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The Mind and Faith of Justice Holmes: His Speeches, Essays, Letters and Judicial Opinions

Max Rheinstein

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bility in the Automobile Industry", "Enforcement in the Coat and Suit Industry", and "Breakdown in the Coal Industry". These chapters include a great deal of historical material and valuable information on important industrial problems.

In his conclusion the author outlines those "elementary rules of fair play which he considers of prime importance:

"First, neither side must commit acts causing physical injury to others nor physical damage to property.

"Second, employers must not hire, fire, and grant promotions in ways which discriminate against union members, nor must they try to promote rival labor organizations among their employees.

"Third, before securing agreements unions must be able to show that they have the support of a majority of the workers whom they purport to represent.

"Fourth, neither side must systematically disregard orderly processes set up by the contracting parties to handle disputes occurring during the life of agreements."⁶

The value of this contribution to the literature of labor is increased by an appendix including tables; an excellent bibliography covering general studies, government reports, legal periodicals, and trade union documents, newspapers and pamphlets; and a very complete index.

William M. Hepburn.

ATLANTA, GA.

The Mind and Faith of Justice Holmes. His Speeches, Essays, Letters and Judicial Opinions, Selected and Edited with Introduction and Commentary by Max Lerner. Boston: Little, Brown and Company. 1943. Pp. 8, L, 474. \$4.00.

Mr. Justice Holmes died in 1935. At present, eight years after his death, a bibliography of Holmes literature already covers nine pages of the present volume, which constitutes a welcome and worthwhile addition to this fast-growing body of writings on Holmes. Mr. Lerner's work is the richest anthology of Holmesiana published so far. In one handy volume of attractive make-up Mr. Lerner has assembled a large collection of Holmes' judicial opinions, letters, speeches and chapters from his scholarly and essayistic writings, preceded by a thirty-page biographical sketch and interspersed with extensive commentaries and introductory notes to the several chapters. Of the 500 pages of text, approximately 320 are given to Holmes' words, while 180 are taken up by the editor's observations, which by themselves constitute a valuable enrichment of the Holmes literature.

Part I of the book, entitled "Campaigns of Life and Law" contains Holmes' Civil War memorial speeches, among them his great glorification of "The Soldier's Faith", his addresses on "Law as Calling",

6. P. 201.

excerpts from the "Common Law" and other scholarly writings of his, which are well-chosen expressions of his conception of the law as an integral part of human civilization. The few of Holmes' Massachusetts State Supreme Court opinions which are added to this chapter illustrate those basic convictions and methods which have been characteristic of all of Holmes' judicial work. Part II, the most voluminous of the book, covers Holmes' career on the United States Supreme Court. From the vast number of his judgments and dissenting opinions the editor has picked representative examples of the following groups of cases: state police power cases, cases involving the concept of "industry affected with a public interest", decisions expressing Holmes' fight against the notion of a federal common law; tort and copyright cases; cases involving economic organization and power; opinions concerned with executive power and war powers, and, finally, the civil liberty cases. Part III contains Holmes' sketches on Montesquieu, John Marshall and John Chipman Gray, some of his essays on the philosophical place of law in the world of ideas, and a few of Holmes' most distinctive letters to William James, John C. H. Wu, Sir Frederick Pollock and Lady Pollock. It concludes with three gems of serene beauty, Holmes' letters of farewell to his brethren of the Supreme Court bar and bench and his radio talk on the occasion of the national celebration of his ninetyeth birthday.

In compiling this anthology, Mr. Lerner has, with reverence and critical scholarship, produced a well-rounded work which presents Holmes in all his aspects, not only to the initiates of the law, but to the reading public at-large. The latter, indeed, is the type of reader Mr. Lerner obviously seeks to reach with this book. But nonetheless, or perhaps, just therefore, the lawyer will derive from it information and inspiration. The materials are well selected for the purpose of presenting a comprehensive picture of Holmes. There are his great speeches, there are those of his decisions and dissents for which he is most famous, those rendered in the battles over the great issues of social legislation, governmental powers and civil rights, but there are also enough of the less spectacular decisions to illustrate his craftsmanship, technique and style, and some of those which show Holmes' judicial weaknesses, as, for instance, the "case of the poisoned pool"¹ and the "stop, look and listen case".² Inclusion of some such case as *Travers v. Reinhart*,³ or some of the decisions rendered in Holmes' weakest field, conflict of laws, might have been included to show that even Holmes did not always escape the snares of false conceptualism against which he was fighting so vigorously and consistently during his long judicial life. Mr. Lerner's emphasis upon the "political cases" is understandable but might unduly influence lay readers in the erroneous though widespread misconception that those exceptional cases are typical of the judicial process. To explain the issues of the cases and, especially of those where Holmes

1. *United Zinc Co. v. Britt*, 258 U. S. 268 (1922).

2. *B. & O. R. R. Co. v. Goodman*, 275 U. S. 66 (1927).

3. 205 U. S. 423 (1906).

only rendered a dissenting opinion, in such a way as to make them clear to lawyers and lay readers alike, was no easy task for the editor. He has solved it in a masterly way. His introductory observations and comments are models of conciseness, precision and penetration. Each case is presented in its political, economic or social setting, in its proper historical place and significance, looking both backward and forward, and legal or procedural technicalities are explained wherever necessary in correct, but simple terms. Several of these notes and comments are valuable essays of historical or critical analysis. Their style can well stand the comparison with Holmes' own.

While Mr. Lerner is a liberal in the truest sense in which this word is understood in America, Holmes might rather be called a conservative, if any such label should at all be tagged at his scintillating personality. Mr. Lerner is fascinated by Holmes, but he is not blinded. He writes with reverence and sympathy, but he does not surrender the critical judgment of his scholarly learning and of his own earnest conviction.

The view of Holmes' work, thought, and faith which the present work presents, makes one pause to consider the mainspring of his rising fame. Holmes is on the way of becoming one of the great, representative figures of his nation. There is no precedent for a judge ever having attained such a position in any nation's history. Kings and warriors, statesmen and religious leaders, artists, poets and philosophers have become heroes or symbols of their nations or of mankind, but no judge has so far joined the ranks of the great representatives of mankind's highest achievements or aspirations. Nowhere but in the United States does the judiciary occupy a place of sufficient conspicuousness and leadership. Holmes and his brethren on the supreme bench of the United States are no mere judges. They are atypical judges, indeed, men who are expected to adjust controversies of high politics in the forms of the judicial process. To fulfil this task without compromising the judicial office requires no mean amount of statesmanship. To fulfil it in such a way as not only to preserve intact the delicate form of the judicial process but also to find for the great controversies the "right" solutions, requires the gifts of the great statesman. Under "right" solutions we cannot mean those which express the ultimate truth. That standard is inaccessible to human beings. Holmes had the feeling for the "spirit of the times"; but that feeling, which might also be found in the demagogue, would not alone have sufficed to make him "great". What distinguished him from minor diagnosticians was his groundedness in the great tradition of mankind which caused him to see the spirit of the times in its proper proportions. As a mere craftsman of the law, Holmes was not beyond criticism. For detailed, factual research, he had a lifelong disdain. In sociological or economic data he was disinterested. Repeatedly he stated in his letters that he barely followed the newspapers. Yet, he knew the world in which he lived, he knew it thoroughly and enjoyed it deeply. The "realists" have claimed him as their spiritual father. But he seems more to belong to the tradition represented in American education by Chicago or St. John's. All his life he conversed with the great spirits of the

human race, the great masters of poetry, art, literature and philosophy. Perhaps he was not "learned", but he was "educated" and, consequently, wise. He represents a type of man which has so far been rare in American history. Jefferson approached it and, perhaps, Franklin and Emerson. Holmes belongs with an Erasmus, a Montaigne or a Goethe. The latter is perhaps nearest to him among the great figures of mankind, the humanist with the zest for life, the harmoniously creative personality. The comparison with Goethe may lay open another ground of Holmes' representativeness. In former ages fighting idealism was inspired by religious faith. Holmes, as Goethe, was an agnostic, a sceptic, a pragmatist; simultaneously he was a fighter, in war and in peace. Sceptical liberals can find in him one whom they believe to have been one of theirs, but whose fighting faith was never extinguished by his doubt. Should this fighting faith perhaps have been grounded in a subconsciously surviving tradition of Puritan Christianity?

Max Rheinstein.

UNIVERSITY OF CHICAGO LAW SCHOOL.

The Expropriation of Foreign-Owned Property in Mexico.

By Wendell C. Gordon. Washington, D. C.: American Council on Public Affairs. 1942. Pp. viii, 201. \$3.25 (cloth); \$2.50 (paper).

Doctor Gordon's work is significant, for apart from its contents, it is motivated by a sense of responsibility towards democracy on the part of the "American Council on Public Affairs". The study sponsored by this Institution marks an evolution in the attitude of United States writers in relation to us: instead of indifference towards Latin-America, a sincere desire to know us; instead of prejudiced and paid propaganda for or against us, the consciousness that truth is the basis of Inter-American relations. The change in attitude is deep for it consists in serving the interests of the American people instead of corporations.

The problem of foreign-owned property in México is clearly stated from the beginning: the observance of international law in the struggle between private ownership of land and the well-being of a nation as a whole.

The First Chapter, "Background of Expropriations", takes us to precolonial days when lands served primarily the interests of Indian chiefs. During the Colony the "encomendero" took the place of the Indian chief. Finally, we come to the crystallization of private ownership of land and its concentration in the hands of a few. I would say that the results of this past are evident: elimination of self-respect on the part of the masses and a constant obstacle to the creation of a numerous middle class, the backbone of civilization.

Then comes the initiation of industry in México together with foreign investments. Mexicans become the employees and labourers of foreign masters. The importation of capital coincides with the