

Michigan Law Review

Volume 83 | Issue 4

1985

Louis D. Brandeis: Justice for the People

Michigan Law Review

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Recommended Citation

Michigan Law Review, *Louis D. Brandeis: Justice for the People*, 83 MICH. L. REV. 1061 (1985).

Available at: <https://repository.law.umich.edu/mlr/vol83/iss4/41>

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LOUIS D. BRANDEIS: JUSTICE FOR THE PEOPLE. By *Philippa Strum*. Cambridge, Mass.: Harvard University Press. 1984. Pp. xv, 508. \$27.50.

During a lifetime spanning the eighty-five years from the Civil War to World War II, Louis D. Brandeis participated in nearly every progressive social and economic movement of his era. His commitment to social justice caused him to strive for trade unionism, trustbusting, education, and later in life, Zionism. Brandeis's insights attracted a generation of followers, many of whom also achieved positions of influence in government and academia. His vision led Franklin Roosevelt and others to call him "Isaiah." In *Louis D. Brandeis*, Philippa Strum¹ presents Brandeis the realist, the optimist, the reformer.

Strum traces several interlocking themes in Brandeis's ideology. Although a biographer's development of overarching themes may appear inconsistent with Brandeis's focus on specifics,² the two approaches are far from irreconcilable. In fact, Strum's thematic approach helps illustrate Brandeis's belief that principles form a framework into which facts are laid, while facts, in turn, reframe principles.³

Central to Brandeis's ideology was his vision of Jeffersonian democracy. He believed that not only do all people deserve the right to participate in the political process, all are *obligated* to participate. Through participation, people develop and better themselves as they improve society. Brandeis treasured Alfred Zimmern's *The Greek Commonwealth* and agreed with the author's conception of democracy: "[D]emocracy is meaningless unless it involves the serious and steady co-operation of large numbers of citizens in the actual work of government."⁴

Although referring often to Brandeis's commitment to democracy, Strum leaves the complexities of his philosophy virtually unexplored. She notes, for instance, that Brandeis asserted that judicial activism infringed on the domain of the legislature, but that Brandeis also maintained that courts were instrumental in safeguarding the rights and liberties of political minorities. She further observes that when these values conflicted, judicial restraint took precedence. How Brandeis resolved the conflict, however, is left beyond the scope of the work. Similarly, Strum mentions that Brandeis opposed such direct

1. The author is Professor of Political Science at the City University of New York and a vice president of the American Civil Liberties Union. Her publications include *THE SUPREME COURT AND POLITICAL QUESTIONS* (1974).

2. See Book Notice, 82 MICH. L. REV. 883 (1984).

3. In his seminal biography, Lief suggests that Brandeis was not doctrinaire. Particular situations, not a philosophy, sent him into action. A. LIEF, *BRANDEIS: THE PERSONAL HISTORY OF AN AMERICAN IDEAL* 300-02 (1936).

4. P. 239 (quoting A. ZIMMERN, *THE GREEK COMMONWEALTH* 432 (5th ed. 1931)).

democratic devices as the recall of judges and the initiative and referendum, but neglects to probe the seeming inconsistency of this opposition with Brandeis's reliance on a politically active citizenry. Finally, Strum cryptically declares without more that Brandeis regarded democracy as but a means to liberty (p. 329). The reader is left to ponder how Brandeis viewed the relationship between democracy and liberty. Although Brandeis never fully organized or systematized his thoughts, Strum exacerbates the confusion by failing to confront gaps and inconsistencies in his beliefs.

Nonetheless, much of *Louis D. Brandeis* forcefully addresses Brandeis's conception of the means to create a true democracy. Brandeis developed two lines of attack: economic reform and education. First, under a proper economic scheme, workers would enjoy the money, leisure time, and self-respect conducive to considering political issues. Under this scheme businesses would be directed by "efficiency engineers" who would predict production and costs through "scientific management." Brandeis further envisioned a confrontation between labor unions and big business — the clash would prevent either from growing too powerful — but later suggested that because their interests coincided, labor and big business would benefit from cooperation. Strum relates that Brandeis supported unions because he believed they would provide workers with control over their lives, but she does not delve into the relationship between the employee and the union in Brandeis's system. Would the success and power of the union inevitably generate satisfaction for the worker? Would workers necessarily be represented by the union or would those in the political minority need protection? How would nonunion workers fare in a union-oriented system? To have raised these issues would have greatly enriched Strum's biography and her picture of Brandeis's views.

Brandeis's second route to democracy was through education. Brandeis wrote, "[O]ur great beneficent experiment in democracy will fail unless the people, our rulers, are developed in character and intelligence" (p. 110). To be fully developed, people require knowledge attainable through formal training, books, meetings, and the press. Brandeis retained lifelong ties to both Harvard and the University of Louisville. He vigorously encouraged his law clerks to become professors and hoped those who entered private practice would someday "reform." Brandeis himself seriously considered pursuing an academic career, only to be dissuaded by its quiet life.

Brandeis perceived himself as an educator in his efforts to influence the public in particular issues. In his fight to reform the life insurance system, Brandeis introduced a mass "propaganda drive" in which he sent letters to businessmen, had circulars inserted in bank savings books, and sent instructors to Bible classes and schools. Weekly dinners and numerous personal letters were designed to favor others with

his views. Throughout his life, Brandeis relied on the press to circulate his ideas. As a Supreme Court Justice, Brandeis expected his opinions to instruct as well as persuade. Even the government, he believed, served as educator. In condemning government wiretapping Brandeis wrote, "Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example."⁵

Brandeis's emphasis on knowledge is reflected in his expansive view of the first amendment. He rejected the prevailing, paternalistic view of the era that individuals must be protected from wrong ideas, believing that free speech contributes to the vigor of the political process. According to Brandeis, the founders knew "that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the fitting remedy for evil counsels is good ones."⁶ Strum suggests that Brandeis viewed free speech as an end as well as a means. First amendment freedoms would not only guarantee the stability of democratic government, but would create an environment from which absolute truths would emerge and be recognized. This novel idea deserves attention, but Strum unfortunately chooses only to mention it and move on.

Having constructed a theory of democracy, Brandeis turned to Palestine as a testing ground for his ideas. Brandeis believed that Judaism had prepared Jews to be natural citizens of the democratic society he sought. He envisioned in Palestine an agrarian economy in which land would be leased to cooperative entities to "insure the fullest opportunity for development and continuity of possession" (p. 274). In addition, the establishment of Palestine's system of free public education ranked among Brandeis's immediate priorities. Social justice could be realized because every child

is brought up to realize his obligations to his people. He is told of the great difficulties it passed through, and of the long years of Martyrdom it experienced. All that is best in Jewish history is made to live in him, and by this means he is imbued with a high sense of honor and responsibility for the whole people. [P. 273.]

To Brandeis, the essence of the "truly triumphant twentieth century democracy" was a community sense in which "the individual . . . values the community as his own life, and strives after its happiness as though it were his individual wellbeing" (p. 276). A major contribution of *Louis D. Brandeis* lies in its casting of Brandeis's Zionism in the context of his social and political ideals.

5. *Olmstead v. United States*, 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting). In *Olmstead*, the majority held that evidence obtained through a secret wiretap was admissible in a federal criminal trial under the fourth and fifth amendments.

6. *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring).

Louis D. Brandeis is well researched, drawing on many primary sources, including several interviews by the author. Strum's writing is competent but dry, although relieved by numerous quotations. By haphazardly combining a thematic with a chronological approach, Strum devotes an almost whimsically uneven level of attention to various subjects — for example, she delves deeply into the contrasting analytical approaches of Brandeis and Holmes, but barely illuminates Brandeis's personality. Like other Brandeis biographies,⁷ Strum's work is plagued by her often blinding admiration for her subject. As a result she often sacrifices inquiry into the more compelling questions raised by Brandeis's acts and views. Strum's writing joins a field teeming with published works, and it is her particular misfortune to publish on the heels of four other Brandeis biographies.⁸ Nonetheless, Strum's *Louis D. Brandeis* makes a competent contribution to the field.

7. See, e.g., A. MASON, *BRANDEIS: A FREE MAN'S LIFE* (1946).

8. L. BAKER, *BRANDEIS AND FRANKFURTER: A DUAL BIOGRAPHY* (1984); B. MURPHY, *THE BRANDEIS/FRANKFURTER CONNECTION* (1982); L. PAPER, *BRANDEIS* (1983); M. UROFSKY, *LOUIS D. BRANDEIS AND THE PROGRESSIVE TRADITION* (1981). However, the scope of Murphy's and Urofsky's biographies is narrower than that of Strum's work.