

The Brandeis Way (Book Review)

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of the states over Federal Government corporations, and the power to tax the incomes of the employees of such corporations. On these two questions the material presented shows that the opinions of attorney-generals and the decisions of the state courts and of the federal courts, are hopelessly contradictory. Chaos is the only word adequately describing the situation.

Chapter IV describes the attempts of the states to regulate Government corporations in a variety of ways such as forcing them to comply with zoning laws, employee welfare laws, etc. For the most part the Government corporations have resisted these attempts at regulation. How far may a state go in such regulation? "The judicial answer is too varied and contradictory to be useful" says the author. The solution to the problem "will probably be found in clearly thought out Congressional legislation which will provide for a reasonable division of power and responsibility." The reviewer feels that this conclusion of the author is fully justified by the facts presented.

Chapters V and VI show how the states have cooperated both by legislation and administrative procedures with the Government corporations. Briefly put, the states have adopted legislation favorable to the Government corporations because it has been to their interest to do so. The same may be said for the administrative cooperation. This has been particularly true since 1933.

Moreover, the officers and employees of the Government corporations have not been passive observers in this situation. They have actively, and in some cases aggressively, presented their ideas to state legislators and administrative officials. Where a Government corporation is operating in several states it is only natural that its officers and employees should desire uniform legislation and administrative procedures.

The closing sentence of this book is significant because it reveals the author's attitude toward all the problems presented. "When Congress has learned to be precise in formulating its desires, and has thought out what relation the state ought to bear to a national government corporation, then the corporation will become a more useful device for the federal system." Taken as a whole this work accomplishes well what it attempts to do. The material presented is important, timely, well arranged, and thoroughly documented.

WILLIAM M. HUDSON.*

THE BRANDEIS WAY. By Alpheus Thomas Mason. Princeton: Princeton University Press, 1938, pp. vii, 336.

In the production of this most significant and fascinating study, Professor Mason has skillfully combined three essential ingredients. Basically, the book is a review of applied democracy; an analysis of its fundamental principles and underlying meaning. The author then proceeds to give point to the abstractions discussed in the opening chapter by selecting for his "case study", Louis D. Brandeis, without doubt one of the noblest and most forceful of the present-day exponents of the democratic ideal. The particular process which is chosen to

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demonstrate democracy at work is the struggle for savings bank life insurance in Massachusetts.

Branding "the economic menace of concentrated wealth and power" as the modern equivalent of the older concentration of political power against which such valiant battles were fought throughout our history, Professor Mason presents a thorough study of the evils of the life insurance business which gave rise to the formation of the New England Policy-Holders' Protective Committee in 1905, and the retention of Louis D. Brandeis as its counsel. The scandals brought to light by the dissension between James H. Hyde and James W. Alexander, both of the Equitable Assurance Society, served to give impetus to a movement which otherwise might have been long delayed. The inability or unwillingness of official agencies to undertake the arduous task of real reform left it to Brandeis' committee to unearth the facts behind the malodorous situation, and to induce the state legislature to take appropriate action.

In connection with the story of the investigation which followed under Brandeis' direction, the author reveals his subject as an idealist who combines all of the best qualities of a careful student and trained detective. Day and night Brandeis mulled over reports, statistical surveys and financial reports, emerging with an irrefutable indictment of the methods of life insurance companies in the conduct of their industrial policy departments. The sheer economic waste attendant on the system by which policy-holders were mulcted so that officials might thrive was skillfully demonstrated in the committee report.

At first the possible relationship between savings banks and life insurance was felt to be nothing more than a matter of comparison. Brandeis pointed to the savings banks of Massachusetts as a yard-stick "to show relative efficiency and economy in handling other people's money." The use of the comparison soon led to the thought that the long-demonstrated efficiency and integrity of the savings banks of the state made them the logical choice for the business of selling life insurance to the poor and lower-class wage-earners.

The long campaign which followed is depicted so vividly by Professor Mason that the volume could well take its place as a significant work merely on the gripping tale of this fascinating struggle. Faced with the ignorance of the public and the indifference of the legislators, Brandeis mapped his campaign in the field of the democratic process with all of the care and skill that a military leader lays his plans for an offensive on the field of battle. Brandeis expressed his thoughts in a letter to Henry Morgenthau, Sr., in 1906: "My belief is that this movement can be advanced best by having presented publicly and with persistence the evils of the present system. If the community is convinced of the evils of the present system, and are driven to the point of finding a remedy, they will, I think, discover that there is no immediate remedy available except through the savings banks."¹

Professor Mason notes four distinct stages in the Brandeis method: "First, thorough investigation and diagnosis, aided by experts and others, leading ultimately to a considered remedy. Second, education to acquaint leaders of opinion with the results of such research, by private interviews and conferences. Third, public education by personal contact, by press and platform. Fourth, legislation to embody the remedy." Through these four stages the book follows Brandeis,

¹ *Id.* at 152.

revealing the revered scholar to be as practical a politician and as expert a lobbyist as this country has ever seen. Practically single-handed, at the beginning, and with apparently inexhaustible energy, the Boston lawyer went about the most subtle of tasks, the creation of a militant movement. Union leaders and bankers, clergymen and public officials were painstakingly sought out in the effort to form an active nucleus through which the more imposing job of enlisting the support of the general public could be undertaken. The tale is almost romantic in its fascination. The press was, of course, an invaluable recruit.

The opposition by the large life insurance companies was necessarily bitter. Every device known to politics was employed to thwart the efforts of Brandeis and his associates, including a rather crude attempt to buy him off with an offer of stock in a company about to be formed. It was not until the failure of this attempt that the companies were convinced that the Boston lawyer was engaged in the movement for no personal gain, and solely because he believed sincerely that the reform he was urging was much needed for the relief of the impeccable policy-holder.

The enactment of the Massachusetts Savings Bank Insurance Act in 1907 was by no means the end of the undertaking. The legislation was, of course, permissive, and if no savings banks availed itself of the privilege extended, the hard labors of several years would have come to naught. There followed an intensive campaign, fraught with many obstacles, to urge the savings banks to procure certificates and launch an insurance division. Tirelessly, Brandeis pounded away at the officers and directors of various banks to take action. So great was the opposition that by 1912 only four banks had entered the insurance field. From 1912 to 1922 there was not one addition to the fold. This hiatus is directly attributed to the evils of "bigness" and monopolistic tendencies of which Brandeis has always been an inveterate foe. Interlocking directorates of savings banks and life insurance companies efficiently prevented the former from entering into competition with the latter.

At the present time there are twenty-four savings banks in Massachusetts which maintain life insurance departments. Educating the public in the benefits of this form of insurance has been a difficult task. The persistent solicitation of life insurance agents on behalf of the companies is more powerful as a means of business acquisition than advertisements for the "over the counter" insurance sold by the savings banks. The recent enactment of a bank insurance statute in New York seems to indicate that the evils of the industrial policy are being appreciated to a great extent in this state, due primarily to a campaign waged by the New York World-Telegram, but whether or not the lethargy of the general public can be overcome to impel a visit to bank instead of the more convenient payment of ten cents per week to the industrial agent who calls at the door is a question which remains to be answered.

Professor Mason's book makes excellent reading. It is by no means a mere study of savings bank insurance, but it is in reality "a case study in the workings of democracy" as it is sub-titled. As an analysis of the operation of democratic processes it leaves little to be desired, and the interesting "case study" treatment permits a rare insight into the means by which a "social invention" is molded into an accomplished and accepted fact.

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