

BOOK REVIEWS

JUDICIAL OPINIONS OF OLIVER WENDELL HOLMES. By Harry C. Shriver, A.B., LL.M., with a foreword by Francis Biddle, Solicitor General of the United States. 360 pp. Dennis & Co., Inc. Buffalo, N. Y. 1940.

Mr. Shriver has again made a valuable contribution to American letters. The author has selected 59 opinions of the 1300 written by the late Justice Holmes while he was a member of the Supreme Judicial Court of Massachusetts. Much has been written about Justice Holmes after he became a member of the Supreme Court of the United States. Too little has been published concerning the 20 years of his career served as a Massachusetts judge.

Part I of Mr. Shriver's latest addition to *Holmesiana* contains a collection of the late Justice's most interesting opinions on questions of constitutional law. These decisions are printed as they appear in the Massachusetts Reports except that certain citations have been omitted; and the author has prefaced the opinion with the facts where that was necessary for a better understanding of the issues. Justice Holmes' famous dissent in *Vegeahn v. Guntner*¹ on the "Right To Picket" and his equally famous dissent in *Plant v. Woods*² are included in this volume. These early opinions foreshadowed Holmes' advanced social and economic philosophies which were to become better known when he ascended to the Supreme Court of the United States. Holmes, of course, further developed his socio-economic theories while a member of the latter court. The present volume is the more valuable, for in it one may perceive that Holmes while a member of the Massachusetts court had achieved the basic tenets of his philosophy regarding constitutional law. While a member of the Supreme Court of the United States, Holmes merely developed his basic philosophy.

Part II of Shriver's volume contains excerpts and epigrams from Justice Holmes' opinions. The selections are clever and very pointed. They have been collected from Justice Holmes' opinions which are scattered through 49 volumes of the Massachusetts Reports.

"A specialty deriving its validity from an estoppel in pais is perhaps somewhat like Nebuchadnezzar's image with a head of gold supported by feet of clay." *White v. Duggan*, 140 Mass. 18, 20 (1885).

"When the words in their literal sense have a plain meaning, the courts must be very cautious in allowing their imagination to give them a different one." *Guild v. Walter*, 182 Mass. 225, 226 (1902).

Many other concise and pithy statements are included in this collection. This,

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1. 167 Mass. 92, 104 (1896).
 2. 176 Mass. 492, 504 (1900).

as well as other parts of the book may be read and enjoyed by lawyer and layman alike.

Part III contains five appendices which are of passing interest to the casual reader. The student of Holmes will find the names of Holmes' colleagues; a numerical table of Holmes' opinions; and a table of his dissenting opinions. Many another interesting statistic is contained in these appendices.

RAMON B. FISCH.

STUDY OF STATE ADMINISTRATIVE AGENCIES IN NEW JERSEY. By Clark Crane Vogel. Directed by Nathan L. Jacobs. 1941. pp. 283.

This study of administrative agencies in New Jersey presages the beginning of a new era in literature on administrative law. The pioneers in this branch of the law, having shattered the enemy's outer lines of defense, are proceeding with mopping-up operations. When the first texts on administrative law first appeared (1906—Goodnow, *Cases on American Administrative Law*; 1911—Freund, *Cases on Administrative Law*), the field seemed cut and dried. Attention was paid almost exclusively to procedure and judicial remedies. No questions of constitutionality were raised. However, Frankfurter and Davidson perceived that this growth of the law reached the very heart of the fundamental organization of governmental power. Their casebook, a crusading text, dealt primarily with the constitutional questions of the separation and delegation of powers.

These two obstacles proved the most serious to the growth, and even existence, of administrative law. The battle raged furiously, but the antagonists of administrative law have finally acknowledged defeat. The battle, however, was not over; the scene merely shifted. Attention next focussed on administrative procedures and techniques. Conceding the constitutionality of the delegation of legislative powers, how far could administrative agencies go in carrying out their functions? What safeguards were to be erected?

Later editors (Maurer 1937, Stason 1937, Sears¹ 1938, and Gellhorn 1940) have displayed growing concern with these procedural problems, developing the constitutional questions as mere background. The battle lines are reforming on this front of processes. Studies and law review articles have been numerous, but deal with generalities such as right to and adequacy of notice, issuance of subpoenas, sufficiency of hearing, evidence, findings. These issues, while interesting to the student, form too philosophic a study for practical application. Pragmatists are asking themselves, How have administrative procedures worked out in practice? Lawyers appearing before administrative boards, impatient with

1. Reviewed in 5 NEWARK L. REV. 82 (1939) by Milton R. Konvitz.