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## Brandeis

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BRANDEIS. By *Lewis J. Paper*. Englewood Cliffs, New Jersey: Prentice Hall, Inc. 1983. Pp. 442. \$18.95.

Born into one of the most important eras of modern legal development, Louis Brandeis witnessed almost a century of this nation's history, beginning with the Civil War and ending on the eve of World War II. His advice to numerous powerful figures, and eventually to several American presidents, helped to shape the times in which he lived. His energetic work for reform and the "public good" earned him the nickname of "the people's attorney," and aided in firmly establishing a tradition of public service for the legal profes-

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sion. Brandeis's support of Zionism, which began only in his later years, was instrumental in giving the movement strength and respectability in the United States. In *Brandeis*, Lewis J. Paper<sup>1</sup> offers a detailed and well-researched biography of this remarkable man of brilliance, diligence, and unflinching optimism.

Paper examines Brandeis's life and work in depth, devoting fully half of his book to the pre-Supreme Court period of Brandeis's life. Brandeis, who "liked a good fight" (p. 214), was involved in many early efforts to champion what he felt was the public good, and Paper examines a number of these struggles in a detail not available in other biographies.<sup>2</sup> Two examples are accounts of Brandeis's efforts to end the Boston Elevated Railway monopoly and his struggle to institute savings bank life insurance in Massachusetts.

Paper believes that one of the continuing motivations in Brandeis's life was a personal belief that each person should have the opportunity and freedom to develop to his or her full potential. Inherent in this concept, thought Brandeis, is a need to exert the greatest possible control over one's own environment. Only through this control can one truly take charge of one's own destiny and find fulfillment. Because Paper considers this idea central to Brandeis's philosophy, he adopts it as a major biographical theme in the book and continually explains Brandeis's actions in terms of this philosophical commitment.

Paper's examination of Brandeis's attitudes on "bigness," money, and Zionism, for example, reflect this approach. Paper reasons that Brandeis's long crusade against "bigness" was motivated by the belief that huge businesses or communities lessened a person's control over his environment and as a result virtually eliminated the personal freedom needed to achieve one's full potential. Thus, Brandeis advocated competition, small businesses with individual entrepreneurs, small communities, and decentralized government as the best ways to attain his ideal society. Because he believed that a certain amount of financial security is necessary to control one's development of potential, Brandeis urged his clients to give their employees steady work at lower wages rather than erratic and unpredictable work at higher wages. He also became an early advocate of unemployment insurance and declared that only men of independent means should go into government, reasoning that they were the only ones who could afford to risk their jobs by exposing corruption and

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1. The author received his J.D. from Harvard and an L.L.M. from Georgetown. Paper has written a number of articles and one other book, JOHN F. KENNEDY: THE PROMISE AND THE PERFORMANCE (1975), and is currently practicing law in Washington, D.C.

2. One of the few biographies that gives as much attention to Brandeis's life before he was appointed to the Supreme Court is A. LIEF, BRANDEIS: THE PERSONAL HISTORY OF AN AMERICAN IDEAL (1936). However, Paper's *Brandeis* is far more accurate in its detail because Paper had access to information that was not available to the public in Lief's time.

working for the public good. Paper also explains Brandeis's staunch Zionism in terms of this philosophy. Brandeis thought a Jewish homeland desirable not only because anti-Semitism prevented Jews all over the world from effectively controlling their environment and thus developing to their full potential, but also because he felt the creation of such a state would provide a unique opportunity to plan an ideal society.

The Brandeis of Paper's biography appears as a man who worked for his beliefs throughout his life, both by personally striving toward his goals and by convincing others, sometimes secretly, to act in ways that furthered his own ideals. It is perhaps by the latter means that Brandeis made his greatest impact on society. His outstanding intellect, keen analytical abilities, forceful personality, and reputation for integrity brought followers willing to aid him, both overtly and covertly, and attracted powerful men seeking his advice.

Brandeis accepted an appointment to the Supreme Court in 1916 largely because it would give him enormous power with which to develop his concept of the ideal America. Paper reveals that, even as a Justice, Brandeis saw no problem with continuing to advise people, especially presidents, provided it was done discreetly and without hint of impropriety. A variety of intermediaries were used, but Brandeis's favorite was his dear friend, Felix Frankfurter, whom he considered " 'half brother, half son' " (p. 257).

Though Paper discusses Brandeis's use of Frankfurter's services and his payment of money to defray Frankfurter's expenses and to compensate Frankfurter for his efforts to achieve Brandeis's goals, Paper does not explore this surprising aspect of the pair's relationship in as much detail as does Bruce Allen Murphy in *The Brandeis/Frankfurter Connection*.<sup>3</sup> Murphy agrees with Paper that Brandeis and Frankfurter were close friends, and in fact notes that "[o]ther than to his wife, Brandeis was closer to no other person."<sup>4</sup> Murphy and Paper also agree that Frankfurter's views were so similar to Brandeis's that when he worked for Brandeis he furthered his own goals as well.<sup>5</sup> Obviously, then, Frankfurter did not act at Brandeis's request simply because he received money for doing so. But Murphy, who clearly considers the long-hidden financial aspect of the Justice's relationship with Frankfurter to have been far more important and ethically troublesome than does Paper, devotes an entire book to the study of Brandeis's secret advocacy, complete with de-

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3. See B. MURPHY, *THE BRANDEIS/FRANKFURTER CONNECTION: THE SECRET POLITICAL ACTIVITIES OF TWO SUPREME COURT JUSTICES* (1982). For a review of Murphy's book, see Wheeler, *Of Standards for Extra-Judicial Behavior* (Book Review), 81 MICH. L. REV. 931 (1983).

4. B. MURPHY, *supra* note 3, at 40.

5. Compare p. 256 with B. MURPHY, *supra* note 3, at 43.

tails about the specific instances in which Frankfurter acted in Brandeis's stead.<sup>6</sup> Paper's biography effectively alerts the reader to the numerous occasions in Brandeis's life when he used others, Frankfurter among them, to advance his political and social goals, but sometimes provides less information on these points than one might hope for.

Paper develops the background for his narrative by coloring his description of Brandeis's activities with glimpses of current events and Brandeis's personal life. In addition, the author attempts to give the reader insight into the character of Brandeis's contemporaries and their relationships with Brandeis. For example, Paper reveals that Brandeis thought Chief Justice Taft had a "first-rate second-rate mind" (p. 300), and that Oliver Wendell Holmes felt Franklin D. Roosevelt had only a "second-class intellect," but a "first-class temperament" (p. 363).

But despite its detailed study of Brandeis's life, this biography remains somewhat impersonal; Paper's characterization lacks the warmth and depth that other works have achieved.<sup>7</sup> And although Paper's study is less uniformly admiring of Brandeis than the works of earlier biographers,<sup>8</sup> it still does not seem to be fully objective. Paper's Brandeis is a man with no real flaws. In the situations where the correctness of Brandeis's actions appears potentially troublesome from an ethical perspective, Paper either ignores the difficulty or quickly dismisses it without fully addressing the problem. For example, Paper does not adequately confront the propriety of Brandeis's attempts to advance his political and social goals through covert, extra-judicial work involving everyone from journalists to presidents, nor does he give the reader more than the most favorable interpretation of Brandeis's troublesome secret payments to Frankfurter. The most critical remark that Paper is willing to venture on his famous subject is that, though Brandeis was sensitive to doing the right thing, "[h]is scale for measurement . . . did not always coincide with others'" (p. 79). Paper's failure to grapple with the troublesome ethical aspects of Brandeis's life is unfortunate, for a focused discus-

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6. Paper at one point defends Brandeis against Murphy's criticism that the Justice's extra-judicial activities tainted his actions in the Sacco-Vanzetti case. Brandeis had quietly contributed to the Sacco-Vanzetti defense fund and had privately given advice on the case to Frankfurter. When the defense attorneys later approached him to request a stay of execution, Brandeis disqualified himself. Murphy suspects that this disqualification was due primarily to the compromising position that Brandeis had put himself in with his advice and financial support, see B. MURPHY, *supra* note 3, at 78-82, but Paper argues that this criticism is unjust because Brandeis's disqualification was mandated by the public involvement in the case of his good friend and then house guest, Bess Evans. Thus, reasons Paper, Brandeis could have properly decided early on that, because he was already disqualified, he could help in the case. P. 256.

7. See, e.g., D. ACHESON, *MORNING AND NOON* (1965).

8. See, e.g., the collected works of Alpheus T. Mason (whom Brandeis authorized to write his biography), all of which are very favorable to their subject.

sion of these issues might well vindicate Brandeis's actions better than a sweetened version of events. Such an approach would in any case be an interesting commentary on the proper roles of advocates and judges in our society.<sup>9</sup>

*Brandeis* is written in an overly conversational style, continually sacrificing even correct grammar to achieve casual narrative. The resulting vernacular is a constant annoyance and a serious distraction from the book's contents. Nevertheless, Paper's biography is a well-researched addition to the literature on Louis Brandeis. Paper has relied heavily on primary sources such as interviews with surviving family members and law clerks and has even gained access to numerous Brandeis letters previously unavailable to scholars.<sup>10</sup> Paper uses these materials effectively by providing a detailed account of Louis Brandeis' life, especially of those activities that were virtually unknown during his life and that have been too little explored since his death.

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9. Though Murphy's *The Brandeis/Frankfurter Connection* examines the *facts* of one of the troublesome aspects of Brandeis's life in more detail than Paper, Murphy fails to give adequate consideration to the question of what the ethics governing such extra-judicial involvement ought to be.

10. These thousands of letters were in the collection of Brandeis's daughter, Susan, and were not available to Melvin I. Urofsky and David W. Levy for inclusion in their multi-volume compilation *Letters of Louis Brandeis* (1971-1978).