it seemed only natural that, when the Institute of Advanced Legal Studies created a Centre for Legislative Studies in 1997, the year of his 90th birthday, it should have decided to name it after Sir William Dale – as the Director puts it, 'to institutionalise Bill'. The remarkable feature of the story is that it should have asked him to become its first director, and that he should have got it going with enthusiasm and verve, as a natural continuation of the work he had been doing more or less on his own over the years.

At the end, I must come back to his first published work, *The Law of the Parish Church*, which appeared in 1932, and has been through six further editions since, the last in 1998. Dale describes in the autobiography in characteristic style how the book came into being, as a metamorphosis of his prize-winning HC Richards Essay for Gray's Inn. By the time of the seventh edition, the work had to take account of the admission of women to the priesthood, which Dale tells us called for only minimal change to church legislation but rather more to his own text, in these words:

*'The writer cannot indeed do what the drafter of the Priests (Ordination of Women) Measure of 1993 was able to do, and simply assure the reader that "words importing the masculine gender include the feminine". A careful adjustment of the text has been needed, but only verbal: not so much the nouns – though "clergyman" must go – as the pronouns; and an attempt has been*

made at a smooth text untrammelled by gender, below episcopal level.'

Pure Dale, especially the little flick at the end. He was a person who, over his immensely long, varied and productive professional life, defied pigeonholing. He liked to be noticed and appreciated, but was unaffected in his behaviour and as modest in his demands if they touched him personally as he was insistent if they touched the interests of anyone he had

taken under his wing. He never sought position, but over the years the attributes of position gravitated towards him: the knighthood, the benchership of his Inn, the honorary doctorate. After his 90th birthday, and in the aftermath of the Institute of Advanced Legal Studies including his portrait as the only outsider amongst its 50th Anniversary series of former directors, I asked him for a photograph to hang on my wall in the

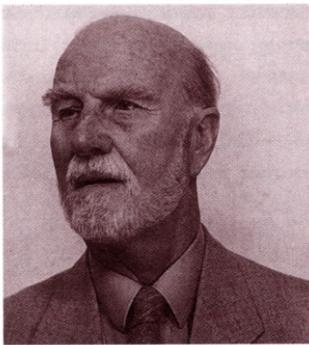
Foreign Office, in counter-position to the set of FO Legal Advisers; it seemed to give him as much pleasure as anything else that had happened. It was a privilege to have known him and worked with him. 

Sir Franklin Berman QC

# Taxation

## Inland Revenue concessions: convenience or just illegal?

by John Booth



John Booth

This article is a review of the anomaly of remissions of tax (called 'concessions'), made on the authority of the Commissioners of HM Treasury, and shows, from the most recently released papers in the Public Record Office, that this is widely misunderstood within the Treasury and Inland Revenue.

Although this source is restricted by the release of papers under the '30-year rule', the up-to-date House of Commons committee papers fill in much information for those missing years. However within both sources there is an absence of references to court judgments, or of comments from learned counsel or commentators, all drawing attention to many anomalies.

There is also the problem for appellants of the absence of any statutory appeals procedure from this 'secondary legislation', or of the need for the costs of appeals to be borne, for defendants and appellants alike, on a 'level playing field'.

It is hoped that these comments will help to extend this debate.

### THE COMMISSIONERS OF HM TREASURY

What is meant by HM Treasury and what is the authority for its powers over the Inland Revenue department?

The statutory source is still of their 'authority, direction and control' (Inland Revenue Regulation Act 1890 (IRRA), s. 1(2)) over the Commissioners of Inland Revenue. It is this statute which distinguishes the Revenue from other departments that also practice 'extra-statutory concessions', the significance being that the Revenue department is that of taxation and specifically of any dispensing power which was ended by the *Bill of Rights* 1688:

*'that levying Money for or to the use of the Crown, by Pretence of Prerogative, without Grant of Parliament ... is illegal' (Bill of Rights Act 1688, s. 1(4)).*

It is of interest that only one reference was found to that Statute in Treasury papers up to 1960, but a note to the Home Office confirmed that:

*'It is doubtful whether there is any authority under which the Treasury can grant an extra-statutory concession ... the Bill of Rights put an end to the Crown's dispensing power'.* (PRO T233, F.1544, 27 April 1945)

This note also drew attention to the 1897 Report of the Committee of Public

Accounts (hereafter 'CPA') and the Treasury Minute of 31 December 1897 (1898 HC 2611, VIII, 147. Copy reproduced in J Booth, *Stand and Deliver*, Waterside Press (1998), Appendix A. 3 and discussed by the writer in *The Statutory Position of the Revenue Department* ((1999) 6 EFSL). The Treasury minute is also significant in that it is often inaccurately quoted in Treasury and Revenue memorandums, but it does contain whatever alleged authority exists for the Revenue to remit tax on the following grounds:

- (a) fixed principles affecting classes, and
- (b) on grounds of *equity or compassion*. (emphasis added)

In 1958 this minute was regarded by the Treasury as '*still the basis for our policy*'. (PRO T233/1598. HF 93/826/01, 11 June 1958), although the Revenue altered the grounds for remissions to 'poverty or other grounds' (1936), 'comparative hardship' (1970) and 'to meet cases of hardship', (IR 1, 1999). HM Customs and Excise did explain to the CPA, in 1966, their own continued use of 'grounds of compassion', to be without problems, from a quoted case (1966-67 HC 647-I, VIII, 687, q. 2590).

However in 1950 the ambiguities, for the Financial Secretary, were clear when he advised the Chancellor that: