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## Review of “Justice Oliver Wendell Holmes, His Books Notices and Uncollected Letters and Papers,” Edited By Harry Shriver

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## BOOK REVIEWS

JUSTICE OLIVER WENDELL HOLMES, HIS BOOK NOTICES AND UNCOLLECTED LETTERS AND PAPERS. Edited and Annotated by Harry C. Shriver. New York: Central Law Book Company, 1936. Pp. xiii, 280.

This volume completes the Miscellanea of the writings of the late Justice Oliver Wendell Holmes, and a debt of gratitude is owed to the editor for having made available this interesting material. The book is a collection of his early book notices, papers not heretofore collected, and some recently published letters. The introduction, which is most appropriate, is written by Justice Harlan Fiske Stone, whose interests in law are much akin to those of Justice Holmes.

The book notices written in the 1870's, while Justice Holmes was editor of the *American Law Review*, are most stimulating. They reveal the philosophy and sense of realism which he possessed at that time and which later were to exert such a potent influence in American jurisprudence. One striking thing about these book notices is the tremendous range of material they cover with equal skill and insight. Text-books, case-books, digests, statutes and codes all fell within his purview and were read eagerly by him and skillfully and fairly appraised for both their practical and philosophic worth.

It is interesting to note that over 65 years ago, in 1870, Holmes was giving expression to views concerning the actual functioning of law which some people would urge today as a new discovery and which others will not yet admit as being true. "It is the merit of the common law that it decides the case first and determines the principle afterwards."<sup>1</sup> And in commenting upon Austin's theory of law we find him saying in 1872, "It is not the will of the sovereign that makes lawyers' law, even when that is its source, but what a body of subjects, namely, the judges, by whom it is enforced *say* is his will."<sup>2</sup>

In these book notices we find affirmed Holmes's belief in the value of precedent in the common law and his distrust of the values claimed for a codification of law. A view, also, which he repeatedly expresses is his disbelief that the Roman Law offers better materials than the common law for the philosophic study of law. In fact, he would have none but the mature and seasoned student of his own legal system dally with Roman Law.

Perhaps the most interesting part of the collection is to be found in the letters to Dr. John C. H. Wu, which occupy 55 pages of the volume. This is so because these letters reveal a more intimate picture of Justice Holmes than the public has heretofore been granted. Moreover, one is given by reading these letters a more complete understanding of the general philosophy of life which Justice Holmes held at the end of a long and richly varied career.

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1. P. 63.
  2. P. 25.

Not the least interesting feature of these letters is the manner in which they originated. It was somewhat unusual for Justice Holmes, then in his eighties, to begin a correspondence with Dr. Wu, a young Chinese law student in his early twenties, and continue this correspondence for eleven years.

These letters reveal that in spite of his advancing age and time-consuming duties Justice Holmes found time to read widely both within and without the field of law. It is interesting to note, however, that he did not put great store by the older books or the classics, and rather felt that there was more profundity in modern books. At times he gave very sage advice to his long-distance protégé. He expressed his distrust in theory not grounded in the hard facts of life, and cared little for the formal systems of Philosophy, including Kant and Hegel. Thus, he says, "The practical is disagreeable, a mean and stony soil, but from that it is that all valuable theory comes. That is why I thought Ehrlich's *Grundlegung der Soziologie des Rechts* worth a garretful of philosophers from Hegel down."<sup>3</sup> A bit of recurring advice to Dr. Wu was that one is so likely to dodge the details and drudgery of the every-day job and seek to generalize and spin theory, with which Justice Holmes found no sympathy.

The frequent expressions of affection and concern for the safety of Dr. Wu living in a disordered China, and the confidences Justice Holmes shares with him concerning his feelings towards his advancing years and his near retirement from the Bench, are most intimate and touching. To hear Justice Holmes say that a man may be young till 60, not old till 80, and express fear of his age because he could no longer take stairs two at a time, enables one to understand how this great figure kept a youthful vigor and outlook to the end. Quite interesting, too, is the fact that, while regarding the matter as trivial, he took some pride in being older than Taney at his death and in being the oldest judge who had sat on the Bench.

Every follower of Justice Holmes will get great satisfaction from reading this splendidly edited collection of Miscellanea, which equally reveal his great mental powers and his human qualities.

St. Louis, Mo.

J. A. MCCLAIN, JR.†

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CONFLICT OF CRIMINAL LAWS. By Edward S. Stimson. Chicago: The Foundation Press, Inc., 1936. Pp. xi, 219.

Professor Stimson, as he states in the preface to this most recent of his works in the field of Conflict of Laws, had two purposes in mind in writing the present monograph. These were, "ascertaining and recommending general principles to be applied" in solving the problems that arise, and "to accurately state the law and to collect and cite all of the Anglo-American authorities it was possible to find." In other words, the book is intended both as a critical work and as a handbook for the practitioner and student.

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3. P. 184.

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