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**It's Your Law (Charles P. Curtis, 1954)**

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appeal and does not prejudice any substantial right of a contestant.

The Court has preserved the extraordinary writ jurisdiction afforded by the Constitution, has accorded contestants an adequate review in lieu of appeal proper, and yet has co-operated ably with the Legislature in reducing time and cost in the review procedure.

GENE DURRANCE

BOOK REVIEWS


One day more than a hundred years ago—on February 17, 1851, to be precise—a professor in Geneva spent six or seven hours reading Joseph Joubert's Pensees. That evening he made a diary entry of his day's doings, including these reflections on M. Joubert:

"He poses many more problems than he solves, notes and asserts more than he explains. In short, he is a thinker rather than a philosopher, a critic remarkably organized, with an exquisite feeling for sensation, but an intelligence without the capacity for coordination . . . . He . . . . is imperfect rather than abortive . . . . The whole [volume] is nevertheless more ingenious than strong, more poetic than profound, and leaves the reader rather the impression of a great wealth of precious little curios than of a great intellectual existence and a new point of view."

The professor, of course, was Henri Frederic Amiel; the diary was the famous Journal Intime, and we have used VanWyck Brooks' 1935 translation rather than inflict our own version upon our readers. We might here remark that the entire Brooks translation is a work of art, off-beat for lawyers, it is true, but a reading of which would do much towards broadening one's outlook—and the sad fact is that most lawyers have as narrow an outlook as do most medical men. Amiel, it will be remembered, defined the law of irony as "unconscious dupery, the refutation of oneself by oneself, the concrete realization of the absurd."
We had Amiel's estimate of Joubert and his definition of irony both in mind as we went through this collection of four long essays, rewritten by Mr. Curtis from earlier law review articles and occasional addresses. The volume might well have been subtitled "The View from Charlie's Head," for, while the author is nothing if not urbane, he is nothing if not provincial, in a nice, Back Bay, Beacon Hill manner. Holmes and Whitehead are his gods, Frankfurter and Learned Hand his latter-day prophets. While he is a relativist of sorts, he delivers himself of sufficient positive—we mean dogmatic in the pejorative sense—judgments to recall Amiel's definition.

Thus Mr. Curtis is of the opinion that, while Aristotle was sufficient for the poor, simple ancients, he is the cause of a great deal of misunderstanding in our day because of his insistence that things have essences; our author would have us follow Quine as a logician, since Professor Quine insists that the essence is in the word, not the thing! Our author agrees with Nobel prize winner Percy Bridgman that no special privilege should be accorded authority or tradition, and that personal prejudices and predilections must be carefully guarded against. But he is "not willing to admit that Learned Hand is ever wrong."

He complains of the "medieval illusion that each word has, and can have, only one taxonomic meaning." He always uses medieval as a term of contempt—was Maitland wrong, writing of the clarity and realism of the medieval legal mind?—thus recalling a remark of his fellow Harvardman Charles H. McIlwain that present-day exhibitions of ignorance of the Middle Ages sometimes border on the grotesque. He observes that "a moral judgment rendered in emotional terms is either a boast or a confession," and goes on to quote Whitehead on the "dogmatic fallacy" having "done its worst" to moral codes. He purports to disdain dogmatism, but says: "I do not myself think that making moonshine whiskey involves moral turpitude, and I cannot see how intelligent people can argue whether it is or not, unless for fun." Was it not Learned Hand who wrote that the spirit of liberty is the spirit which is never quite certain it is right?

On the other hand, Curtis is not in much position to complain that we thus view his attitude, for he has exclaimed: "The meaning of words is to be sought, not in their author, but in the person addressed. ... Words are but delegations of the right to interpret them. ... The question before the court is not whether he gave the words the right meaning, but whether or not the words authorized the meaning he gave them."
Quite unlike Joubert, who is reputed to have lain abed day after day in a pink dressing gown, trying to think nothing and feel no emotion, Mr. Curtis is in the fray every minute. There is not a page of his latest work which the reader will not mark for future reference, nod assent to, violently disagree with, or pore over puzzledly. For all of his blind spots, Charles Curtis is extraordinarily widely read, can, on occasion, turn a beautiful phrase, would make a fine conversationalist, and is a spur to thought. We might classify Mr. Curtis as Zechariah Chafee, Jr., classified the late Harold Laski: "There are few men with whom I have disagreed so often, and few still with whom I have passed so many happy hours."

Thus: "We are still a combative people, not yet so civilized and sophisticated as to forget that combat is one way to justice."

Or: "A lawyer . . . has lower standards of conduct towards outsiders than he has toward his clients . . . against the outsiders. He is required to treat outsiders as if they were barbarians and enemies."

And: "The administration of justice is no more designed to elicit the truth than the scientific approach is designed to extract justice from the atom."

Again: "A practicing lawyer will soon detect in himself a perfectly astonishing amount of sincerity. . . . You cannot very well keep your tongue in your cheek while you are talking."

And finally: "Our civil liberties are poorly served by being lumped with the least we have a legal right to insist on."

Speaking of Canon 15 of the Canons of Professional Ethics, which makes it "improper for a lawyer to assert in argument his personal belief in his client's innocence or in the justice of his cause," our author says that this merely "gives a lawyer an excuse when his client wants him to espouse a cause, when all the lawyer wants to take is a case."

Commenting on a practice of Brandeis, among others, he observes: "By not putting their emotions as well as their minds up for hire, they saved, for the clients as well as for themselves, the waste of spirit which some lawyers confuse with devotion."

Discussing exerting one's best efforts, he exclaims: "When a man is fully conscious of what he is doing, there is too little of him left to do it."

And, after noting that, in legal draftsmanship, originality is a vice, he suggests: "A book of legal forms is the legal cousin of an anthology of popular ballads."

With the thought in mind that, in certain instances, the legislature
had no intention whatsoever, thus making interpretation of legislative intent somewhat of a problem, he says: "It puts a great strain on a man's wisdom to feel he is under the duty of making up his own mind only by filling it with what another did not have in his." He recommends: "Let the courts stop peering over the shoulders of legislative committees and sitting in the strangers' gallery. The Congressional Record is not the United States Code."

"Have you ever watched a lawyer drafting a legal document for you?" Mr. Curtis asks. "Only a good poet manipulates words at once more tenderly and more ruthlessly, but a poet sees and uses all their characteristics, their color, their texture, their luster, all their virtues. The legal draftsman works only in black and white, in browns and grays, in highlights and in shadows, in a chiaroscuro of clarity and obscurity. He is concerned with the size of words, their shape and contour. He works in only two of their dimensions, so to speak."

In the same vein, he continues: "Abstractions have the appearance of being precise, and lawyers cherish a prejudice in favor of precision, however illusory. . . . A lawyer's words should be no more precise than his client's control of the future is both practicable and desirable. . . . What we admire in legal draftsmanship is not precision. It is a precisely appropriate degree of imprecision."¹

He suggests that "it is a mistake to confuse ethics to the emotions" and quotes a Whitehead apothegm: "The conception of the Universe as evolving subject to fixed, eternal laws regulating all behavior should be abandoned." This seems to amount to a return to Heraclitus, after we have abandoned Aristotle as old-fashioned.

As an advantage of the Immanent over the Imposed Order, he relies on Whitehead's atheistical remark: "It is evident that the doctrine involves the negation of 'absolute being.' It presupposes the essential interdependence of things." This approaches a pantheistic notion.

"Your respect for another man's position," we are told, "or for his competence, or for his wisdom, has a bearing upon your judgment as to whether his opinion was right or reasonable." If an opinion is an evaluation, it would come within the definition of "total assertion," as used by Dorothy Emmet and our author, and would thus include emotional response. We point this out lest it be thought that our evaluation of Mr. Curtis is emotionally controlled without our knowl-

¹There is a footnote at the end of this essay to the effect that the author's debt to John Dewey is obvious.
edge. Let us examine Curtis' position as it affects our respect for him, our judgment of him.

At one point, he quotes Montaigne: "An adequate reader often discovers in the writings of others perfections which the author neither put there nor perceived, and which give us richer aspects and meanings." We trust the reader will bear with us while we see what this passage looks like in the French. Our edition of Montaigne's Essays was published by Hachette in Paris in 1860. We find: "Un suffisant lecteur découvre souvent ez esprits d'aultruy des perfections aultres que celles que l'aucteur y a mises et apperceues, et y preste des sens et des visages plus riches." While we might not agree precisely with the translation, we would be bold indeed to say that the thought in English was not the same as the thought in French. While we cannot say that the translation is that of our author, internal evidence in the volume under review would lead one to conclude that Charles P. Curtis has a competence in French.

Next we consider another, and more important, quotation from Montaigne. This one was used by Mr. Curtis in an article some years ago in the Stanford Law Review. It caused quite a stir at the time, including a formal rejoinder by Henry S. Drinker, then the Chairman of the Standing Committee on Professional Ethics and Grievances of the American Bar Association. That Curtis was stung by Drinker's rejoinder is obvious from his treatment of the episode in this book. After he summarizes the matter, he quotes an opinion of Mr. Drinker's Committee and concludes: "The Committee on Professional Ethics, as you see, comes perilously close to agreeing with me." Note carefully that "perilously." In any event, the footnote citation to the Montaigne quotation we are about to set forth is not to a mere book and chapter — as in another citation — nor yet to an essay title, book and chapter — as in yet another citation — but, rather, to a French variorum edition of 1876. We unfortunately do not have the edition at hand. Should its text differ from the standard texts? Why not use a standard text or explain? The quotation is: "An honest man is not responsible for the vices or stupidity of his calling and need not refuse to practice them." Our text reads: "un honneste homme n'est pas comptable du vice ou sottise de son mestier, et ne doit pourtant en refuser l'exercice." The sentence clearly does not end with les exercices, nor with des exercices. The difference between a singular and a plural pronoun in this instance makes the difference between translating the sentence as our author has done and translating it: "An honest man is not responsible for the vices or stupidity of his calling, and need not refuse
to practice it." If Curtis is right, then translators have been wrong for 350 years.

The point to be made is that our author, who thinks it proper for a lawyer to lie for a client "beyond the point where he could permissibly lie for himself," and who says that the criticisms of his Stanford Law Review article led him "to clarify some ambiguities and correct some misstatements," has made neither clarification nor correction to his private discovery in Montaigne of "perfections which the author neither put there nor perceived, and which give us richer aspects and meanings." He has certainly given a different meaning to Montaigne's thought by his translation than appears in the original. The different meanings can hardly be attributed to textual difficulty, in view of the fluency demonstrated by Curtis in his other Montaigne translations. Could it be because the preparation of a document, in his language, is an attempt "to influence the conduct of the people to whom the document is addressed," and he would like his readers, the readers of his document, his book, to believe that Montaigne was even stronger than Lecky in backing expediency against principle? We return to Mr. Curtis' own suggestion that judgment on his opinions depends upon our respect for his position. Whether or not we agree with Trechmann that "a translation of Montaigne in which the errors are to be numbered only by hundreds is a good translation," this particular mistranslation weighs heavily in our general evaluation of Charles P. Curtis.

The tendency is always to take the competent writer seriously. There is grave danger in reading the polished prose of Mr. Curtis that the reader will presume the content to be sound. The danger is real enough, for in fields in which the average lawyer may presume a competence Mr. Curtis is, in fact, sound. But in religion and history, in semantics and logic, he is not merely unsound; he is, to use Amiel's language again, "the concrete realization of the absurd." With these thoughts and reservations in mind, we recommend the volume. Mr. Curtis will make the reader think. Whether one agrees or disagrees with the author, he will think, and there is precious little evidence that thinking ever harmed a lawyer.

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