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## Book Reviews

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## BOOK REVIEWS

OF LAW AND MEN, by Felix Frankfurter. Harcourt, Brace, & Co., 1956.

Having read the review of Professor Rodell of Yale<sup>1</sup> of this most interesting compilation of the writings and speeches of Mr. Justice Frankfurter, this writer has resolved to record in much simpler language, his impressions of this fine collection, edited by Mr. Philip Elman.

At the outset, Mr. Justice Frankfurter has written on subjects vital to our times. To those interested in criminal law, there is reproduced the testimony of Mr. Justice Frankfurter before the Royal Commission on Capital Punishment. Here the Justice furnishes a most illuminating review of the actual status of capital punishment in the several states of the Union in 1950, although he states quite frankly that he is "not an authority on criminology". Authority or not, the picture he presents to the Royal Commission could well be the source of an interesting speech on the puzzling problem of capital punishment as it exists today.

On page 44 we find a discourse on the reading of statutes, a vital part of the business of every judge and lawyer. To those who find statutory construction at times difficult, the Justice has these consoling words, "But unlike mathematical symbols, the phrasing of a document, especially a complicated enactment, seldom attains more than approximate precision. If individual words are inexact symbols, with shifting variables, their configuration can hardly achieve invariant meaning or assured definiteness apart from the ambiguity inherent in the symbols. A statute suffers from dubieties. It is not an equation or a formula representing a clearly marked process, nor is it an expression of individual thought to which is imparted the definiteness a single authorship can give." And then he goes on to define a statute in these words, "A statute is an instrument of government partaking of its practical purposes but also of its infirmities and limitations, of its awkward and groping efforts. With one of his flashes of insight, Mr. Justice Johnson called the science of government 'the science of experiment.' The phrase uttered a hundred and twenty years ago has a very modern ring, for time has only served to emphasize its accuracy" (pages 45 and 46). We gather that the Justice feels that the problem will always be there. In his discussion of the consideration of the text of the statute, the Justice warns that, "Statutes are not archaeological documents to be studied in a library. They are written to guide the actions

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<sup>1</sup> SATURDAY REVIEW OF LITERATURE, Sept. 1, 1956, p. 15.

of men." The perfectionist who would demand the ultimate in this field, Mr. Justice Frankfurter dismisses summarily with these words, "Perfection of draftsmanship is as unattainable as demonstrable correctness of judicial reading of legislation. Fit legislation and fair adjudication are attainable. The ultimate reliance of society for the proper fulfillment of both these august functions is to entrust them only to those who are equal to their demands."

If your secretary develops a long face and lapses into a non-speaking phase because you make a great number of drafts of a document, listen to the words of Mr. Justice Frankfurter when he is writing about Mr. Justice Brandeis:

"Even after the long incubating process of maturing an opinion—the wide range of investigation, the toilsome study within it, the slow, careful writing of findings and conclusions—it was routine for him to revise his draft opinion again and again, often more than a dozen times. In at least one instance there were fifty-three revisions."

On page 202, Mr. Justice Frankfurter selects six opinions which he believes represent some of the outstanding opinions of the great Cardozo. These opinions are on a variety of subjects. It will be recalled that Mr. Justice Cardozo wrote the opinion in *McPherson v. Buick* and that he was the great modern exponent of the common law.

It is not at all surprising that this great teacher should have wanted included in this volume, considerable of his writings about people. There appears a letter which the Justice took time in 1954 to write to a twelve-year-old boy seeking to prepare his mind for the study of the law. The advice which is given may well apply to that great body of young men now studying all over this country. Here is advice from one who is present on the great American scene today. "Stock your mind with the deposit of much good reading, and widen and deepen your feelings by experiencing vicariously as much as possible the wonderful mysteries of the universe, and forget all about your future career."

Mr. Justice Frankfurter writes of many well-known figures in the law and in other fields. He pays a very fitting tribute to Guido Panteleoni, Jr., so well remembered by his associates in the *White* case in New York City. In this tribute to the Justice quotes Mr. Justice Holmes' immortal words, "Life is action, the use of one's powers. As to use them to their height is joy and duty, so it is the one end that justifies itself."

Naturally the Justice writes of Justice Stone, Justice John Marshall, Justice Hughes and others whose careers are of particular interest to the Bar today, and of each he has something original to say.

Somehow as this writer contemplates again the review of Professor Rodell, he might feel constrained to apologize to the learned Professor for this rather naive appreciation of Mr. Justice Frankfurter's great contribution to American legal writing, but I feel sure the Professor would rather, on the other hand, that I offered my thanks to Mr. Justice Frankfurter for making available to the Bench and Bar such a wealth of wisdom as a guide for our perilous times.

JOHN WARREN GILES.\*

JAMES WILSON, by Charles Page Smith. The University of North Carolina Press, 1956.

Mr. Smith, Assistant Professor of History at the University of California at Los Angeles, has undertaken to provide us with the long needed biography of James Wilson. This work clearly demonstrates that James Wilson deserves our plaudits as one of the "founding fathers" who made the revolution possible and the new government a success.

Biography is usually conceded a place in the field of history because from a close examination of the life of an individual we can learn much about what was done, thought, and felt in a given period and place. This study is perhaps unique in that the examination fails to lead us far into the enigma of James Wilson but does shed considerable light on his era.

James Wilson's parents deprived themselves on a hard farm in the Scottish Lowlands to provide him with a college education and a career in the ministry. His close family mortgaged their future in order to make it financially possible for him to have a chance in the broad horizons of the new world. By virtue of mental ability, hard work, and a fortunate marriage, he advanced from a frontier lawyer to a place of prominence in the Continental Congress, the drafting of the Constitution, and an early place on the Supreme Court of the United States.

He contributed too little and too late to his widowed mother's security; he repaid tardily, if at all, those of his family who gave him his chance to come to America; he allowed his narrow partianship in Pennsylvania internal politics to jeopardize the revolutionary movement at the time the Declaration of Independence was being debated. He destroyed his political usefulness when he was still sorely needed by his questionable involvement in extensive land

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\* Special consultant to the Comptroller General of the United States; formerly Professor of Law at the Catholic University Law School.

speculation. Before his death, a fugitive from a debtor's prison, he pulled down with him, unnecessarily, friends of long standing. Through his greedy insistence on clinging to the whole of his shaky, paper empire, he lost it all and left his widow and children in dire financial straits.

Lawyer, political theorist, financier, business man, and land speculator—there were few important facets of the American struggle of his time, from negotiating with border Indians to shaping the Constitution, which were not affected by this ambitious Scotsman. Cold, aloof, and reserved in manner, Wilson was frequently charged with being proud and aristocratic. The charge of pride seems well established but though he opposed the extension of popular government in Pennsylvania, he was the leader of the democratic forces in the Constitutional Convention and stood almost alone in his advocacy of the direct election of both houses of the Congress and of the executive.

Responsible scholar that he is, Mr. Smith does not attempt to supply the missing intimate details of the heart and mind of his subject which can lend so much to our understanding when available. Students of the Revolutionary period and of the Constitutional Convention will welcome this substantial contribution toward an understanding of the formative years of the republic.

JAMES J. MCARDLE.\*

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\* Librarian, Assistant Professor of Law, Dickinson School of Law; B.A., M.L.L., University of Washington; LL.B., University of Wyoming; Member of the Montana Bar.