

## NOT IN FEATHER BEDS

By Lord Radcliffe; (Hamish Hamilton, London) 1968; 277 pp.

This book gathers together random sparks struck from the anvil of a brilliant mind over a period of some twenty years. Its author served as a Lord of Appeal from 1949 until 1964. He was Director-General of the British Ministry of Information during the Second World War. He has been chairman of numerous important boards and commissions.

He is now 71 years of age. Looking back upon an interesting and a useful life, he speaks of his formative years: "As I get older," he writes, "I become increasingly aware of the fact that my own reaction to life was formed by the War of 1914-1918, the impact of which I met first as a schoolboy rather older than my years and later in the Army. In a way that we did not then understand that War made us its own. I do not think that anyone who began to grow up under that vast and poignant shadow could ever begin a life after it that was not already committed, with however bright a seeming radiance the shadow may have passed. The Spring had gone out of the year, and it never came back. I know that, for myself, I never expected it to."<sup>1</sup>

In the twenty-two chapters of his book, Lord Radcliffe treats of many themes. Among them may be instanced the following: The Place of the Law Courts in Society, Law and the Democratic State, Patronage and the Arts, The Immortal Memory of William Shakespeare, Censors, and the Dissolving Society. These are divergent themes. The only unity that the various chapters which make up the whole book have is the attractive and disciplined personality of the author which, as he recalls, was forged in a time of trial, and tested by active years at the bar and on the bench.

Lord Radcliffe sees the lawyer, not as a technician, but as a social physician, whose training must be a long and strenuous one. More than 'a warm heart and a humane temper' are demanded of the lawyer. Knowledge is demanded and more than the narrow range of knowledge that may serve the specialist. Speaking of the training to which the lawyer must subject himself, he once said: "Some knowledge of other legal systems than our own: some familiarity with the history and development of our own system: an intimate knowledge of the decisions and opinions of former judges and the views of commentators: that long wrestle, which ends only with the end of one's professional life, to grasp the major principles that underly a system of law so developed; and, finally, such powers of deductive reasoning as fate may endow a man with. It is with such weapons that we would equip a man for that strange calling which is neither so masterful as a craft, nor so precise as science, nor so imaginative as art,

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1. Pp. xvi-xvii.

and yet which mixes the elements of all three and which we are disposed to rank among the great professions.”<sup>2</sup>

These magnificent words are not from his present book. They come from an address which he gave to the Cambridge University Law Society, in 1949. But his book has many equally eloquent and inspiring passages. Perhaps, its varied riches may best be illustrated by a few brief quotations.

In speaking of freedom of information, a human right, he has this to say: “The roots of the doctrine are deep in European history and such is its vitality that it is still capable of putting out new shoots. I should not call it exactly Christian doctrine. For the inspiration of Christian teaching has lain, surely, in dwelling upon our duties rather than in spelling out our rights; and the only disaster that we should teach ourselves to fear is that which alienates the human spirit from the love of God. Such teaching hardly needs to assert, and might sometimes be puzzled to defend, a theory of the inalienable privileges that attach to the event of being born a man. Still, a belief in natural rights restores to the individual the dignity of being individual. Man is, at least, as Sir Thomas Browne said, ‘a noble animal’.”<sup>3</sup>

Here is a comment on legal training: “The Elizabethans, as you know, regarded a young man’s admission to an Inn of Court in London as equivalent to the undertaking of a University education. The comparison is misleading, unless one allows for the limits of University education in the sixteenth century and remembers that an Inn of Court could serve as a school of manners as well as a school in the stricter sense; but at least it serves to show that modern English society has at its base the idea that a study of law is worthy to serve as an introduction to civilized life.”<sup>4</sup>

And here is a comment on the judicial function: “More and more I am impressed by the inescapable personal element in the judicial decision. We are fond of saying, approvingly, that a Judge should be objective; but it is perhaps the wrong metaphor, an idea borrowed, like so much else that obscures our thinking on general topics, from an analogy between the physical sciences and things incommensurable with them? Say indeed that a judge must be fair, or that he must be impartial: that is essential. He must strip himself of all prejudices, certainly; except, I ought to add, those prejudices which on consideration he is prepared to stand by as his sincere convictions. You see how quickly, just because he is not a machine, one begins to tie oneself in words and qualifications of words. He has no right to be biased; but then no human mind is constructed with perfect balance. He must give an honest hearing to all points of view and to arguments that

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2. Some reflections on Law and Lawyers, (1950) 10 Can. L.J. 361, at p. 369.

3. Pp. 13-14.

4. Pp. 46-7.

do not even introduce themselves to him as plausible: but it is unreal to think of a judge of experience as if he were a mere hearing aid. It was said of the late Lord Bryce that to him all facts were born free and equal. That may be all right for facts, before the work of evaluation begins, but a judge is a mature man, of long and professional experience, with prepared approaches and formed attitudes of mind, and it would be, I think, almost hypocritical to speak of him as if each case presented itself to his eye in the light of the first dawn of creation. To me fairness of mind cannot involve such innocence as that."<sup>5</sup>

As a last offering, here are some wise words on the law which must never be permitted to forget its long pedigree: "Edmund Burke once declared in a famous passage in which he described the ends of civil society that it was a partnership 'not only between those who are living, but between those who are living, those who are dead, and those who are yet to be born'. In a long established society such as ours, law, which is a reflection of society, reflects a partnership which is composed of beliefs that are dying, beliefs of the day and beliefs that are still inchoate and taking form. It is not appropriate to it that it should be remade completely and continuously so that it should express nothing deeper than the will and aspiration of the hour. It would be a weakness, not a strength, if it were possible to do so."<sup>6</sup>

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## "LE CONTROLE JUDICIAIRE DE L'ADMINISTRATION AU QUEBEC"

par René Dussault,

Les Presses de l'Université Laval, 1969, Pp. XXV, 488

A notre époque où le droit administratif prend sans cesse de l'importance les juristes canadiens et québécois ne peuvent que se réjouir de la parution du volume du professeur Dussault. En effet la montée du rôle de l'Etat, l'émergence de l'administration, pose avec acuité le problème de son contrôle. En ce domaine la littérature juridique canadienne et québécoise, quoique assez abondante, se retrouvait malheureusement parsemée dans différents périodiques ou ouvrages spécialisés. Le volume de Me Dussault vient donc remédier à cette situation. Il s'agit véritablement du premier traité canadien qui envisage d'une façon globale tous les

5. Pp. 212-13.

6. Pp. 224-25.

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