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Book Review

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Whereas: A Judge's Premise
Essays in Judgment, Ethics and the Law

By Charles E. Wyzanski, Jr.

Little, Brown & Co. Boston 1965. 312 pp. \$6.75

Judge Wyzanski's collection of essays is excellent fare for the appetite of the busy attorney or student who, because of the press of time, is unable or unwilling to take on any extended 'extra-curricular' reading projects. The work lends itself especially well to occasional reading because it is comprised of speeches and articles which the author has given or prepared on various topics over a period of many years. The reader, therefore, can select and examine any chapter that invites his attention without suffering that inevitable feeling of incompleteness that plagues one who leaves any good book unfinished.

The inclusion of two selections on the Nuremberg trials at first seems somewhat anomalous, and in a strict sense they do intrude into what is otherwise a 'domestic' series of writings. However, these two articles, both dated 1946, serve to illustrate the remarkable perception of the author, because they are in many respects more relevant today than when they were written. His analysis of those much-discussed trials moved him to register a closely reasoned objection to them, because they represented what he considered a distortion and a frightening misapplication of basic notions of law. They are all the more foreboding, he felt, because of the implications for the future. Our present riot-strained society might be well advised to look back to this author's prophetic words and perhaps therein begin to find some understanding of today's discontent.

Quite apart from the effect of the Nuremberg trial upon the particular defendants involved, there is the disturbing effect of the trial upon domestic justice here and abroad . . . Indeed our complaisance may

mark the beginning of an age of reaction in constitutionalism in particular and law in general. Have we forgotten that law is not power, but restraint on power?

Any discussion of this collection would be unforgivably deficient if it failed to mention the excellent biographical chapters on Holmes, Brandeis, and L. Hand. The latter selection is particularly well-written, and it is clearly the product of one who knew his subject intimately. It also bears the unmistakable imprint of affection and respect. But let the author himself describe Learned Hand for you.

There he walks out of the frame in which Gardner Cox portrayed him. He wears that suit he had made in England with the cuffs unbuttoned and rolled back. See that smart gray vest! Observe the twinkle under those bushy brows. He has unashamedly announced that his destination is the Abbaye de Theleme and that there he plans to file an affidavit of loyalty to its motto, 'Fay ce que voudras.'

It is, of course, somewhat hazardous to advance generic statements about a book which is a collection of separate pieces; however, throughout the author evinces a concern for the change which is now more than ever before affecting the legal profession. Illustrative of this is the author's response to the growing pressures toward specialization. Judge Wyzanski's outlook, which seems to be characteristic of him, is positive and optimistic. He views this change as another great challenge; indeed, his view is that this type of challenge is indispensable if the law is to retain its appeal and its vitality.

Another pervasive element in the work is the conscious thematic pattern displayed by Judge Wyzanski which is evident in both the content and selection of material. The primary concern that emerges is most obviously evidenced by a recurring aligning of law with morality. To this pairing is added a central theme that enjoins the individual to engage in careful self-evaluation, and in this combination lies the gravamen of the work which is an invitation to the reader

to go beyond the rote application of law and to accept the challenge of understanding it.

One of the most revealing passages about the author and his view of life with the law is contained in the selection, 'The Anatomy of Courage' wherein he sets forth his definition of that concept. The passage in part describes a variant form of what James Joyce would probably have labeled an epiphany. Somewhat less dramatic than Joyce's heightened moments, the brief periods of introspection described by our author are nevertheless indispensable to the person of courage. Of them, he asks:

Indeed, have we not learned that candor in revealing one's own limitations and acknowledging one's own struggles is the first prescription for increasing emotional courage? . . . Every man has it in his power deeply to increase his fortitude by facing his weaknesses and taking those elementary precautions of rest and withdrawal which will give him serenity and assurance.

This same idea is echoed in the final selection of the book which is entitled, 'This I Believe,' taken from a radio broadcast by the late Edward R. Murrow.

Solitariness is the core of every man. And what he believes lies at the core. When overcome by emotion this inner loneliness vibrates, and its secrets can be discharged by love, by prayer, by meditation.

Unusual sentiments to be adopted by a judge? Most assuredly not, especially when read in the thematic context of the entire book. Finally, it can be contended that it is this deliberate appreciation of these moments that distinguishes the philosopher from the technician, and that it is this type of perception that is the unique reward of scholarship. Certainly it is Judge Wyzanski's obvious dedication to this concept that gives meaningful substance to 'A Judge's Premise.'

Ronald K. Olson

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