

REVIEWS AND NOTICES

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Holmes-Pollock Letters. The Correspondence of Mr. Justice Holmes and Sir Frederick Pollock, 1874-1932. Edited by MARK DEWOLFE HOWE, with an Introduction by JOHN GORHAM PALFREY. In two volumes. Cambridge: Harvard University Press. 1941. Pp. xxii, 275 and 359. (\$7.50)

Occasionally — but unfortunately very occasionally — a book appears about which the reviewer can manifest an unbounded enthusiasm. The present is such a book. To anyone interested in law; in the personalities behind the law; in life viewed either as an abstraction or a very concrete reality; in anecdote; in belles lettres; in the history of a generation; and above all in a study of thought transmuted into action; the present volumes should be definitely placed on a required reading list. The editor of the present collection of letters quite appropriately remarks that the volumes might have carried the subtitle: "An Autobiography of a Friendship; the Biography of an Era." Amongst many excellent collections of letters the present series is unique. We have here not only letters between two outstanding leaders of thought in their respective countries and in their respective professions, but the long span of life permitted to both correspondents, and the fact that with advancing age both men manifested a vitality and youthfulness bordering almost on exuberance, would, even if the letters were mere intelligent and friendly correspondence, furnish sufficient reason for calling them important. When, however, both correspondents are masters of the pungent phrase; when both are men of quick and definite decision who do not hesitate to express their views on the most diverse of topics, from Couéism to the latest as well as the oldest metaphysical conceptions of the universe, the result is a book to which any man of letters, life or law, will return time and time again, and each time make new discoveries and new estimates not only of the two central characters but of his own thinking on many problems.

The first thing that astounds the reader as he follows the correspondence between these two men is the extraordinary amount and diversity of reading exhibited in their letters. Perhaps one is not so much surprised at the extent of the reading of Pollock, since he was essentially the contemplative scholar. Holmes, however, was, practically to the end of his long life, the active and busy judge who "fired off", as he so frequently styles it, a terrific number of judicial decisions, and whose judicial duties from time to time seriously cramped but never side-tracked his insatiable desire to discover vital human thought wherever he believed it might be obtained. More than half the fun of reading the present collection lies in the speculations offered the reader on the character and underlying philosophy of the two writers. Both were so alive to all the great thinking of both the past and present that it is extremely difficult to pin down or

catalogue either writer. To the present reviewer it seemed particularly interesting to observe that to Pollock law was, in a sense, a thing separate and apart from his reading and study in other fields of thought. Thus, for example, he wonders in one of his letters whether his friend Holmes, as a judge, ever felt "conscious of any definite attitude towards the 'historical' school." (Vol. II, p. 113). Holmes' reply that he didn't believe that most judges knew or cared "a sixpence for any school" (*ib.* p. 115), seems to reflect the difference between the two men. All that Holmes read and all that he thought made Holmes, the judge, who was inseparable from Holmes, the man, and therein lies the greatness of Holmes.

Again, while the book should not be read with the view of making comparisons, it is interesting to observe how Pollock time and time again in his orthodox English legal style places so much emphasis on individual decisions of courts. Holmes, on the contrary, manifested what must have seemed at times to his correspondent an almost irreverent attitude to the discussion of judges on general theory of the law (Vol. I, p. 65). He was at all times, as his other writings have shown, interested in the actual solution of pressing problems, and it is amusing to observe that while throughout the entire two volumes he repeats again and again that he was not interested in "facts", and that, as he said, "I don't read the papers or otherwise feel the pulse of the machine" (Vol. I, p. 124), he *was* interested, not in general propositions of law, but only in "the *fact* that in a given jurisdiction they do so and so." One of his pet expressions which occurs several times is that "the chief end of man is to form general propositions and no general proposition is worth a damn." One cannot help wondering to what extent Pollock ever grasped the implications behind such typical remarks of Holmes, since Pollock, despite a few statements in the letters that might be used to support a contrary view, placed a great deal of importance on general propositions as his more formal works clearly show. One could take several instances from the correspondence itself in which Holmes might appear to be pulling Pollock's leg, particularly when Holmes condescended to discuss some of the English decisions which seemed so important to Pollock. Whether he was doing so or not is more doubtful, and it is that constant element of uncertainty whether Holmes was serious or in a puckish vein which affords one of the chief fascinations of the present series.

To lawyers, undoubtedly some of the most interesting parts of the correspondence will be the frank comments made by both writers on living authors, scholars and judges. The Canadian lawyer will note that even Holmes followed a practice (not altogether uncommon in our own courts) of writing some of these letters while listening to argument on the Bench. Thus, for example, in an early letter, Holmes wrote a most interesting review of *Allen v. Flood* to his friend while listening to a "bore" whose argument was "dragging slowly along after one has seen the point and made up one's mind." Neither writer had much sympathy with the geometry of law as expounded by such erudite "gents" as Hohfeld and Kocourek, and Holmes' remarks concerning Vinogradoff's book on the *Outlines of Historical Jurisprudence* are illuminating. "It gave me the impression of the Chinaman who ran three miles to jump over a hill—but I just looked, yawned and passed on." To any one familiar with Holmes' writings one can see how much a part of the man his views on law

were, for even in his letters he constantly hammers at some of the ideas which are familiar to his readers. Thus, for example, we have him in 1898 making the following observation: "I don't like to be told that I am usurping the functions of the jury if I venture to settle the standard of conduct myself in a plain case. Of course, I admit that any really difficult question of law is for the jury, but I also don't like to hear it called a question of fact. . . ." (Vol. I, p. 85). It is significant that Pollock does not comment on such heresies. Further, Holmes expresses the view that all legal questions are questions of degree and he continues: "I have just sent back an opinion of one of our JJ. with a criticism of an argument in it of the 'where are you going to draw the line' type—as if all decisions were not a series of points tending to fix a point in a line. The admission of an antithesis between extremes necessitates it. North and South Poles import an equator." (Vol. II, p. 28). One of the mysteries, to which a reading of these volumes gives rise, is how little Holmes' thinking on legal questions affected Pollock's writing on law.

Perhaps one feature which will interest the reader in pursuing this amazing correspondence is the zeal with which Holmes read things which he found tedious, boring and distasteful, simply because he was afraid that if he did not he might miss something that the author had to say about life that he had not read before. Again and again Holmes literally curses certain writers, while at the same time expressing his determination to read them in the hope of discovering some new point of view, even though he placed no value at all on the conclusions of the author that he was reading. To the reviewer this furnishes one of the most significant commentaries that could be made concerning Holmes and explains in part why he stands head and shoulders above most judges, not only of his own generation and his own country, but of the present generation and other countries where the common law is followed.

As the two volumes cover a period of almost sixty years, including the hectic war years, one finds here sharp, and what some persons may think, unfair criticism of politicians and statesmen. It is rather surprising that so little is found in the correspondence concerning economic theory or theories of government. Plainly Holmes was a great admirer of Harold Laski. One gathers that Pollock perhaps did not share the same enthusiasm for what he doubtless considered the "radical" views of that author. Holmes himself denies that he had any particular views regarding the adjustment of relations between labour and capital even though his judgments manifested certain definite points of view. Perhaps, however, he merely refrained from exhibiting the defects of the doctrinaire, and while the homely and homespun thought he expressed in a letter in 1906, in discussing the struggle between "classes" for domination, may have changed with the years, the solid, earthy approach still continued as the basis of his essentially empirical judgments. At that time he said "My hobby is to consider the stream of products, to omit all talk about ownership and just to consider who eats the wheat, wears the clothes, uses the railroads and lives in the houses. I think the crowd now has substantially all there is, that the luxuries of the few are a drop in the bucket, and that unless you make war on moderate comfort there is no general economic question." (Vol. I, p. 124).

As stated at the beginning of this review, the present two volumes yield more interest per page than any book which it has been this

reviewer's privilege to review in many months. To those of our readers who wish to add to the shelves of their library something to which they can return from time to time with both pleasure and profit, we know of nothing currently published better than the Holmes-Pollock Letters.

C. A. W
