

Code tests for joinder to the considerations of trial convenience and the like, which govern modern procedures. This is only to be expected on the part of these authors, one of whom has written some of the most significant articles there are on the subject of joinder.

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THE SPIRIT OF LIBERTY: PAPERS AND ADDRESSES OF LEARNED HAND.

Collected, and with an Introduction and Notes, by Irving Dilliard. New York: Alfred A. Knopf, 1952. Pp. xxx, 262. \$3.50.

MR. Dilliard has made a judicious selection from among the many published utterances of Learned Hand. His volume contains some thirty-four of them—beginning with a Class Day Oration delivered in 1893 and ending with an address made in 1952, only a few days before the speaker qualified as an octogenarian. Although the utterances deal with a great variety of subjects each is a characteristic bit of self-expression. It is always the man himself who speaks. It is always the same literary style that charms. It is always the same philosophy of life that is proclaimed—and this gives an underlying unity to the addresses, which otherwise differ greatly from one another.

The two most remarkable facts which the volume brings to light are the maturity of the commencement orator and the youthfulness of the retired judge. The man is a perfect product of his early academic training. His philosophy of life at eighty accords so perfectly with that of the men who dominated Harvard thinking when he was young that the volume might aptly have been styled "The Spirit of Learned Hand."

To attempt a statement of his philosophy is a hazardous undertaking, for his expositions of it I find somewhat elusive. He himself suggests that his "views about ultimate values" may best be gathered from the latest of his addresses. There the reader will find the following passage:

"On what have we staked our hopes? Is it less than the thesis, as yet quite unverified, that the path toward the Good Life is to assure unimpeded utterance to every opinion, to be fearful of all orthodoxies and to face the discords of the Tower of Babel; all with the hope that in the end the dross will somehow be automatically strained out, and we shall be left with the golden nuggets of truth?"<sup>1</sup>

If this were merely a commendation of tolerance of the opinions of others, it might readily be heeded by a convinced believer in (say) the teachings of Nicene Christianity. But if it is intended as a complete statement of a man's whole faith, one is left wondering how in practice it can prove itself to be an effective substitute for convictions and fixed beliefs. As a statement of judicial

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1. P. 257.

attitude it is admirable. The "jacket" of Mr. Dilliard's volume carries a photograph of Judge Hand as he might look when proclaiming his philosophy—stern, unprejudiced, the incarnation of equal justice under the law. But the Learned Hand who is beloved and admired by this reviewer and by a great circle of other friends—and who has as many fine qualities as any man I know—must (it seems to me) have within him sources of conviction and wellsprings of feeling far deeper and more soul-satisfying than the faith which he so sincerely proclaims. A man willing "to assure unimpeded utterance to every opinion" might have no beliefs of his own; but unless he had within him things more true and deep than he himself is aware of, he could not be a Learned Hand. Skepticism has had a large part to play, but I feel sure that it is only a part of the drama of his life.

To comment here upon each of the addresses is not practicable. Of the two that this reviewer especially commends, one bears the title "Is there a Common Will?" and the other is the address made in presenting to the Harvard Law School a portrait of Mr. Justice Holmes. The least convincing number is "Morals in Public Life"—a statement made (with frequent interruptions) before a Senate Committee in Washington. It might well have been omitted from the collection.

The volume begins with a brief "Personal Appreciation" by the editor. This is an admirable introduction to what follows. One critical comment candor compels me to make. As one of those whom it has become popular to characterize as "the Republican Old Guard," this reviewer records his dissent from the slur directed by the editor at President Taft—who first appointed Hand to the federal bench. "Taft did not know," says the editor, "how irregular his youthful choice could be or he never would have considered him, to say nothing of giving him a lifetime seat on the federal bench." Anyone who knew Mr. Taft's keen recognition of judicial fitness will recognize this as a wholly unwarranted observation. Long after Hand's characteristics were well known, another conservative Republican, Calvin Coolidge, elevated him to the Circuit Court of Appeals and later wisely did the like in the case of that other able and just judge, Augustus Hand, whom Woodrow Wilson had previously appointed to the District Court.

The volume will be read with pleasure and profit by all interested in the working of a fine judicial mind. The reader will feel himself in the presence of greatness. If he is fortunate enough to enjoy Learned Hand's friendship, he will be able, in reading each address, to identify the passages in which seeming solemnity was relieved by an engaging smile. It is seldom that a portrait, however admirable, is a satisfactory substitute for companionship with the man himself, but the many who cannot know Learned Hand except through the printed page will be grateful to Mr. Dilliard for placing the page within easy reach.

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