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Book Reviews

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BOOK REVIEWS

ON THE TEACHING OF LAW IN THE LIBERAL ARTS CURRICULUM. By Harold J. Berman.[1] Brooklyn: The Foundation Press, 1956. Pp. 179. In November, 1954, a conference was called to explore the possibilities and to assay the intellectual gains which conceivably might accrue from teaching law in the liberal arts curriculum. The conference met at Harvard Law School and was financed by the Carnegie Corporation of New York. The participants made up a roster of lawyers and the academic elite in the teaching of law and political science. Included were McGeorge Bundy, Thomas H. Eliot, Mark DeW. Howe, Archibald MacLeish, Talcott Parsons, and Charles E. Wyzanski, Jr. Members of the conference were concerned with objectives of teaching law to college undergraduates and graduate students in the arts and sciences, appropriate content and teaching methods for courses in law in the liberal arts, and the problems associated with introducing law courses into present curricula — indeed, a formidable list of topics.

Friendly but exacting scrutiny is needed here. In looking over this monograph, one wonders if a committee of physicians from the medical schools will one day make a similar overture to the liberal arts colleges. Few would question either the merits or power of many of the arguments well stated in this report by those who see compelling reasons for the introduction of law to the liberal arts curriculum. But the limits of time, human energy and physical facilities preclude teaching vast areas of demonstrably useful and enlightening subject matter; rigorous selection must perforce be made. Already the college curriculum is a veritable chaos of requirements and electives, an 'unmeaning profusion of subjects.' A plethora of individually worthwhile courses surely leads to confusion and redundancy. The intellectually liberating virtues of each ingredient are tirelessly extolled by academic protagonists, although to the rank and file student they are viewed superfically and almost excusively as vocational preparation. However, the liberal arts curriculum remains shorn of its liberal arts objectives. Instructors imbue their special fields with quasi-magical properties which, by a complicated alchemy, will produce ideal citizens from students dutifully exposed to the beneficent rays of history, government, the classics and, yes, the law. In the welter and turmoil of teaching and learning neither faculty member nor student has much opportunity

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simply 'to stand and stare,' to reflect profoundly and comprehensively upon what he had done, or to ask the question in the Mahayana: "Where, what and who am I"?

With all our academic bustle and obsequious devotion to truth, we fail in large measure to examine with candor and courage the underlying assumptions upon which the several disciplines are built. In reality, these assumptions are largely unconscious and unformulated in our minds. We are so used to them that it is well nigh impossible for many teachers — let alone students — to recognize them. They have become axiomatic, second-hand and conventional. Though perhaps overstated, the remark of Sir Walter Moberly that the university today is not asking the really fundamental questions has much merit. As he puts it: "We have concentrated on what is of secondary, and have neglected what is of primary, importance; we have paid tithe of mint and anise and cummin, and have omitted the weightier matters of the law, judgment, mercy and faith."[2] An attitude of pervasive triviality haunts the groves of academe; intellectual venture recedes before personal security and status.

It is difficult to see — at least from reading this book — precisely how the study of law in the liberal arts curriculum will significantly change this picture. One may confidently hazard the guess that the law, like other disciplines already in the liberal arts curriculum, would be taught as it is now widely taught, in a pedestrian, superficial and incurious fashion. It seems that the high ends currently envisaged by the conference and eloquently stated in this book could conceivably be reached through a drastic over-hauling of present teaching methods at the college level rather than through the addition of more courses. The curriculum is sorely overloaded with academic empires. Is the law to be the newest addition to "a narrow and arrogant departmentalism"? Dean Bundy and Thomas H. Eliot raise relevant issues in this connection.

Much college teaching is of extremely poor quality, little more than hackwork, another form of routine. It lacks the courage to defy, where indicated by reasonable inquiry, common sense and public opinion. Thus education, instead of being a tool of social criticism, becomes an apologist for the *status quo*. The pivotal problem of really educating students to the point of independent thought will be resolved not by enlarging the curriculum, but by bringing to bear in the classroom some of the courage of Socrates and a heightened awareness of the responsible use of knowledge.

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[2] MOBERLY, THE CRISIS IN THE UNIVERSITY 304 (1949).

This brief, provocative volume should provide a point of departure for searching inquiry with respect to the proposals set forth in its pages. Herein lies its real value.

*Frederick E. Ellis**

READY FOR THE PLAINTIFF. By Melvin M. Belli.[1] New York: Henry Holt and Company, 1956. Pp. x, 338. $6.50. Each day, in the factories, on the highways of the countryside, in the streets of the cities in all manner of places and in an unbelievable variety of situations human beings are crippled, maimed and killed because someone was careless. The automobile which has contributed so much to the convenience, comfort and happiness of mankind is also an instrument of destruction because it is made carelessly, or because both users and non-users fail to exercise care to avoid its patent dangers. In *Ready For The Plaintiff*, we are told, "one in eighteen of us will be seriously injured before 365 days of the calendar year have passed."[2] We are told also "In the last fifty years, one deadly weapon, the automobile, has killed more people in the United States than we have had fatalities on all the battlefields in all the wars this Republic has fought since its founding nearly 180 years ago!" "These statistics are not abstract, impersonal," says the author. "They are broken bones jutting thru flesh. They are arteries spurting blood. They are screams and groans of piercing agony. And any one of them could be *you*."[3] During 1954, 9,700,000 persons were injured and 96,000 accidentally killed. It is a fair surmise that a substantial number of those accidents resulted in claims for the recovery of damages. Each year brings its heavy toll of accidents and lawsuits. Personal injury and wrongful death claims represent 75% of the lawsuits filed in the state and federal courts. So great is the volume of this type of litigation that courts in the larger jurisdictions of the country are sorely pressed to make reasonably prompt disposition of the cases pending on their dockets.

Representation of the victims of accidents has become big business, offering rich rewards to lawyers who successfully prosecute the claims of plaintiffs. Competition for this business has produced many evils, of which the book takes cognizance.

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1 Member of the California Bar and author of MODERN TRIALS (1954).

2 Text at 36.

3 *Id.* at 37.

No effort is made to condone the reprehensible practices of the ambulance chaser or the shyster lawyer, although these derelictions are dealt with more gently than the unfair practices of representatives of defendants, against which the author repeatedly and vigorously inveighs. The book is relentless in its condemnation of the claim agent who endeavors to settle every case "for as little as possible" regardless of its value or merit. Such practices are scathingly denounced as "the short-changing of cripples" and are regarded by the author as infinitely more reprehensible than the justly criticized efforts of plaintiffs' lawyers who attempt to secure excessive verdicts by appeals to passion and prejudice.

The author also rides to battle against those publicists who in highly critical articles on the growing number of personal injury suits and the increasing number of large verdicts in such cases, have, by implication, included all lawyers for injured claimants in the category of the ambulance chaser and the shyster. Conceding that there are some lawyers who violate the canons of ethics and decency in their representation of injured claimants, the author indignantly resents "the large scale libel" of the many honest and dignified lawyers who specialize in the representation of plaintiffs in the trial of personal injury suits. In their behalf he cites and quotes at length from a survey of the Bureau of Economic and Business Research of Temple University which, among other things, reports that "all lawyers contacted in the work seem to be dignified, with established practices and high moral and ethical standards of procedure."[4]

Apart from its controversial aspects and partisan tone, there is much in the book of interest to the layman. It contains a clear, concise and altogether interesting exposition of the principles and procedures that govern and control in the trial of lawsuits. The author ranges over a wide field. Not only does he cover the subjects of negligence, contributory negligence, comparative negligence, proximate cause and the doctrine of last clear chance, as these principles are applied in negligence cases, but he also deals with suits for libel and slander and a great variety of claims under the workmen's compensation laws. Potential plaintiffs are warned against dilatoriness that would result in a claim being unenforceable because of the running of the statute of limitations. They are told also of the frustrating experience of suing a physician for malpractice because of the difficulty in obtaining expert testimony in support of an aggrieved person's claim. But while the book is assertedly addressed to the layman, quite likely it will be most widely read by the legal pro-

[4] *Id.* at 294.

fession. Even those lawyers who violently disagree with many of the views expressed therein will find it interesting. The book abounds in "shop talk" and in anecdotes of the court room. The well-told accounts of many unusual and amusing incidents arising in the trial of cases will make the reading of the book a pleasant experience for even the dissident barrister. Trial lawyers, particularly the young and inexperienced, as well as law students, will profit by reading it. The author offers the sage advice to "never underestimate the intelligence of a jury or overestimate its information."[5] He emphasizes the necessity of intelligent and persistent investigation and painstaking preparation as the essential ingredients of success in the trial of cases. In stressing the need for thorough investigation of the facts, Mr. Belli does more than merely sermonize; he demonstrates the value of unremitting effort to ascertain the facts by reference to actual cases in which imaginative and persistent investigation resulted in the discovery of facts which insured the success of litigation.

Like many other successful advocates, the author is a strong believer in the efficacy of demonstrative evidence. He writes well and at times, brilliantly; but it is not unfair to say that he attempts to cover too much ground. As a successful trial lawyer and author of several other books dealing with the subject of personal injury litigation, he writes with a confidence born of success in both fields of endeavor. *Ready For The Plaintiff* is not a great book, but it is an interesting and provocative work well worth reading.

*Charles J. McNamee**

HARLAN FISKE STONE: PILLAR OF THE LAW. By Alpheus Thomas Mason.[1] New York: The Viking Press, 1956. Pp. xiii, 914. $8.75. The author has attempted to duplicate his earlier and impressive work on the life of Justice Brandeis in this biography of another pillar of the law, Harlan Fiske Stone. However, in the reviewer's opinion, he has not succeeded. Mr. Mason, nevertheless, has provided us with a competent, if not compelling, work which constitutes required reading for the lawyer and for close observers of the Supreme Court of the United States. Indeed, in

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[5] *Id.* at 251.

* District Judge, United States District Court for the Northern District of Ohio.

[1] McCormick Professor of Jurisprudence, Princeton University.

the commentator's opinion, this book should leave its mark as a contribution to the source materials available to students and historians of the law and contemporary American political history, rather than as an imposing biographical work.

In further excuse of what the reviewer considers Mr. Mason's failure to put together a really outstanding biography, the author would be entitled to plead certain limitations of his subject matter as being responsible, rather than deficiencies of his own style, research or scholarship. Harlan Fiske Stone was a very great and good man; nevertheless, it is the very reasonableness of his nature which makes it difficult for any biographer to portray him as a hero, crusader or villain without which dramatic trappings most biographies almost unavoidably lapse into a tedium which does not make for inspired writing or easy and long remembered reading. Brandeis was a crusader, Holmes a patriarch of the law and a pariah of philosophy, Marshall a constitutional innovator, and Hugo Black a controversial public figure. The biographers of these men had material much more adaptable for inspired biographies in the grand tradition of American historical-biographical writing than Mr. Mason had at his command when he wrote his book.

However, to say that Harlan Fiske Stone was not one of the dramatic figures of American constitutional history is not, in the least, to suggest that he did not have an enviable public career and contribute significantly to the development of American life and law. Any man who had the honor of serving at various stages of his career, as dean of the Columbia Law School, partner in a distinguished New York law firm, Attorney-General of the United States, Associate Justice and then Chief Justice of the Supreme Court of the United States, quite obviously enjoyed unique opportunities to leave the imprint of his philosophy on the times which knew him. Harlan Fiske Stone did not fail in this respect. He used his opportunities of public service, as teacher, dean, lawyer and judge to advance both his profession and the body of legal principles and rules which comprise American public law in the direction of fuller realization of the twin goals of democracy, *i.e.*, security within the bounds of liberty. And if Stone had to choose between the two, the history of his public career makes it quite clear that his preference would be on the side of liberty.

Harlan Fiske Stone was an intellectual. About that there can be little doubt. Despite sharing the distaste of his friend, Judge Learned Hand, for some of the young, less humble, intellectuals of the New Deal, the *fillii aurorae* as he called them, it is quite clear that Stone viewed the law, as an arm of philosophy and

as an intellectual process. His public and private utterances as well as his judicial opinions, almost without exception, confirm this judgment of the man. However, while Stone was entitled to regard intellectuality as a moving force in his nature, he was equally justified in laying claim to other strains of human character which served him almost as well in making him the man he was and explaining his commendable contributions to the development of American legal institutions. Stone was a Yankee. He had deep roots in a New England Puritan past and family tradition. Not only did such a genealogy assist in constituting him as one who entertained considerable reverence for American traditions and the Anglo-Saxon basis of our law, but also, perhaps, explains why he remained always a cautious and practical fellow, given to extended and weighty deliberation before acting in any direction, whether in deciding a case or taking some action with respect to the political arena or in regard to the affairs and administration of the law school which he served so well as dean. Finally, Justice Stone, on most occasions, demonstrated that straightforwardness of inquiry and response which our New England friends somewhat immodestly like to consider as the exclusive trademark of their region and their people.

Throughout his book the author exploits the rugged virtues that undoubtedly were those of the man about whom he writes. He does this well. Unfortunately, he has done this too effectively, to the point where they seem, on occasion, overdrawn. However, the instances or opportunities of heroic action in the life of Harlan Fiske Stone are overshadowed by the undramatic, recurrent consistency of his capable and workmanlike performance at the bar and on the highest bench. It is because of this, the reviewer believes, that Mr. Mason's treatise unavoidably takes on a pedestrian cast in which dramatic and decisive incidents and moments in the life of the man about whom it is written furnish comparatively short hiatuses in the otherwise measured but monotonous procession of tasks well, but not inspirationally, executed.

There is another trait manifested by Harlan Fiske Stone in his public life developed at considerable length by the author. Stone, despite his integrity, his courage, and determination of character, was frequently indecisive and as a consequence often seemed to give the appearance of playing both sides of the philosophical and political fences. For instance, he could never quite make up his mind whether he wanted the Court "packed" as President Roosevelt proposed, or whether it was better to endure the judicial obstinacy of his brethren in the majority who seemed intent on demonstrating that the Constitution was no longer a workable charter of government. His wavering between the

liberal and conservative points of view is most charitably explained, perhaps, by the very reasonableness of the man; he was able to see good in most men and in most philosophies. Accordingly, he could be vigorous in his condemnation of the moribund views and Toryrhetoric of his colleagues of the bench and bar during the late twenties and in the early thirties as the shadows of an approaching depression gave way to the stark realities of an economic collapse. On the other hand, he was quite sincerely shocked by the radicalism and lack of concern for *stare decisis* that his new colleague, Hugo Black, demonstrated in his brutally candid dissents during the latter's early period of service in the Supreme Court. And from its first days, Stone could complain in private of the "grave faults of the Roosevelt administration . . . its lack of financial foresight and its reckless disregard for the most elementary points of justice in dealing with grave public problems." No New Dealer was Harlan Fiske Stone. While he put the imprimatur of constitutional approval on most of Roosevelt's works, there can be no doubt he remained to the last a Yankee, an ardent admirer of Herbert Hoover, and a conservative in philosophy, if not in judicial deed and utterance.

However, it is clear that the philosophical conservatism of Justice Stone led him in the end to the same place where Holmes' philosophical skepticism took the Great Dissenter. As Stone put it, he knew, only too well through personal experience, that the "courts are not the only agencies of government capable of governing." With Holmes, he agreed on the necessity of social and economic experimentation within the broad bounds of the purposefully general, almost platitudinous, principles of the Constitution. Stone, however, did disagree with Holmes concerning the basis which underlay their common conclusion regarding the wisdom and the efficacy of judicial self-restraint in passing upon the constitutionality of legislative enactments. Holmes surely would say concerning social and economic experiments undertaken by the body politic that "they can't do it, but let them try." Stone would rather reply that "they should not do it, but judges are not the ones to oppose."

Stone's willingness "to give opportunity for play of the joints" in the constitutional process by sustaining the constitutionality of legislative attempts to meet economic and social problems of the times without repudiating the traditions of the past or imparing the principles of the Constitution entitle him to be known as a judge who, while taking cognizance of the past, looked to the future, and thus kept attuned to the present. This judgment of the man is best supported, perhaps, by referring to his famous footnote in his opinion in *United States v. Carolene Prod-*

ucts Co.[2] That now classic summary of why personal rights occupy a higher echelon in the scheme of our Constitutional values than do mere property rights is a penetrating revelation of Stone's understanding of the essence of our democratic government. He knew that unless the rights of the minority were protected in the areas of free speech, freedom of religion and free exercise of the franchise, we would have repudiated the basis or assumption on which a democracy rests, *i.e.*, political truth will be fashioned in and evolve out of the free interplay and clash of competing ideas and philosophies. If this assumption is adhered to, then courts are correct in exercising an attitude of restraint when passing upon the constitutionality of legislative enactments; but if legislators, conversely, attempt to impair the basic tenet of democrary by fettering the rights of minorities to compete in or contribute to the contest of ideas and philosophies, then the Court should be vigilant in striking down such attempts.

However, when we turn to those aspects of Stone's career not directly concerned with his judicial philosophy and the opinions he composed, the record is not quite so commendable, although far above the average. As Chief Justice, for instance, he was much too tolerant of his temperamental and egocentric colleagues. *Seriatim* opinions, both dissenting, concurring, and dissenting in part and concurring in part, became the order of the day. The judicial feuds that burned within and the personal animosities that pervaded the august inner sanctum of the conference room of the Supreme Court of the United States became material for the political and popular commentators of the times. As a result, the justices who had done most to redeem the Supreme Court as a working instrument of effective government, taking its proper place in our constitutional sphere by not exceeding the authority which the founding fathers intended it to exercise, were the same men who brought the Court into popular disrepute as an institution and as a symbol of government entitled to the respect and admiration of the citizenry, whatever the comments of the political smart-alecs. Yet Stone labored to keep the Court removed from the political battles which raged around it. He did yeoman service in resisting President Roosevelt's attempts to appoint members of the Supreme Court to a second portfolio in the government, whether it be a rubber czar or head of a Pearl Harbor investigation. While he did not entirely succeed in these efforts, Stone must be commended for such resistance, for unless the Court remains (and equally important, gives the appearance of remaining) detached from and impervious to the pressures or

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[2] 304 U.S. 144, 152 (1938).

pleasures of either the executive and legislative branches of the government, a serious fissure in our constitutional structure will be the unfortunate result.

In conclusion, the reviewer would like to say that Mr. Mason's biography of Harlan Fiske Stone is indeed an authoritative work. However, authority usually is disposed to reveal itself in dull, flat tones. Order and continuity are so often its hallmarks. These also are both the vices and the virtues of this book. If one can survive the tedium of perusing it from cover to cover he will be rewarded, if not enriched, intellectually. One final word, however, as a further encomium of the author's effort. Mr. Mason has spurned in his book the temptation to suppress the few traces of clay which appear in the feet of his hero. A recent biographer of another Chief Justice of the Supreme Court of the United States, the predecessor of Chief Justice Stone, could have emulated Mr. Mason's candor in this regard. Actually, it is when the author is developing or exploiting the weaknesses of Justice Stone's character that the subject matter best catches his reader's attention and invokes more interest and understanding. In that connection, Stone's private complaints to a Washington columnist about what he regarded as the less than adequate abilities and judicial temperament of one of his younger brethren, which were later revealed in public press, supply one of the more interesting tales in the book. If the author had done more in this respect it is quite possible that the final production would have been a livelier and more stimulating work. On the other hand, if this had been attempted it probably would have resulted in a less accurate biography of Harlan Fiske Stone, for the latter was undoubtedly the original, reasonable, likeable, admirable, hardworking man, despite the fact that his career would never entitle him either to be known as a crusading fighter in the war of constitutional ideas or as a shirking scoundrel in that conflict.

As a lawyer the reviewer perhaps may not be unbiased in this next criticism. The book seems to suffer, as do most books about lawyers which are written by political scientists, from the author's less than clear perception of the cases he attempts to analyze throughout the book. This deficiency is not so apparent when the decisions under discussion are concerned with constitutional questions. In the rarified atmosphere of constitutional law the political scientist, in the main, survives quite well. However when he turns his hand to the more mundane fields of the law, such as conflicts of law, commercial law, statutory interpretation and above all, federal procedure—or as professionals like to call them, "lawyers law" — the political scientist is woefully deficient in the equipment with which he tackles a difficult job. The reviewer

is sorry to say Mr. Mason has proved no exception to the rule. However, we are grateful for what he has provided us, whatever lingering regrets we may entertain as to whether he might not have embellished or adorned the fare a bit more.

*Alfred L. Scanlan**

* Member of the bars of the District of Columbia, Alabama, and Maryland.

BOOKS RECEIVED

ACCOUNTING

BASIC ACCOUNTING AND COST ACCOUNTING. By Eugene L. Grant. New York: McGraw-Hill, 1956. Pp. v, 623. $6.50. Basic accounting principles and cost accounting procedures are discussed, the work being designed primarily to familiarize the layman with good accounting practices.

BIOGRAPHY

*HARLAN FISKE STONE: PILLAR OF THE LAW. By Alpheus Thomas Mason. New York: The Viking Press, 1956. Pp. xiii, 914. $8.75.

TIGER AT THE BAR. By Chester Harris. New York: Vantage press, 1956. Pp. 452. $3.95. A dramatic and highly interesting biographical sketch depicting the courtroom tactics and finesse of famed criminal lawyer Charles Joseph Margiotti.

COURTS

THE SUPREME COURT. By Bernard Schwartz. New York: Ronald Press, 1957. Pp. vii, 429. $6.50. In light of the vast changes that have occurred within our governmental policy during the last quarter-century, this book analyses Supreme Court decisions in the areas where the opinions of the Court are most noticeably felt.

ESTATE PLANNING

CONTRACTS TO MAKE WILLS. By Bertel M. Sparks. New York: New York University Press, 1956. Pp. 230. $5.00. This text treats of the appropriateness of the contract to make a will in the field of estate planning, and presents a guide to those lawyers who find it convenient to employ this device.

INTERNATIONAL RELATIONS

HERITAGE OF THE DESERT. By Harry B. Ellis. New York: Ronald Press, 1956. Pp. vi, 311. $5.00. A portrait of Arab people based upon personal experiences of the author, coupled with detailed explanations of the factors which signify the importance of the Middle East in the international picture.

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* Reviewed in this issue.

JURISPRUDENCE

ON THE NATURE OF MAN. By Dagobert D. Runes. New York: Philosophical Library, 1956. Pp. 105. $3.00. A searching and challenging insight into the thinking process of man, presenting the author's definition as to human morality.

LEGAL EDUCATION

*ON THE TEACHING OF LAW IN THE LIBERAL ARTS CURRICULUM. By Harold J. Berman. Brooklyn: The Foundation Press, 1956. Pp. 179. Price unlisted.

LITERARY PROPERTY

THE LAW OF LITERARY PROPERTY. By Philip Wittenberg. New York: World Publishing Co., 1957. Pp. 284. $5.00. An exposition of the law of literary property, severed from technical legal jargon, it guides authors and publishers about the various media of communication.

PERSONAL INJURY

*READY FOR THE PLAINTIFF. By Melvin M. Belli. New York: Henry Holt and Company, 1956. Pp. x, 338. $6.50.

POLITICS

AMERICAN DEMOCRACY UNDER PRESSURE. By Donald C. Blaisdell. New York: Ronald Press, 1957, Pp. v, 324. $5.00. The author sets forth an explanation of the effects of pressure politics on the traditional liberties of our American heritage.

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