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Book Reviews

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BRANDEIS: A FREE MAN'S LIFE. By Alpheus Thomas Mason. Viking. Press, New York. 1946. Pp. xiii, 713.

A reasonable familiarity with the life of the late Justice Brandeis should be a *sine qua non* of every lawyer's education. I say this not merely because his judicial opinions have been important influences in our jurisprudence and his political and economic views important factors in the development of much legislation which affects our lives and our work, although greater understanding of the man might bring more enlightened interpretation of his work. Brandeis' life could hardly fail to be an inspiration and an education from the professional standpoint.

Professor Mason designates it "a free man's life." It was that; and it was so because of an organization and efficient use of time which every lawyer should cultivate. Most of us "can't find time" to accomplish what seems to be necessary to achieve success in even a single aspect of professional activity. Brandeis made time to do well many forms of professional life. He was extraordinarily successful in his practice. Starting from scratch, without money or family influence, hanging out his shingle in a great city with a law school classmate (maybe part of the secret is in choosing the right partner), he was a millionaire in less than thirty years, acknowledged one of the two or three outstanding lawyers of New England, designated by the Chief Justice of the United States as "the ablest lawyer he ever heard argue in that court." And during the latter half of those thirty years, and even more in the years following, he devoted an ever increasing proportion of his time to public causes without compensation.

Many of the public causes he championed were matters of absorbing interest in their own right, but it is the philosophy of life which led Brandeis to devote himself to them which is of the greatest significance at this date. And the lawyer observer must find special interest in the extension of that philosophy which caused Brandeis to regulate the manner of his representation of private clients by his views of the public welfare. It is axiomatic that a lawyer must not represent conflicting interests at the same time and skeptical observers of our legal system have often suggested there was incompatibility in a lawyer's whole hearted devotion to his client and a simultaneous regard for social values. Some light on the merit of those queries may be thrown by the record of the Senatorial investigation of nominee Brandeis when he was proposed for the Supreme Court.

And that record may well give rise to homilies on the fallibility of man and the pettiness of party politics. Six ex-presidents of the American Bar Association saw their public responsibility and volunteered their pontifical judgment that the nominee was "not a fit person to be a member of the Supreme Court of the United States." One of the six later had the privilege of sitting on the same court

with Brandeis and of privately—if not as publicly as good sportsmanship would demand—eating his words. Most of the other erstwhile chosen leaders of the Bar are to-day totally forgotten. Just possibly something is wrong with the standards by which the Bar has at times selected its outstanding members. And *quaere*, would more widespread familiarity with the record of Brandeis' life including the fight over his appointment induce more humility and caution when other men, whose professional careers or social outlooks don't fit the pattern to which the organized bar is accustomed, are presented for confirmation?

The Senatorial vote on the Brandeis appointment was on straight party lines. So were the committee votes in the great Ballinger investigation, in which Brandeis had appeared as most effective counsel. They are not re-assuring spectacles of the calibre of our statesmen.

There can be no doubt that a study of the Brandeis life is instructive. Professor Mason has done a scholarly, well documented biography. How much he has improved upon the earlier work of Lief, considering the obvious advantage of having the other book before him, is debatable. The new work is the more complete, probably the more objective. Certainly there is much to be said for a dispassionate recital of the facts; certainly it would be in the Brandeis tradition; but I do not think the function of a great biographer stops there. Mr. Brandeis was one of the great influences on legal and social thought of our time. The evidence all points to a warm and stimulating personality. Professor Mason gives us the evidence but doesn't fully re-create the personality. This seems to me the most serious fault of the biography. Mr. Walter Armstrong has suggested that perhaps Mason actually found his subject to be so reserved and ascetic that the impression of the book is deliberate but if that is the case, the biographer saw a different man than did many others who knew him well. The treatment of Brandeis' philosophy of government, law and business, which found its fullest expression after he mounted the bench, is not extended. Indeed, by far the greater part of the book deals with his life before he became a member of the court. Professor Mason's emphasis here seems to me to be quite proper. Brandeis spoke for himself very adequately, and what he said and wrote is on record for all to read. Critiques of those views may have much merit—indeed, Professor Mason has tried his hand at that elsewhere—but a biography of the life in which the philosophy was developed may stand on its own, without attempting to incorporate all the intellectual experience of the subject.

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