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Book Review: The Dissenting Opinions of Justice Oliver Wendell Holmes, by Alfred Lief

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printed in the appendix and would not be forced to consult the tables of the state statutes as published by Brannon or rely on his imperfect knowledge of the act in locating the proper section of the act in the appendix.

The writer of this review does not agree with the authors in omitting the introductory chapter on negotiability. He well remembers a statement made by Dean Max Schoetz ten years ago that the first thing to "put over" on a class is the conception of negotiability. The chapter as contained in the first edition was particularly adapted to this purpose. Possibly the theory underlying the omission of this chapter is that the student is to evolve the conception of negotiability from the cases as he goes along rather than have it presented to him on a platter at the beginning of his course. The experience which the writer has had in the classroom would convince him that his theory while it may work with highly selected groups of students would not work out satisfactorily with the average run of students such as the average law school handles. It has therefore been his practice to refer back to this chapter in the first edition even while teaching from the second edition.

These objections however are of a minor nature and do not substantially detract from the great value of the book as a medium of teaching this difficult subject. The reviewer therefore expects to continue with the third edition just as he has in the past used the first and the second editions.

CARL ZOLLMAN

The Dissenting Opinions of Justice Oliver Wendell Holmes. By Alfred Lief. Published by the Vanguard Press, New York, (1929).

This collection of opinions, although a few years old, is particularly appropriate for review at this time, in view of the recent retirement of the distinguished jurist, Mr. Justice Holmes, a time when the nation at large is wont to appraise his contribution after twenty-nine years on the bench of the United States Supreme Court. Containing some fifty-five decisions in which he found it necessary to dissent, it gives us an insight into his philosophy of life and of the law in its relation to the business of life. Little did he know that he was to become the "great dissenter," for in one of his early dissenting opinions, written in 1904, in *Lochner vs. New York*, 198 U.S. 45, he prefaces his remarks by saying, "I regret sincerely that I am unable to agree with the judgment in this case and that I think it my duty to express my dissent." He then believed that it was rather futile to object, no matter how vigorously or persuasively, to a judgment already rendered. However, in his later opinions, we find no such apology,—he felt, as the years rolled by, that every decision rendered by such an august tribunal as the highest court of the land, was of tremendous importance in molding conduct; hence, he was justified in pointing out wherein the thought the court was in error.

Though his place in judicial history is indisputably linked with the title, "The Greater Dissenter," it is well to note that he was not alone in his criticisms, except on one occasion only. Of the other fifty-four cases, in thirty-seven, his dissent was shared by either two or three colleagues, and in no less than seventeen, he was dissenting from a bare five to four vote of the court. It will further be remembered that he has either written or concurred in the judgment of the court in approximately ten cases for every one in which he found it desirable to record his dissent.

This collection of opinions is an enlightening story of twentieth century legislation and its inevitable conflict with accepted constitutional doctrines wherein the Supreme Court was called upon to decide the issue. Where, on the one hand, the court was for strict, almost literal construction of certain sections of the Constitution, Justice Holmes pleaded for greater liberality so as to permit states' rights to prevail. One gathers the impression that the Justice was not so much concerned with the merits of the particular act in question,—he certainly would be loath to foist his social or economic views on the contending parties,—but he dissented because he stood for less restraint by the judiciary and more freedom for the popularly-chosen legislative assemblies.

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