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Review of “Holmes-Pollock Letters: The Correspondence of Mr. Justice Holmes and Sir Frederick Pollock, 1874-1932,” Edited By Mark de Wolfe Howe

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BOOK REVIEWS

HOLMES-POLLOCK LETTERS: THE CORRESPONDENCE OF MR. JUSTICE HOLMES AND SIR FREDERICK POLLOCK, 1874-1932. Edited by Mark de Wolfe Howe, with an introduction by John Graham Palfrey, Cambridge, 1941, Vol. I; pp. i-xxii, 275; Vol. II, pp. 359. \$7.50.

Whoever first suggested the collection and publication of these letters has deserved well of the republic. The layman will find in them a whole epoch, seen through two diversely refracting prisms. And he will also find in them vastly interesting psychological studies. Two men of first rate intellectual power and, in different degrees, of first rate social importance are depicted here in the best way possible, which is by their own uncensored and unrevised statements, protected till now—if I may use an expression that Pollock would have understood—by the excommunication of Rabbi Gershom who in the 12th century cursed any unlicensed person that opened a sealed letter.

It was the characteristic of these two superlatively good lawyers that they talked of a great many other things besides the law and thus made their correspondence a book for the general public. It is evident that they thought literature, human affairs, and philosophy well within the range of interests of a lawyer. But the things that filled their non-professional leisure were widely diverse. Holmes never liked the classics but tried terribly hard to do so, because men he respected as he did Pollock took such delight in them. Pollock made somewhat less of an effort to find interesting the things his friend liked. Pollock's scholarship was by much the wider and more critical. He knew Greek and Latin as an expert does, as well as German and French. He was competent in Persian and had at least a smattering of Sanskrit, Hebrew, and Arabic. He was a trained palaeographer. Holmes, even in those historical questions with which, I fancy, he displayed less impatience than he really felt, had a keener and more incisive judgment. Above all, he knew much more about men than did his distinguished correspondent. Pollock never quite shed his scrolls.

All this comes out with admirable clearness in this interchange of letters. And what is quite clear is that strong as the ties of respect and affection were that bound these men, they never really quite understood each other. They were thoroughly different in temperament and character. I think it is profoundly true what Holmes wrote in 1929—at the age of 88—to the man with whom he had been constantly exchanging ideas for fifty-five years (II, 253), "You open chasms between us that seem to reach to the middle of the earth—but then I realize they are only a foot wide at the mouth, and I am comforted." The chasm *did* in fact reach to the middle of the earth but over it the two friends could easily clasp hands.

It is curious that what separated them could be called political. Pollock was an intense and bitter Tory, an uncompromising and ill-tempered partisan. If he had examined the Zinoviev letter as he would have examined something that purported to be written by Jocelyn de Brakelande, we may be sure he would have more than doubted its authenticity. If the evidence

in the *O'Dwyer* or the *Sacco-Vanzetti* case had concerned the Ban of Kenilworth, he would have found it, I feel sure, less convincing than he did. He disliked Wilson and despised R. M., i. e., Ramsay-MacDonald, since most Tories did.

And like the successive Tory ministries who left Britain naked to its cruel enemies, he was hell-bent on ultimate war with Moscow. To be sure, the letters antedate the Hitler-Terror, but Pollock's insistence on a danger that threatened his class rather than his country is a foreshadowing of Cliveden and Munich and the footling management of the war before the advent of Churchill.

Holmes, on the contrary, was as much of an agnostic in politics as he was in religion. He had little faith in machinery but much in men of good-will, and his own good-will embraced all degrees, even reputed anarchists who wished "to talk drool about a proletarian dictatorship." To follow a party line as faithfully and uncritically as Pollock followed his, would have been inconceivable for him.

To Pollock's credit be it said that his creed did not have some of the more offensive concomitants of Toryism. He was completely devoid of race-prejudice. Hindus and Parsees, Jews and Poles and Turks, were dealt with wholly on the basis of his estimate of their minds and characters. If his scholarly ghost will forgive me one of the most hackneyed of Latin tags, he made real the Virgilian line: *Tros Tyriusve—nay, niger albusve—nullo discrimine agetur*.

Philosophy occupies the minds of both the friends. Pollock's interest was almost professional. His book on Spinoza is a necessary part of the bibliography of Spinozist studies. Holmes was much more of a dilettante, quickly repelled by abstruse speculation but with a lively interest in mathematical schemes of the universe which he treated as entertaining diversions rather than as revelations of truth. His very quotable statement (II, 120) "that infinite meditation upon a pint pot wouldn't give us a gill of beer" presents his view as well as anything could. Holmes was interested in the beer rather than the pot. We can not be so certain of it in the case of Pollock.

Holmes read much in economics and even tried to master Marx's *Kapital*, with which he was frankly bored. It is hard to see in the correspondence that Pollock was interested in the subject at all. On the vexed question of labor, Pollock keeps himself within strictly legal discussion in which he is in the main on the side of Holmes. At any rate, he approved of *Vegelehrn v. Guntner* and was pleased to see it become a cornerstone in the British edifice as well (II, 79). And on child-labor he has the humanity of a gentleman as other men of his class had had before him. Shaftesbury is a notable example. With deferential hesitation I should say, that neither of these eminent men had any full realization of the methods and results of modern economic research. Holmes, for example, loathed rate cases (I, 238), and thought that labor was in a dominant position in the country. Pollock's general economic notions rarely rose above the idyllic harmonies of a Jane Austen society.

One extraordinary fact about both of them was their indefatigable industry. Pollock worked diligently at law-reports, editions of medieval texts,

management of the Law Quarterly Review, and revisions of his textbooks. Holmes wrote an opinion a week and examined a huge number of petitions for certiorari, "in each of which" he says (I, 247) "we had to familiarize ourselves with the case so far as to decide whether it was a proper one to come up, a question that I, at least, generally answer with very little regard to whether the case seems to have been rightly decided or not." Counsel are invited to recall this fact. If we remember further that "The Common Law," which contains a mass of learning, in addition to as keen an analysis of historical legal data as had till then been known in English, was written in the intervals of an active practice by a man under forty (I, 16), it becomes apparent that brilliance of intellect did not seem to Holmes an adequate reason for omitting labor.

All this the layman will appreciate as well as the lawyer. But he will miss at least half the savor of the book. Its full enjoyment will remain the privilege of lawyers. Both Holmes and Pollock loved the law well enough to talk about it frequently in the intervals of helping create it, the one by his decisions and the other by his books. Which is not to say that Holmes has not been effective in the latter way as well. It is the characteristic of good lawyers to think their business is as fruitful a topic of conversation as anything can well be, and the law will be in a parlous case when lawyers are ashamed to talk shop.

Pollock and Holmes quote enough cases to make a case-index a valuable help. Pollock fulminates against his "old enemy," *Derry v. Peek* (I, 49) and Holmes takes pride in introducing into Massachusetts, in despite of precedent, the external standard of negligence even in criminal cases (I, 26). Over and over again Pollock comes back to Holmes' paradox that an obligor is bound only in the alternative, i. e., to pay damages or to perform, a position Holmes pertinaciously defended to the last.

It may interest orthodox defenders of *stare decisis* that Pollock finds it (I, 239) "strange that a proved series of blunder should be more sacred than one;" and it may interest "realists" that Holmes not merely regarded the *Mogul* case (I, 54) as an expression of class sympathy, but told Pollock so. It may also interest those who seek to dehumanize our courts to read the caustic comments of Holmes on his colleagues both of the Massachusetts bench and of the Supreme Court. On one occasion (II, 155) he tells Pollock that the majority, in a decision from which he dissented, "failed to grasp the first principles of tort."

These things can be indefinitely multiplied, but lawyers ought to make their own collection. To make the reading of these volumes the occupation of the first moment of leisure that can be stolen for it, may go far to help redeem us from the imputation of illiteracy with which both Holmes and Pollock charge their profession (II, 30, 32). And if in the course of this reading, it becomes evident that Holmes had his vanities and obstinacies and Pollock his pedantries and bigotries, that fact will doubtless restore our self-esteem without in the slightest qualifying the admiration we feel for both or impairing the high satisfaction the book leaves with us.

The editorial labors of Professor Mark de Wolfe Howe, himself a distinguished scholar, have added much to the value—indeed to the intelli-

bility of the book. He tells us (I, vii) that he followed a rule of thumb in his editing but it is hard to see that he has omitted anything of importance. I offer the following supplemental notes which might interest lawyers or the postulated intelligent readers.

I, 14. The Year-Book somebody is Brian, one of the ablest of the medieval English judges. He was a contemporary and associate of Littleton. 17 Ed. IV, 1-2.

I, 53. Boscovich's "points" were "atoms without extension" as set forth in his Theory of Natural Philosophy published in Vienna in 1759.

Misprints to be noted are (I, 14), *hopiseien* for *horiseien* in the passage from Aristotle; (I, 84), *inter apries juris* for *inter apices juris*; (I, 107), *ka* for *kai* in the passage from the Odyssey. Perhaps the frequently recurring *non obstant* should be *non obstante*.

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THE LAW GOVERNING LABOR DISPUTES AND COLLECTIVE BARGAINING. By Ludwig Teller. New York: Baker, Voorhis & Co., 1940. Three volumes: vol. 1, pp. 673; vol. 2, pp. 675-1401; vol. 3, pp. 1402-2149. \$25.00.

It is high time that a new general text on labor law should appear. Fourteen years have gone by since Oakes' book¹—never adequate in any event—came off the press. Multitudinous changes in labor law have occurred since then. The National Labor Relations Act is but the most important of them. Anti-injunction legislation also looms large, and common law changes have been far from meager. For the practitioner as well as for the research man, it had become imperative that there should be some more adequate guide to the materials than was available. True, the law reviews, the loose-leaf services, and such a book as Rosenfarb's on the National Labor Relations Act,² cover as much material as is presented by Mr. Teller and cover it more thoroughly and more critically. But a handy reference work is also of importance.

We have been swamped, for instance, with cases in the Circuit Courts of Appeal arising under the National Labor Relations Act. The West Publishing Company's atrocious Master & Servant, paragraph 16, duly records all of their headnotes. This may be better than nothing, but how much better is something few would quarrel about. Certainly there was room for sorting them out and putting them into usable form. The merit of the bulk of Mr. Teller's second volume is that it does just this. But it goes further, for it pays minute attention to the Labor Board's own opinions, as the West Publishing Company does not. To say that the result is good reading or that it can be completely relied on would be to say too much. Here, as in too many commercially sponsored treatises, the cases are treated democratically. One is as good as another. I am exaggerating, of course. Mr. Teller's treatment of the *Globe* case,³ for instance, recognizes

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1. *The Law of Organized Labor and Industrial Conflicts* (1927).
2. *National Labor Policy and How It Works* (1940).
3. *Globe Machine & Stamping Co.*, 3 N. L. R. B. 294 (1937).