

Book Review

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JUSTICE OLIVER WENDELL HOLMES: HIS BOOK NOTICES AND UNCOLLECTED LETTERS AND PAPERS. Edited and annotated by Harry C. Shriver. Introduction by Mr. Justice Harlan Fiske Stone. Central Book Company, New York City. 1936. Pp. xiii, 280.

This slender volume is well worth buying and reading, and keeping and re-reading. Mr. Shriver is entitled to the thanks of all those, laymen as well as lawyers, who are interested in the work and personality of Mr. Justice Holmes.

As stated in the preface, "This volume completes the *Miscellanea* of the writings of the late Justice Oliver Wendell Holmes. It is a collection of his early book notices, extant papers not heretofore collected, and some recently published letters. . . . Part I consists of book notices, editorial comments and partial reprints from *Common Carriers and the Common Law*, and *Codes and the Arrangement of the Law*. Part II is made up of uncollected writings. Part III reproduces the letters of Justice Holmes to Dr. John C. H. Wu, published by the latter in the October, 1935, issue of the T'ien Hsia Monthly."

To this reviewer, the letters to Dr. Wu, later commented upon, are by far the most interesting part of the book. This is not to say, however, that the early book reviews and uncollected writings are not without great interest. For one thing, the book reviews exhibit Holmes' intense interest in everything pertaining to the law and, even in cases where his convictions differed from those of the author, his criticisms were urbane, and his appreciation of honest work, generous. Two passages, written more than sixty years ago, serve to indicate their quality. Reviewing an article complaining that our courts give undue adherence to precedent, he said:

"We must add that we sincerely hope that the editors will fail in their expressed desire to diminish the weight of precedents with our courts. *We believe the weight attached to them is about the best thing in our whole system of law.*"

Commenting on a digest, he said:

“It should be added that the author, in a very prepossessing preface, vindicates his plan of extracting principles from cases instead of giving an abridgement of the facts with the judgment of the court upon them. We believe that he is wrong; and that just in proportion as a case is new and therefore valuable, no one, not even the judges, can be trusted to state the *ratio decidendi*. We believe that the very essence of a digest, apart from its alphabetical arrangement, is that it should state cases and not principles. But when the other course is deliberately taken, we go no further than to differ, and to be thankful that if generalizing was to be done it should be done so well.”

The letters to Dr. Wu, remarkable in themselves, are more remarkable in the circumstances of their writing and in the flood of light they throw upon the personality of the writer. Consider the circumstances. The first letter bears date of April 19, 1921. Justice Holmes was then eighty years old and a world-famous jurist—58 years older than the Chinese student of law. They cover a period of eleven years, the last being dated March 14, 1932. They number 44. In them, one can find an epitome of his philosophy of law and of life; and the simple, cordial, and indeed affectionate relationship, without a trace of condescension, which he was capable of sustaining to a fellow-worker in the same field. One delightful personal touch appears in the letters regarding Dr. Wu's visit to Washington, in which the then 82-year-old Justice, in arranging for his visitor's accommodations, discusses at considerable length the relative merits of rooms at a club, priced from \$1.25 to \$2.50 a day.

These letters cover a wide field of intellectual interests: Kant, Hegel, Spinoza; economics, general literature, and law are discussed. But the daily task comes first:

“I have a number of tasks on hand this morning, and so don't write at length, since I am miserable when I have in my hands and in my conscience something to be relieved.”

One would like, in reviewing this book, to summarize what is said on subjects such as work, reason, war, the use of words, literary criticism, and other matters, but space is not sufficient and at any rate, it would probably be a hope-

less undertaking to attempt to paraphrase the sayings of such a master of language. A few quotations must suffice:

On work:

“Therefore I hope you will not shirk the details and drudgery that life offers, but will master them as the first step to bigger things. One must be a soldier before one can be a general.”

On reason:

“I hate to discourage the belief of a young man in reason. I believe in it with all my heart, but I think that its control over the actions of men when it comes against what they want is not very great.”

Zest of living:

“ . . . Although my physical activity grows more limited I still feel so much of the zest of life that I am afraid that I realize less than I should how precarious is the tenure of a man of 87.”

Justice Holmes was, as all know, taken to the bosoms of many “liberals”. And he was a liberal. But this passage may suggest that some of his devotees worshiped him ignorantly:

“Also, if there is a form of speech for which I have less sympathy than another it is talk about ‘exploitation,’ as a hostile characterization of modern commercial life, and an implication that dominant brains are to blame. I think it is drivelling cant and I have a standing war with my dear friend Laski, as to his passion for Equality, with which I have no sympathy at all.”

On the Constitution:

“He seemingly has followed the suggestion of Beard that really the adoption of the Constitution was due to the moneyed interests and I don’t readily give up the belief that Washington and the rest had for their dominant motive a patriotic desire to see a powerful nation take the place of squabbling states. If the change helped their investments, I should suppose that it was because they invested in the belief that what they thought best would come to pass, not that they talked patriotism because they had invested.”

There is inspiration in these letters for the beginner in law. There is inspiration, as well as consolation, for men of middle age and more, who are baffled and perplexed by the modern world. They show how a skeptic can have faith and can find a meaning in life. He wrote: "If I were dying, my last words would be: Have faith and pursue the unknown end."

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