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Book Reviews

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BOOK REVIEWS

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Dissenter in a Great Society is a title which characterizes both its author and his view of the vocation of a Christian in relation to his world. William Stringfellow is a New York lawyer and a confessing Christian who practices his vocation of dissent with rare perceptiveness, forceful convictions and compelling prose. "Dissenter" is neither his first book, nor his best but like all of the others it is not a book about which readers will be neutral, for it probes and exposes, denounces and convicts with such relentless power that it cannot be ignored.

As we are reminded in the Foreword, *Dissenter* is the product of Stringfellow's practical involvement as a Christian in the American social crisis, especially as it has developed since 1964. The book "represents spontaneous reactions to certain contemporary happenings," hence its unsystematic character, and "has no other ambition than to be a chronicle of criticism, complaint and dissent." It is, in other words, a series of critical essays or reflections on American society from a biblical and theological perspective.

The targets of Mr Stringfellow's dissent are too numerous to detail here, but taken together they depict a society whose idolatry of money as a value in itself, whose preference for property rights over human rights, whose betrayal of the poor, in the face of technical skills and potentials which could virtually eradicate poverty, whose subjugation of the Negro, and whose failure to recognize that at the center of its problems lie the unquestioned assumptions of middle class white supremacy point inescapably to the coming of "a day of wrath." American society is in short suffering from a "sickness unto death" and the prognosis for the future, save for some sort of miracle, is dark and foreboding. As Stringfellow himself indicates, he wrote with "the premonition that this nation is engaged in suicide and that its self-destruction is being pursued in the name of supposedly admirable purposes: nationalism, survival,

domestic tranquility, resistance to aggression or aid to the development of other countries, the maturing of democracy, the construction of a great society”¹

One of *Dissenter's* assumptions is that basic to the American social dilemma is a moral rather than a technical problem. Instruments, techniques and resources are available for the accomplishment of fundamental changes necessary for society. What is missing is the will to use such tools in order to effect a change in the collision course upon which the society is set. In Stringfellow's view all of the institutions of society, including churches and universities, and all of the professions, which maintain the life of such institutions, are responsible for and reflect the moral decadence which prevents the society from overcoming poverty and the human miseries which stem from it. His essay on "Law and the Poor" should be of particular interest to readers of this journal. "The law—in its making, enforcement, administration, practice and adjudication—has virtually abandoned the poor. It fails to counsel them in their complaints; it refuses to represent them in their causes of action; it neglects their rights as citizens, consigning them to charlatans or charity; it is almost totally indifferent to their entrapment in poverty"² Ghetto riots are merely a symptom of the complete breakdown of confidence in the law on the part of the poor, for whom the law itself is increasingly a sign of their rejection by a society which tries to hide, control, suppress and forget them while maintaining that it is the poor themselves who constitute the basic problem. What Stringfellow finds particularly frightening is that simultaneous to the eruption of violence, anger and despair in the urban ghetto is the hardening of the recalcitrance of the rest of the society. The unrest of the ghetto is thus being met with methods of violence and with a strategy that increasingly sees the role of the police as that of "armies of occupation." But the blame for this cannot be placed on police enforcement alone. Stringfellow insists that the default of the legal profession as a whole, despite its token charities, and of legal education, which "for more than three decades has pursued a specialization that has equipped the legal profession to serve the great corporate powers, the government, and the prosperous, but has relegated the preparation of lawyers in matters of civil rights, juvenile crime, domestic relations, tenant problems and the like to the periphery of the curriculum,"³ is also responsible. The implications of such a default, however, run deeper than the problems of the poor, for if the least in our society is unable, practically

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Perhaps one of the most profound insights of *Dissenter* is the recurring theme that rejects the notion that it is the poor alone who suffer the consequences of poverty and that the Negro is finally the only victim in a divided society. Stringfellow believes that in this case the victims tell us much about ourselves as the real locus of our society's problems, as those who are unwilling and/or unable to face the fact that we are also the victims of our own moral dilemma. The exclusion of the poor, and of the Negro in particular, from the mainstream of the life of our society, he tells us, "jeopardizes the political freedom, economic solvency, psychological stability, and moral integrity of those who are not excluded, just as much as those who are."⁴ That being the case, and this reviewer believes that it is, no amount of charitable activity or "doing good" indeed, nothing short of coming to terms with ourselves and with the mainstream in which the problems of our time have their foundation will constitute either serious or responsible action.

Dissenter has been criticized by some, and perhaps not altogether incorrectly, for its inadequacies in posing solutions for the myriad problems which it seeks to expose. It is true that this is not a book containing "neat solutions" and that Stringfellow himself recognizes that some of his constructive suggestions carry within them the seeds of new problems which inevitably pose new necessities for continued dissent. But one must remember that in this instance it is not Stringfellow's purpose to issue a blueprint for the Great Society but to illumine what appear to be the present grim realities of that society and to view them from a particular perspective. One of the realities of Stringfellow's perspective is that there are in fact no easy solutions to the problem of being human. The incarnation and crucifixion of Christ, which Stringfellow views as "political events," witness to that fact.

The final section of *Dissenter* constitutes the author's attempt to articulate the biblical and theological perspective which has informed the whole of the book. To Stringfellow himself this section doubtless seems redundant, since the whole of his discussion of the Great Society is in fact theological. But for those who believe that theology is a language and a world unto itself (one which is for the most part irrelevant) or who are unaccustomed to recognizing theological reflection in relation to the realities of political and social

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life, it is helpful to have the author clarify his language and expose some of the convictions which he brings to his dissent. Paramount among those convictions is that this is still the world which God loves and judges and in which he is reconciling men through the incarnation and crucifixion. This is no esoteric religious affirmation for Stringfellow, but a fundamental fact which both informs and redeems the possibilities of human existence. To quote him:

The Cross means not only the consignment of Christ to death, but His triumph over the power of death on behalf of the world. The Cross means the invincible power of God's love for the world, even though all of the world betrays, denies, abhors, fears or opposes the gift of His love for the world. The Cross means voluntary love which is undaunted by any hostility or hatred or violence or assault. The Cross means the gift of love even to one's enemy—even to one who would take one's life.⁵

While men may and do forsake the Cross, God has neither forgotten nor forsaken it. What Stringfellow urges, therefore, is that the only real solution for Christians, indeed for all men, is to accept real involvement in the real world and to be open to the witness of the Cross, that is, to be prepared for whatever suffering, loss, humiliation, and even death may be required in order to release men from the enormous accumulation of guilt, shame, alienation and fear which is present in society "There has never been—for any man, anywhere, at any time—any other way. In the work of God in our midst, reconciling black men and white men, there is no escape from the Cross."⁶

This concluding point is doubtless the most puzzling and perplexing, for Christians, as well as non-Christians. What does it really mean? Stringfellow's theological essay in which he tries to suggest some of the characteristics and possibilities of a Christian's style or posture in relation to society is helpful and suggestive, but does not alleviate the problem. What does the Cross mean in relation to the law, for which, I judge, love is not a basic working category? What does the Cross imply for the life of institutions and for the goals and processes of change in the Great Society? What Stringfellow has done, it seems to me, is to posit a real relationship between the Cross and the issues which confront a society. If nothing else, that is surely an invitation for serious discussion of many kinds, within which a high priority ought to be assigned to issues related to the law, legal institutions and the

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V. BRUCE RIGDON*

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If it were not for the author's apparent intention to " 'attempt to do a large-scale work [about the Supreme Court] that would be documentary in tone, historical in perspective, [and] analytical in approach,' " ¹ one might be tempted to say merely that *Opinion of the Court* is an intriguing and rather well-told story

The plot of this novel involves the appointment of the governor of Nebraska, Paul Lowe, to the position of Associate Justice of the United States Supreme Court, his estrangement from his wife, his marital infidelity, his divorce, his eventual marriage to a young newspaperwoman, and the death of the latter after a brief but happy marriage. Thus, the plot seems to have many of the elements of a successful novel: snob appeal, sex (with some graphic descriptions which suggest a technique which may be halfway between that of D. H. Lawrence and that of Frank Harris), physical danger (in the form of a flashback describing the main character's flying of a P38 in Burma in World War II), and a tragic conclusion (which is, in some way, reminiscent of Catherine's death in Hemingway's *A Farewell to Arms*) It is true that the reader may find himself sympathizing more with the first wife than with the associate justice, who rather callously rejects her simply because he is tired of her company; yet, the revelation of the essential selfishness of the main character serves to make him a more human—and hence believable—individual. And although the style, at infrequent intervals, tends to resemble some modern advertising copy—alas, the

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Mr Woolfolk's treatment of the law, however, is somewhat disappointing. There are both major and minor defects. In the latter category is the author's apparent lack of understanding of the problem of conflict of interest. Some time after Justice Lowe tells his first wife of his desire to get a divorce, they go together to see the same lawyer. After that attorney becomes convinced that reconciliation is impossible, he suggests that they obtain separate counsel; *he goes on to suggest*, however, that the wife file for the divorce and that she allege extreme cruelty. Would any self-respecting lawyer permit himself to engage in such activities? It is true, of course, that some lawyers—hopefully few in number—may attempt to represent conflicting interests, but surely an example of this is exceptional—something worthy of comment; nevertheless, the main character witnesses this conduct, falling far short of that required by the Canons of Ethics, and voices no objection.

A similar situation develops in the latter part of the book. Mr. Lowe's former law partner, and close friend of many years, argues a case before the Supreme Court. Not only does Justice Lowe not disqualify himself, but also he fails, in briefly discussing the possibility of disqualification with one of his law clerks, to mention that he has already discussed the merits of the case with his former law partner. Apparently, the author believes that this latter fact is of no consequence. Again, this incident is treated as though it were a common occurrence, and no words of criticism are expressed by the author or by the other characters in the book.

The major defect appears in the incomplete view which the author gives of the attitudes of the justices toward the role of the Supreme Court. The cases which come before the Court in the book present the sorts of questions—partly hypothetical—with which professors of constitutional law love to torment their students. Can a local school board force white students to go to a school which is attended primarily by Negro children in order to eliminate "de facto" segregation? Is a state civil service law which forbids the hiring of teachers who advocate the forcible overthrow of the government unconstitutional as applied to college professors? Is a state statute which prescribes the death penalty for the offense of rape within the Eighth Amendment's proscription of "cruel and unusual punishments?" The attitude of the main character, Paul Lowe, toward these issues can perhaps best be described as that of a judicial activist. His feelings are expressed by his idol on the

Court, Justice Edmunson, who, in voting for a declaration of the invalidity of the death penalty because of the proscription of the Eighth Amendment, says:

"In the long view of history we all know that capital punishment will not be countenanced. Then why should we not forbid it now? Does not the Constitution allow us to exercise the power of our conscience? The Constitution was set up, this Supreme Court was established, for no other purpose than to give us such freedom to act."²

One should not criticize the author for presenting this point of view; indeed, these thoughts may be representative of the feelings of some of the present members of the Court. One may regret, however, that nowhere in the book is there an adequate presentation of the concept of judicial self-restraint. This is perhaps surprising, since Justice Edmunson, referred to above, appears in some respects to be patterned after Justice Holmes, one of the great champions of self-restraint. That the author of this book is an admirer of Holmes is suggested by the fact that the page preceding Chapter I contains a quote from Holmes; yet, the reader looks in vain for some quotation of Holmes which expresses his views regarding a judge's function. (One such quotation which comes to mind is that famous statement from *Lochner v New York*:

This case is decided upon an economic theory which a large part of the country does not entertain. If it were a question whether I agreed with that theory, I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law)³

The cause of this rather important omission is unclear. At first, one may be tempted to say that it results from the author's lack of understanding of the concept. That this is a possibility is suggested by his apparent lack of comprehension of the related concept of *stare decisis*. Speaking of the views of one of the justices regarding this latter idea, the author says at one point:

Gabriel Hart—stickler for *stare decisis*—would want to be certain of the continuity with the past. Hart approached every problem dragging his precedents behind him. A law always seemed better to him if it had originally been passed by the thirteen colonies.⁴

2. WOOLFOLK 471.

3. 198 U.S. 45, 75 (1905).

4. WOOLFOLK 140.

of the five facts and such is adduced in favor of the defendant, a directed verdict for the defendant should follow irrespective of any other consideration.¹⁸

The supreme court in the instant case has applied the *Restatement (Second)* as the better reasoned cases would have it applied; under this application, the resulting liability is only negligence liability; the defendant is not liable if he has used all reasonable care under the circumstances.

PATRICK W FISHER

18. Klaus v. Eden, 70 N.M. 371, 374 P.2d. 129, 132 (1962).

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