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1947

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Recommended Citation

Fuchs, Ralph F., "Book Review. Mason, A.T., Brandeis, A Free Man's Life" (1947). *Articles by Maurer Faculty*. 1609.

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BOOK REVIEWS

Brandeis, A Free Man's Life. By Alpheus Thomas Mason. New York: The Viking Press, 1946. Pp. xiii, 713. \$5.00.

There are only a few life-long acquaintances to whom the man Brandeis—the “free man,” in Mason’s term, who emerges clearly from the pages of this superior, full-length biography—may not be a striking revelation; to others his life will seem a startling phenomenon. Laymen who recall the man and his work dimly will be impressed by the extent to which his thought and action shaped many of the crucial political, economic, and legal events of the formative period between 1890 and World War II. Lawyers, economists, social workers, and business and labor leaders who are aware of the importance of the “Brandeis briefs” and of Mr. Justice Brandeis’s contribution to the work of the Supreme Court will be struck by the almost unbelievable variety and effectiveness of his professional and public activities outside the court room, before he ascended the bench. Those who recall from personal experience the courtesy and warmth of the Justice, whose eager, inquiring eye took in the newcomer and evidenced the friendly searching of the mind behind, will be surprised at the ruthlessness and ingenuity with which the same mind and spirit drove forth in pursuit of evil and relentlessly tracked it down. To every historically conscious reader Professor Mason’s pages reveal a man whose intellectual capacity, democratic philosophy, variety of interests, purity of purpose, and solid body of accomplishment render him worthy of comparison with the greatest among the Founding Fathers. Professor Mason’s assembly of the Brandeis record in a single fascinating volume is a literary and historical event of the first magnitude.

Professor Mason’s account makes it clear that Louis Dembitz Brandeis was not a chance emergence in American life—not merely an individual who happened to inherit or develop a superior mind or to possess a more-than-ordinary love of his fellows or an ability to make friends and influence people, such as often enable a man to make his mark in life, as it were, naturally. Brandeis, moreover, was no product of overweening ambition, such as drives a man into the seats of power, there to dispose of the lives and fortunes of his fellow men. In Brandeis, too, there was an absence of the strong, misguided purpose that sometimes springs from uncritical acceptance of traditional beliefs or institutions. Here was a man who shaped his views by the pure light of reason and deliberately harnessed his life to moral purposes that would not let him rest so long as work remained to be done. The fire that burned within him was carefully tended in his youth, and its flame was stronger to the end through sheer force of conviction than all the winds that blew to extinguish it.

Louis Brandeis was born in Louisville, Kentucky, on November 13, 1856, the son of middle-class parents who had emigrated from

Prague a few years before as members of a group of "48ers" in search of economic opportunity and intellectual freedom. The families in the group "were closely knit, idealistic, intellectual, [and] self-reliant." Louis's mother, who played the major rôle in shaping his ideals and character, possessed, according to her son, "preëminently a sense of duty to the community, not so much by preaching, but by practice." Neither of Louis's parents adhere to any formal religious group, but sought, according to the mother, to give their children "something that neither could be argued away nor would have to be given up as untenable, namely, a pure spirit and the highest ideals as to morals and love." Later the son and Alice Goldmark, his second cousin, who likewise remained aloof from religious affiliation throughout their lives, were married by Felix Adler, founder of the Ethical Culture movement. During his youth, Louis Brandeis set down in a notebook choice passages from poetry and essays, frequently with critical notations of his own, in much of which the ethical note was strong. The years at the Harvard Law School were characterized by the same zeal to lay hold of all that was valuable for pursuit of the best in life, whether from a personal or from a social standpoint. Brandeis's phenomenal ability as a student was matched by his wide-ranging interest in culture and in public affairs. His persistent search for excellence led to dissatisfaction with the relative crudity of life in St. Louis in 1878, when he made an attempt to commence the practice of law there. He returned to Boston to enter into partnership with his classmate, Samuel D. Warren, Jr., and there commenced the career which was to win success at the bar, nationwide renown, and a place on the Supreme Court.

Brandeis's career as a lawyer and the progress of the firm of which he later became the head are adequately outlined in the pages of Professor Mason's book. But it is his public activities upon which interest naturally centers. These are reviewed with admirable fullness and objectivity, allowing the record to speak largely for itself. A mere catalog of the major public matters to which Brandeis devoted himself from 1897 to 1916, playing a leading rôle in each, is staggering in itself. He fought attempted franchise grabs by the traction interests of Boston; battled the Boston Gas Company with reference to rates; secured the adoption of legislation to permit savings-bank life insurance in Massachusetts and thereafter promoted the insurance plans themselves; single-handedly exposed evils in the management of the New Haven Railroad and opposed state legislation which it sought; served as principal prosecuting counsel before the joint committee of Congress which investigated Secretary Ballinger's administration of the Interior Department; labored recurrently to settle bitter labor controversies in the New York women's garment industry; served as leading counsel in two major rate controversies before the Interstate Commerce Commission; became a dominant figure in the national and world Zionist movement; and wrote his famous briefs and appeared in oral argument, defending

legislation to establish maximum hours of labor and minimum wages for women in industry. In the year 1910 alone, Brandeis supplied Senator LaFollette, in April, with material for a speech dealing with the abuses of the New Haven management; conducted the examination of witnesses in the Ballinger hearings from January to May; extended himself in efforts to adjust the garment industry conflict from June to August; and during the remainder of the year participated in some of the principal freight rate hearings in which he became involved.

Many of the causes in which Brandeis participated were self-generated, and many of the ideas which he promoted were his own. Savings-bank life insurance was his own idea; the sliding scale rate principle for public utilities originated with him; the preferential union shop was another of his devices. The application of scientific management to railroads became a personal cause with him. He was zealous in advocating regularization of employment, the legalization of resale price maintenance, and democracy in industry. He more than any other American developed the philosophy that bigness and possession of uncontrolled power, whether in business, in labor organizations, or in government, are inherent evils because of the danger of abuse and the limitations of human capacity to manage complex affairs. He was the arch foe of monopoly in industry, stood out against the closed shop in labor relations, and had no faith in socialism. Always, as Professor Mason stresses again and again, his method was to achieve complete mastery of the facts in relation to any problem in which he became interested and then to promote what he deemed to be sound solutions, enlisting aid in every conceivable quarter; keeping up a stream of advocacy and comment, signed and unsigned; stimulating others to do likewise; and giving of his substance as well as of his time and energy to almost every cause he attacked—leaving nothing to chance and no stone unturned. All this as a private citizen, while practicing law in the city of Boston.

Brandeis's involvement in national politics followed the Ballinger episode. He became a loyal supporter of Senator LaFollette for the Republican nomination in 1912 and refused to climb on to the Theodore Roosevelt band wagon even after almost all but he had gone over to that facile charmer. He was delighted by Woodrow Wilson's nomination by the Democrats and supported him actively in the campaign, making speeches in a number of Mid-western cities. The reliance of Wilson upon Brandeis for many of his ideas in the economic field makes the latter in effect the author of some of the Wilsonian reform measures, notably the Clayton Act. For a time it appeared that Brandeis would receive a cabinet post; but this appeared inexpedient to the party powers, and it was not until President Wilson's unheralded nomination of Brandeis to the Supreme Court on January 28, 1916, that official recognition came. In retrospect, Wilson's action, deliberately taken for the purpose of introducing into the Court the precise influence which Brandeis later

exercised, followed by his unwavering support of the nomination during the bitter fight that ensued over confirmation, surely appears as one of his most far-seeing acts of statesmanship. Professor Mason devotes many pages to the fight over confirmation, for in it was summed up all of Brandeis's prior contribution to American life; and to it the enemies he had made brought all the venom of which they were capable. But there were fair-minded men in the picture even among those who doubted, like Sherman Whipple of the Boston Bar; and there was organized support outside the Administration, led by Brandeis's younger partners, McClennon and Nutter. Brandeis himself hesitated at first to accept the President's nomination, for he had hoped to remain active in public affairs a few years longer. Once he had made the decision to accede, however, he threw himself into the fight from behind the scenes with all the vigor of which he was capable. He had never lifted a finger to obtain preferment, but when the battle was offered, he gave battle. He was no shrinking violet, and his life illustrates, among other things, that aggressive self-confidence is a necessary accompaniment of righteousness in public affairs.

Professor Mason deals more sketchily with Mr. Justice Brandeis's service on the Supreme Court, for it was, after all, the natural flowering of his previous thought and work; but Brandeis's principal contributions as a Justice are set forth, and the skill with which he managed his personal relations with his brethren on the bench is nicely highlighted. Mason correctly compares and contrasts the thought and temperament of Holmes and Brandeis, the famous pair of dissenters, and develops their relationships to each other. Brandeis's rôle in the fight upon President Franklin Roosevelt's Court-packing plan, leading directly to Chief Justice Hughes' statement pulling the rug from under the President's ostensible justification in lack of efficiency on the part of the Court, is also told.

Throughout the book Professor Mason sticks closely to the facts of record and lets them speak largely for themselves. His biography is not a psychological study. Except as recorded incidents and an occasional quotation from a letter afford a glimpse into the soul and spirit of the man, we are not conducted into the recesses of Brandeis's mind or led to share in the conflicts and emotional stresses that must have arisen there. The book would lack warmth and human interest, were it not for the inherent drama and fascination of its subject. It is made clear, however, that Louis Brandeis was a sensitive, emotional human being as well as a man of intellect and of action. Indeed, it requires only a glance at the photograph facing page 329, made in 1914, to demonstrate irrefutably the rare quality of the man who forms the subject of the narrative. We learn from the text that Brandeis, who was warned in his youth against public life because he was "too sensitive," deliberately steeled himself against the denunciation which was heaped upon his head and so pursued his purpose and lived his life undeterred by the bitterness

and hatred of his enemies. His detachment was of the intellect, however, and the struggles within him over his course must have been intense. That he was a man of deep personal loyalty is indicated by several events—his steadfast devotion to LaFollette in 1912; his continued support of DeHaas in the Zionist movement after DeHaas's defects of personality had alienated many others who agreed with his policies; his steady stream of correspondence with his brother, Alfred, throughout his life; and his long friendship with Norman Hapgood.

Ethical questions which were raised in regard to a number of Brandeis's professional acts are fully discussed by Professor Mason, who recognizes that the questions were in some particulars legitimate and indicates a slightly less favorable judgment of his own in some instances than others will form on the basis of Mason's account. There was a misunderstanding with a client in one matter, which might possibly have been prevented; and in reference to the United Shoe Machinery Corporation Brandeis might better have left to others the crusade of 1911-1912 against the company's abuses, in view of his earlier connection with it. Brandeis's defense of the company in 1906, which Mason regards as surprising in view of its inconsistency with his stand on other subjects, seems nothing more than a natural consequence of confidence in friends and associates of long standing, which it required additional experience to impair. He did not, however, rely upon information which his earlier connection supplied in conducting his later fight, since policies, not facts, were the subject of dispute. Conflict between his attachment to Samuel D. Warren at the time when Warren, as client, needed his services and the demands of the Ballinger inquiry, doubtless caused inner struggles upon which a biographer might enlarge; but it did not raise problems of professional ethics.

As to only one matter does Professor Mason definitely condemn Brandeis. In his view, the prophet stumbled in opposing the repeal of the Volstead Act in 1923. To Professor Mason, this stand was "strangely out of key with his customary liberalism" and with his earlier recognition that regulation of "liquor drinking" is not enforceable. Brandeis's stand, however, is indicative of the quality of his value judgments as contrasted with the dominant mood today. Although an opponent of prohibition, he concluded after its adoption that the effort then should be actually to achieve the social gain that was being attempted, rather than to seek at that time to revert to the earlier state of affairs. With him, first things came first; and liquor drinking, by himself or by others, was not one of them. The same scheme of values led him to live simply and to devote his wealth, which would have permitted ease and self-indulgence, to purposes in which he believed.

What are we to say in this troubled post-war era of such a life and of the philosophy which it was devoted to effectuating? Surely, for one thing, that in Brandeis the American ideal was epitomized as in no other modern figure possible to name. Self-reliance; success.

with only the start in life that careful nurture in a middle-class home and a good education could give; ardent belief in democracy, free enterprise, and civil liberties; zest for battle and the ability to wage a hard, fair fight and come up smiling in victory or defeat; uncompromising ethical standards; love of fellow men; faith in the future because people can be brought to see the truth and live by it, if only those who see it earliest will strive to make it effective—all these and more are here in high degree. If the practical test is applied, the results of Brandeis's work are seen to exist on every hand: on the statute books of several States and of Congress; in the techniques of lawyers in public-law litigation; in current anti-trust policy; in the philosophy and the views on specific issues of the present Supreme Court; in the opinions which form a permanent influence upon the jurisprudence of the nation; in the hearts and minds of many now living who had personal contact with him.

We may have doubts concerning the sufficiency of some aspects of Brandeis's thought to meet the problems of even his own time, to say nothing of the present. The localism which he advocated did not satisfy him in his own life, which he could only be content to live in a cosmopolitan center. The "curse" which in his mind attached to bigness and to centralization, leading him even to favor state over federal regulation of the insurance business, hardly negates the need of national and world controls; nor did it always, of course, prevail in his own mind. The racial pride and belief in the contribution that groups can make to a common culture if they jealously maintain their identity, which made him a leading Zionist, have been a factor in developing a nationalism that threatens the idealism which gave it birth and contributes its quota of difficulty to a world striving for a minimum of unity while rent asunder by tribal antagonisms. But the Brandeis view, even in these matters, will always possess validity as a check upon unnecessary centralization and upon the tendency toward uniform cultural mediocrity. The Brandeis way of attacking difficult problems by the method of reason, with solutions to be worked out through the free and open interplay of individual contributions, together with the Brandeis devotion to high ethical aims, form a part of the heritage to which we must cling like grim death during the trying times ahead. It has not been more worthily clothed with flesh in our time.

All hail, then, to Professor Mason for presenting us with this full-length history of the embodiment of a living ideal. Into it have gone exhaustive study of the correspondence and documents and first-hand knowledge of the subject. This book will undoubtedly be widely read, as it should be; and as it is read, the Brandeis influence will be strengthened and prolonged in American life. Such a work is a major contribution to society, as well as a source of unending pleasure to the reader.

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