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MR. JUSTICE HOLMES AND THE SUPREME COURT, by Felix Frankfurter. Harvard University Press, Cambridge, 1938. Pp. 139. $1.50.

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from Plato to Holmes—a stimulus certain to dissolve incipient provincialism.

Professor Hall has divided his book into three main parts, Philosophy of Law, Analytical Jurisprudence, and Law and Social Science. These parts are not mutually exclusive but represent differences in emphasis. The first part consists of eight chapters and seventy-seven selections (335 pages); the second part, seven chapters and fifty-four selections (334 pages); and the third part, ten chapters and eighty selections (487 pages). Without attempting to list all the important authors whose contributions appear in the book, I might name the following as representative and as indicative of the scope of the work: St. Thomas Aquinas, Aristotle, Austin, Bentham, Bingham, Blackstone, Cardozo, Carmichael, Carter, Cicero, Cohen, Cook, Corbin, Dewey, Dickinson, Duguit, Ehrlich, Frank, Fuller, Grotius, Hohfeld, Holmes, von Jhering, Kant, Kocourek, Korkunov, Llewellyn, MacIver, Maine, Markly, Oliphant, Patterson, Plato, Pound, Radin, Stammler, Terry and del Vecchio.

It would be impossible for the editor of such a work to satisfy everyone as to authors to be represented or in the selections to be made from each author. But, in my judgment, Professor Hall has done an exceptionally fine piece of work—one that shows wide reading, keen analysis and good judgment. The selected bibliography makes easily available favorite selections that are wholly or partly omitted.

With this handy volume now available it is to be hoped that jurisprudence will become a regular course in every curriculum, and that every law student will take the course.

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MR. JUSTICE HOLMES AND THE SUPREME COURT, by Felix Frankfurter. Harvard University Press, Cambridge, 1938. Pp. 139. $1.50.

The title of this book is too narrow. The book is in fact a brief and striking analysis of the social and economic problems facing this country and coming before the United States Supreme Court during the period of Mr. Justice Holmes' service on that Court, from 1902 to 1932. It is both interesting and valuable, and

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presents the view, not only of a friend and admirer of Mr. Justice Holmes, but of a scholar uninfluenced by prejudice or friendship. It is a pleasure to read this little volume after coming into contact with academic propaganda so characteristic of recent publications in the field of constitutional law.

The book contains three chapters: the first on "Property and Society," the second on "Civil Liberties and the Individual," and the third on "The Federal System." Criticism of the book may in good part be based upon the fact that its brevity prevents full discussion; but brevity is also one of the good qualities of the present volume, particularly in view of the fact that it is not intended primarily for lawyers. Its text occupies only 94 small pages.

The first chapter is open to the objection that, by its emphasis on Mr. Justice Holmes, it implies that he alone, among the members of the Court, stood for a liberal attitude toward social and economic legislation. For example, there is a reference to the view of Mr. Justice Holmes "in dissenting from his brethren in the Minimum Wage Case."[1] The uninformed reader would get the impression that Mr. Justice Holmes was the only dissenter. The author appears also to over-emphasize Holmes as a dissenter, and largely to disregard the cases in which he either concurred with his brethren or was the spokesman of the Court. Such of these cases as involve the Fourteenth Amendment are listed in an appendix to the volume. But reference to them in the text would have been desirable, as well as reference to *Pennsylvania Coal Co. v. Mahon*,[2] and to other cases in which Mr. Justice Holmes adopted what may be regarded as a conservative attitude. And Mr. Justice Holmes' dissents were not always the most effective. Compare his opinion in *Tyson v. Banton*[3] with that of Mr. Justice Stone in that case and in *Ribnik v. McBride*.[4]

Chapter II clearly shows that Mr. Justice Holmes, while liberal in supporting social and economic legislation, took a different view as to "due process" where it affected civil liberties. The author properly says that "Mr. Justice Holmes attributed very different legal significance to those liberties of the individual which history has attested as the indispensable conditions of a free society from that which he attached to liberties which derived

1. P. 33.
2. 260 U.S. 393, 43 S.Ct. 158, 67 L.Ed. 322 (1922).
3. 273 U.S. 418, 47 S.Ct. 426, 71 L.Ed. 718 (1927).
4. 277 U.S. 350, 48 S.Ct. 545, 72 L.Ed. 913 (1928).

merely from shifting economic arrangements."[5] But, logically, such a view must admit the right of other judges to determine also what were "the indispensable conditions of a free society;" and liberty of speech and of the press are meaningless unless accompanied by some degree of freedom to earn a living. Mr. Justice Holmes recognized this in many of his opinions. He was not always consistent, and fully realized that logic was not the basis of law. The author is hardly justified in saying that a majority of the Court has consistently sanctioned restraints of the mind, and that a change of attitude was brought about by Mr. Justice Holmes' dissents.[6] And with reference to personal liberty, Mr. Justice Holmes' dissent in *Bailey v. Alabama*[7] cannot be regarded as supporting a liberal point of view.

In Chapter III, on the Federal System, there is, as in the other chapters, too much emphasis on dissent and too little attention given to the constructive influence of Mr. Justice Holmes. Any complete analysis would necessarily refer to Mr. Justice Holmes' dissent in *Northern Securities Co. v. United States*,[8] in which he stated or endorsed the most restrictive positions as to the federal commerce power; and to *Swift and Company v. United States*,[9] in which Mr. Justice Holmes, speaking for the Court, adopted a liberal and constructive view of the commerce power. Here again it is not possible to harmonize Mr. Justice Holmes' views; and it may be proper to suggest that certain of the so-called conservative judges contributed more to the expansion of the commerce power than did Mr. Justice Holmes. It is also desirable to call attention to the fact that the reader will derive from this book an erroneous view of Canadian federal power,[10] in view of recent decisions of the Judicial Committee of the English Privy Council, and to the further fact that the present judicial construction of federal taxing and commerce powers under the Constitution of the United States leaves no "matters clearly beyond the legal powers of the nation."[11]

What is said in this review should not be construed as seeking to minimize the important services of Mr. Justice Holmes; nor as derogating from the value of Professor Frankfurter's little

5. P. 51.
6. P. 62.
7. 219 U.S. 219, 31 S.Ct. 145, 55 L.Ed. 145 (1911).
8. 193 U.S. 197, 24 S.Ct. 436, 48 L.Ed. 679 (1904).
9. 196 U.S. 375, 25 S.Ct. 276, 49 L.Ed. 518 (1905).
10. P. 69.
11. P. 75.

book. The reviewer would, however, appreciate a fuller and lengthier analysis, by Professor Frankfurter, of the influence of social and economic changes upon the construction and effect of the Constitution of the United States.

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THE ADMINISTRATIVE PROCESS, by James M. Landis. Yale University Press, New Haven, 1938. Pp. 160. $2.00.

The Administrative Process contains the four Storrs Lectures on Jurisprudence delivered by James M. Landis at the Yale Law School in 1938. It is a worthy companion of a distinguished predecessor, *The Nature of the Judicial Process,* in which are recorded the Storrs Lectures of Justice Cardozo, given in 1921.

Dean Landis writes in his customarily incisive style concerning "The Place of the Administrative Tribunal;" "The Framing of Policies: The Relationship of the Administrative and Legislative;" "Sanctions to Enforce Policies: the Organization of the Administrative;" "Administrative Policies and the Courts." His effort—a successful one—is to avoid the uncritical labeling process which so often characterizes punditical oratory at bar association *Kaffee Klatsches* where administrative law is being given a professional massaging.

But to say that Mr. Landis avoids uncritical labeling is not to say that he is uncritical. He perceives possibilities of careless, uninformed, or abusive administrative action. What he recognizes, however, is that they are no more inherent in the administrative process than, let us say, in the judicial process. Unlike many lawyers, he concerns himself with doing more than viewing with alarm; he addresses himself to a consideration of ways and means of controlling the dangers.

The refreshing thing about Mr. Landis' comments is their insistence upon the improvement of administrative methods, rather than upon the development of judicial restraints of the administrative power to adjudicate.

Justice Stone has remarked that "Courts are not the only agency of government that must be assumed to have capacity to

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