



authors is possible has been acknowledged by them in their observation "How this problem would be resolved is uncertain" (p. 923). This illustrates the great care and circumspection exhibited by the authors in dealing with the complex problems presented by the legislation which was described in 1922 by Sir Leslie Scott, Attorney-General, when he introduced it in Parliament, as "the biggest bill ever introduced into Parliament". The book under review establishes the justification of the claim made by Sir Leslie Scott that the legislation in question "is not revolution but evolution... It is the slow and gradual product of half a century's work by legal reforms building on existing foundations".

In short, the book under review fully deserves all the praise that has been bestowed on it by the reviewers of the First Edition and bids fair to become a classic on the subject.

G. C. V. Subba Rao*

Justice Oliver Wendell Holmes : The Shaping Years (1841-1870).

By Marke DeWolfe Howe : Published by the Belknap Press of Harvard University Press : pp. xii and 316 & index 12 pp. Price \$ 5-00

This volume has been written by Professor Marke DeWolfe Howe in partial fulfilment of an obligation undertaken by him at the request of Mr. John G. Palfrey, the executor of Mr. Justice Holmes, to prepare a biography of that great American judge. It is a fascinating study of the first twenty-nine years of the justice's life, appropriately named by the biographer as "The Shaping Years", a study which makes a valuable contribution to the understanding of the influences which moulded his mind and temperament during the formative years, a mind of extraordinary richness and a temperament of eternal youth which peep not only through his court opinions but also through his extra-judicial writings and letters. In his preface to this work, Mr. Howe tells us that the materials available for this period of the Justice's life are particularly rich as "during the civil war, as on his first European trip and in his first two years of practice he kept diaries which have survived and in which daily events are recorded".

Those who are conversant with Mr. Justice Holmes's judicial opinions and his letters will have noticed a strain of skepticism in his

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mental make-up. In suggesting to Morris Cohen what factors were responsible for his own basic skepticism, Holmes spoke of the predominant influence as "the scientific way of looking at the world. My father [he said] was brought up scientifically..and I was not. Yet there was with him, as with the rest of his generation, a certain softness of attitude towards the interstitial miracle—the phenomenon without phenomenal antecedents, that I did not feel..Probably a skeptical temperament that I got from my mother had something to do with my way of thinking..But I think science was at the bottom.." ¹. But it must be pointed out that his skepticism was not of the paralyzing kind, which may easily slide into a sterile cynicism. Holmes had an irrepressible faith in the power of the human spirit, given the necessary freedom for self-expression, to build a better civilization on this earth than what we now know. This attitude of his, therefore, made him tolerant towards the views of other people, views which he himself may not have liked, and, in fact, in one of his famous opinions he said that "if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free-thought—not free thought for those who agree with us but freedom for the thought that we hate". ² It is because of this basic tolerance of approach towards experimentation in every sector of human activity, he would not, like some of his colleagues on the Bench, employ the judicial veto over State laws intended to grapple with the economic and social problems of the day by recourse to the vague contours of the due process of law clause of the fourteenth amendment.

In one of his great dissenting opinions lodged in *Lochner v. New York* ³ where the Supreme Court by a majority had set aside as contravening the due process of law clause, a New York Statute limiting the hours of labour in bakeries to not more than sixty hours in any one week or ten hours in any one day as "meddlesome interferences with the rights of the individual" to contract in relation to his labour, Justice Holmes said that "Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statistics" and that the case was being "decided upon an economic theory which a large part of the country does not entertain". He added that "if it were a question whether I agreed with that theory, I should desire to study it further and long before making up

1. See pages 17–18 of this book.
2. *United States v. Schwimmer*, 279 U.S. 644 at 654–5.
3. 198 U.S. 45.



my mind, but “I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of the majority to embody their opinions in law”. Justice Holmes was a great champion of liberty of expression. As he himself said in his dissent in the *Abrams* case ⁴ it is a part of the American system to be “eternally vigilant against attempts to check the expression of opinions that we loathe” and “only the emergency that makes it immediately dangerous to leave the correction of evil counsels to time warrants making any exception to the sweeping command, ‘Congress shall make no law . . . abridging the freedom of speech’”. He was also a strong upholder of the principle that a judge ought to allow to the legislatures, who have to bear the brunt of finding solutions for the economic and social problems of the day, the widest latitude of legislative experimentation and that it would be a misfortune” if a judge reads his conscious or unconscious sympathy with one side or the other prematurely into the law; and forgets that what seem to him to be first principles are believed by half his fellow men to be wrong”. ⁵ Mr. Howe in the book under review has given us an insight into the Justice’s life when these basic attitudes towards human problems were being shaped.

In the first two chapters of his book, Mr. Howe has given us a vivid account of Holmes’s childhood years and of his stay at Harvard College. Holmes’s participation in the civil war as a combatant in the Union forces ⁶ and his experiences in that stirring period form the subject-matter of the next two chapters. Holmes was wounded in that war, twice dangerously and once lightly. In the fifth chapter we have an entertaining account of his days at the Harvard Law School which he joined after leaving the army. There we are told that the Law Faculty consisted then of three men, Theophilus Parsons, Joel Parker and Emory Washburn. Mr. Howe refers to the members of the Faculty in these words: “Their varying talents suggest that they had been selected in the hope that if the judicial experience of Parker, once Chief Justice of New Hampshire, the productive scholarship of Parsons, author of numerous treatises, and statesmanship of Washburn, former Governor of Massachusetts, were brought together in the Law School, Story’s Spirit would survive in legal education.” ⁷ We are told

4. 250 U.S. 616, at pp. 630-1.

5. Holmes, *Collected Legal Papers* (New York, 1920), p. 295.

6. He was commissioned as a first lieutenant on July 10, 1861.

7. P. 184



that Park though his technical competence was indisputable, was a singularly dull lecturer while Parsons who was a man possessed of considerable charm, belonged to "that breed of teacher which considers that the personal anecdote, the apt recollection of a departed giant, or the simple bit of professional gossip contributes to a student's education"⁸. Parsons was liked by his pupils. In those days a law degree could be awarded, as it was awarded to Holmes in 1866, "after three terms of unrequired and, therefore, casual attendance at lectures". It was then very common for law students to get a part if not the whole of their preparation for the bar by working in a practitioner's office. It was only after the appointment of Christopher Columbus Langdell as Dean of the Law Faculty by President Eliot that the new Faculty took the important decision that candidates for the LL. B. Degree in future should take written examinations before they were graduated. We have three further chapters in the book headed "Contours of Conviction", "Europe" and "Apprenticeship", all very readable. The choice having been made that law should be his chief concern in life, Holmes pursued it with a single-minded devotion and became an eminent judge.

Admirers of Justice Holmes were already greatly indebted to Professor Howe for his careful and discriminating editing of the *Holmes-Pollock Letters* and the *Holmes-Laski Letters*. This volume which is a work of great labour, skill and devotion adds to that debt. The publication of further volumes by Professor Howe dealing with the later years of the Justice's life will be awaited with great interest.

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The Cy-près, Doctrine by L. A. Sheridan, LL. B., Ph. D., Barrister-at-law, Professor of Law and Head of the Law Department in the University of Malaya and V. T. H. Delany, M. A., LL. D., Barrister-at-Law, Lecturer in Law in the Queens University of Belfast, London : Sweet & Maxwell, Ltd. 1959. XXXVI and 160 and (index) 6pp. £ 2 10s net.

The book is a valuable contribution to the legal literature. Its usefulness to the Indian student and the practitioner is beyond doubt. In the absence of specific provisions dealing with the doctrine of *Cy-près* under the Indian Succession Act or the Transfer of Property Act, the doctrine in India had its evolution in judicial decisions, the important early authority in the field being the decision of the Privy

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8. P. 187