

The Spirit of the Common Law: The Papers of Richard O'Sullivan

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BOOK REVIEWS

THE SPIRIT OF THE COMMON LAW: THE PAPERS OF
RICHARD O'SULLIVAN

Edited by *B. A. Wortley*

Fowler Wright Books, Ltd., Worcestershire, England, 1965.

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Reviewed by

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On the 18th of February 1963, Richard O'Sullivan completed his 75th year and died at London. The event failed to be noted in the American press, a long newspaper strike in New York City being then unsettled. It was weeks and months later before his friends in America became aware of the loss. No memoir of his unique life work has yet appeared, although among all modern jurists a word of tribute is his due. For Richard O'Sullivan gave a novel turn to reflections on the history of the common law, and he did so at a striking moment in time, between two devastating world wars, when the Anglo-American legal system, though unaware of what the future held in store, stood in great need of fresh thinking about the roots of the law.

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B.A. Wortley of the Law Faculty at Manchester, and well known in this country for his own deep reflections on comparative and international juridical problems, has made some amends for the regrettable omission by selecting and editing, in a graceful volume, a representative collection of the papers of Richard O'Sullivan, under the appropriate title: *The Spirit of the Common Law*. To Professor Wortley's Introduction, Lord Justice Diplock adds a Foreword, and Douglas Woodruff, of *The Tablet*, supplies an illuminating summary of the more striking events in Richard O'Sullivan's life. The sustaining hand of Dorothea Borton O'Sullivan can be glimpsed between the pages in fulfillment of her trust.

To those who so far have missed the vivid insights of the O'Sullivan publications, the perceptions reprinted here are worthy samples. There is the tribute to

Thomas More which appeared in the *Law Times* in 1952; the Reading on Edmund Plowden given in the presence of H.M. Queen Elizabeth, the Queen Mother, at Middle Temple in 1952; the chapter in *Current Legal Problems*, of 1949, on "The Philosophy of the Common Law"; the article on "Natural Law and Common Law" which appeared in the *Transactions of the Grotius Society*, volume 31; "A Century of Divorce Jurisdiction, 1857-1957" in *Current Legal Problems* for 1957; and "A Scale of Values in the Common Law" which appeared in the *Modern Law Review* for 1937.

Further evidences of the unique O'Sullivan contribution to contemporary legal thought are to be found in four earlier books planned, edited, or written during his lifetime. These include: *Christian Philosophy and the Common Law* (1947); *The King's Good Servant* (1948); *Under God and the Law* (1949); and *The Inheritance of the Common Law* in 1950. There is much more hidden in the anonymous columns of the periodical press, including *The Tablet*, *G.K.'s Weekly*, *Blackfriars*, which a competent biographer could ferret out.

The beginnings of the new viewpoint can be traced back as early as 1925 when Richard O'Sullivan became active with the movement to found an Aquinas Society, and to 1928 with the establishment of the Thomas More Society. The canonization of Thomas More as a Saint in 1935, 300 years after his death, owes much to Richard O'Sullivan, who had a good deal to do with collecting and carrying to Rome documentary material in support of the petition. An extraordinary

recognition of this tremendous event in the history of the English Bar was at once an indication of the O'Sullivan persuasiveness and the respect—though an Irish-born Catholic—in which he was held by British barristers, when the Benchers of Lincoln's Inn permitted an annual Mass to be said in the Old Hall on Thomas More's Feast Day, at the historic bench where More himself had sat as a judge.

Acquainted with many of the contemporary members of the legal profession, on the continent and in America as well as in England, who held sympathetic interest in the philosophical foundations of the common law, Richard O'Sullivan manifested generosity and enthusiastic encouragement for each bit of comparable effort which came to his notice. He travelled to America one cold December (1951) to lecture at the Natural Law Institute at Notre Dame, as well as at a special convocation of the then newly established Law School at Seton Hall University in New Jersey. When the American Bar Association met in London in 1957, he was deeply moved to learn that the Lord Chancellor of England (Viscount Kilmuir), giving the principal address at the ancient Westminster Hall, referred to "my predecessor, *Saint Thomas More*"—an unprecedented recognition of the martyrdom for integrity of conscience.

In essence, what, it may be asked, constituted the novel contribution made by Richard O'Sullivan to modern juristic thought which is worthy of perpetuation? It was his inimitable reading of the history of English law with a fresh eye, noting the differences in thought in pre-Reformation times from those after 1535, restoring

the missing links of the neglected chain, and conveying that insight engagingly to all who would listen. The candor and relentless scholarship of Frederick William Maitland provided him with the facts, especially about Bracton's era, and his assimilation of the thought of Bracton's contemporary, Thomas Aquinas, and of his own model, for all seasons, Thomas More, yielded comprehension in a way no non-Catholic barrister of recent years has been able to match.

If those who are struggling to grasp some connection between so-called natural

law and common law foundations will take Richard O'Sullivan as a guide, they may not find the precise answers they desire, but they will meet a modern mapmaker who can indicate directions well worthy of much further exploration. Certainly this book of collected essays provides a compelling start. For that reason it should be donated to the public and private libraries in every American community where it can be within reach of those who may not yet be certain why the common law merits the love and devotion of the best men the profession claims as its own.



CIVIL LAWYER

(Continued)

civil lawyers and ask them to bear part of the burden of their grave responsibility. Such co-operation might gradually lead to the point where civil lawyers could act side-by-side with tribunal Advocates as assistant counsel in the collection and presentation of evidence and in the preparation of briefs.

Conclusion

We may be at or fast approaching the first stage of an evolutionary process in the emergence and growth of the role of the civil lawyer in the Church courts. If

we are, the evolutionary process will run its natural course only if civil lawyers are willing to take an interest in the work and jurisprudence of the Church courts which, at least in this country, they have not heretofore taken. In addition, the officials of these ecclesiastical tribunals must recognize the tremendous potential for meaningful assistance that stands at their beck and call in the person of the American civil lawyer. It would be a tragedy for the Church if this evolution did not come to pass. As matters stand today in this country, the work of the Church courts is by force of tradition the private preserve of tribunal officials. Logically, the first move, if it is to be made at all, must be made by them. I am convinced that the American civil lawyer will respond enthusiastically.

ANNULMENTS

(Continued)

seventy-five dollars. The small sum given the dedicated medical experts is more an honorarium than a compensation for services rendered. Petitioners in cases which are tried on appeal in New York and Philadelphia are asked to pay sixty dollars. The court does not accept fees in excess of expenses. The expenses for a case which goes before the Rota may amount to between one thousand and one thousand five hundred dollars. In the few cases which go from New York to the Rota the court sometimes asks for a reduction or cancellation of expenses. When a case goes to the Rota it is translated into Latin or Italian, retyped in translation, and then printed. This work is a major item of expense. Part of the Rotal fee is for the payment of the Advocate and the maintenance of the Rota. The expenses for cases which go to the Sacred Congregation of the Sacraments or the Sacred Congregation of the Holy Office vary with the nature of the case and the volume of the acts. The total expenses for the work done in New York

and Rome in one of these cases may be as low as two hundred dollars and as high as four hundred dollars.

While only God is completely objective, I think this paper approximates an objective presentation in summary fashion of the grounds for annulment and dissolution of marriages in the Church courts, the procedure in the processing of cases, and the practical results of these procedures in the Archdiocese of New York.

Should we look for, should we strive for changes in the law so that more persons can obtain annulments and dissolutions more expeditiously so that they may return to the sacraments or embrace the Catholic faith? Some Church lawyers think substantial changes in the law are in order. In fact, it has been suggested recently that a committee of judges and lawyers of the civil court should review the procedures of the Church court and offer suggestions as to possible changes in the law. It is quite probable that such a committee, drawing upon its rich background and experience in civil law, could make a substantial evaluation of present Church law procedure and might offer tangible suggestions towards its improvement.





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