

The Spirit of Liberty. Papers and Addresses of Learned Hand. Collected by Irving Dilliard. New York: Knopf, 1952. Pp. xxx, 262. \$3.50.

This is a hard book to review.

It is easy to begin: one remarks that these are the truly *obiter* papers of the most distinguished living judge of the English-speaking law, and that Dilliard's biographical study (pp. v-xxv) is welcome. Then begin the troubles.

Shall one go on, as is so easy, to the sudden spread of admiration for Hand among those outside our profession when his speech on "The Spirit of Liberty" caught the general eye? Along that road, one would record that in the substance, as in the detail of each word, the speech stands up on one's own fortieth rereading, and seems still to belong almost beside a certain speech at Gettysburg. The road would lead further along that line into Learned Hand's philosophy of freedom of thought, freedom of speech: not merely toleration, but welcoming tolerance for and faith in growth from difference in and on every phase of man's living. One would explain that his *obiter* philosophy must, of course, be read against his judicial decisions, and that he had to wrestle, as for example Mill did not, with the problems of weighing the costs of freedom against its gains, and with the labor of modifying even his own most precious single ideal value to take account of other values. In these papers—cumulating into "The Spirit of Liberty"—the forces which might limit freedom of expression might seem to be only forces of sect or faction or bigotry; but in the whole range of the man's work, especially in his last years on the bench, one would have to recognize his clean tackling (in the teeth of his own articulate philosophy) of the deeper question of when and how far the values of freedom must yield to the needs of the society on which, and for which, the recent and delicate plant of freedom grows.

Along the road opened by "The Spirit of Liberty," as along any other road I have been able to imagine, one would have to comment on Learned Hand's prose style. I think it inept to dismiss the problem with "distinguished": it is like dismissing good ideas by calling them "brilliant." The secrets of style have never been grasped, even for communication to the gifted; but in this man's style one can spot one attribute of vital note to men of law. Outsiders might call his style "lapidary" or "polished." It is not. Any legal reader with sensitivity for language must feel and then see the process. Whereas Cardozo truly polished his writing, and whereas Holmes felt for the striking phrase—each, for my money, thereby diluting the legal job he was accomplishing—Hand works at writing in the cleanest simple tradition of legal craftsmanship: "First you work out what you want to say. Then you *say* it. Accurately." The results are almost mirrored in what Learned Hand has written of his great brother on the bench, Tom Swan (who, in my opinion, learned his own magnificent judicial style even more from Hand than from Corbin): "Simple, clear, severe, trimmed of ornament. He never seeks a display of learning or a locution or phrase designed to divert his reader's attention from the substance he would convey, and

to center it upon himself; and in this he is protected, as few of us indeed are protected, by as complete an absence of any desire to startle and impress others with his endowments, as I have known on the bench or off." Hand's effectiveness along this simple line is plain from reading any twenty of his opinions in succession; with that as a guide (a help which laymen who "think" literature do not have), these papers illustrate the same point unmistakably. Hand's intent and theory along this line was rubbed under my personal nose when I was trying to persuade him of the value of a purpose-clause in a statute. He wouldn't persuade; there was just one sound way of writing: say it.

The difference between the styles of Swan and Hand is thus neither in method nor intention. It lies in what I should like to call the judicially suppressed show-off in Learned Hand, coupled with plain literary genius; even the most severely dealt-with desire for "a locution or a phrase" can, without design, as a man ponders on "how to say it," lend to the final saying overtones, sparkle, fragrance.

A completely different line of reviewing would offer itself if one were to consider the development of the man and his thoughts as reflected in the papers (and, of course, in the opinions). One is truly grateful to the editor for including the smug, unripe Harvard commencement address, as illuminating as was Margaret Hall's inclusion of an undergraduate paper of Cardozo's. This business of having our heroes come before us at sixty, seventy, or eighty, as if they had been smashed by Vulcan out of the head of Zeus, is not good business. The young have need to see and feel that greatness can begin where they themselves are or, even better, have been and already are no longer.

Still different ways of review would be along the line of, say "Learned Hand and his Time," with the sharp question of why our Supreme Court could be deprived of this major American judge, and with by-discussion of his senior and beloved teacher, Hough, that tower of early twentieth century American commercial law, who died in frustration because third-rate commercial judges on the Supreme Court rewrote and spoiled his entire sequence of Mansfeldian opinions. Or else, to review along the lines of the prior reviews, pointing out how people missed the various points: Berle, for example, seeking to apply a practicing party politician's tests to what is no philosophy of party politics but instead a philosophy of sympathetic general understanding built by a great judge to implement great judging, and by a great citizen to implement great citizenship and, for a citizen in office, great statesmanship. Yet another and rewarding approach would be to see Hand in the light of his appreciations in these pages of a variety of men worth any man's appreciation: Holmes, Cardozo, Williston, Brandeis, Littell, Flexner, Stone, Swan, Hughes.

What is clear is that no single review or manner of review can do justice to a book as deep and rich as these collected papers. You need not only to read it, but to buy it, so that you can read it every year.

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