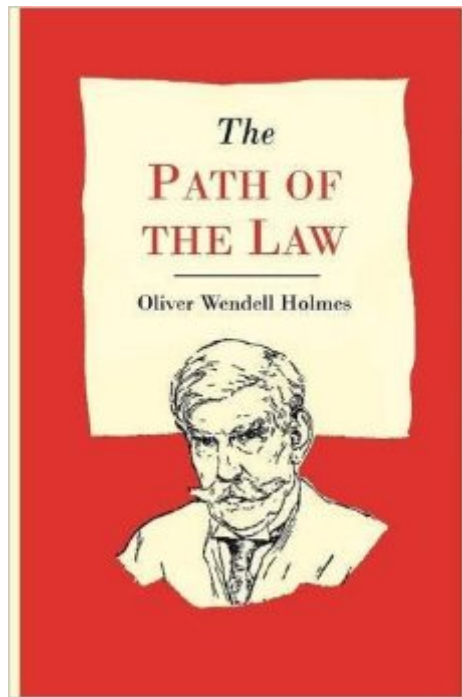


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The Path Of The Law



Synopsis

2012 Reprint of Original 1955 Edition. Exact facsimile of the original edition, not reproduced with Optical Recognition Software. "The Path of the Law" by Oliver Wendell Holmes, Jr. was originally published in the "Harvard Law Review" in 1897. By the time of his essay "The Path of the Law," Holmes had completed the evolution to a behaviorist theory of law. Whatever you may think of Holmes's jurisprudence, "The Path of the Law" is an unambiguously great exercise in legal philosophy; certainly it withstands the test of time much better than "The Common Law." Laws should be written, we learn, from the standpoint of "the bad man," he who will do the absolute minimum necessary to avoid the sanctions of his neighbors. In other words, it must create objective standards, that do not depend on the personal virtue or goodwill of the citizens. When the law seeks to determine the "intent" of someone who committed an act for which he is on trial, it is not seeking to determine whether he meant to do good or harm. The law seeks to know only whether he knew what the results of his action would be. The inquiry can be made only by considering the defendant's observable behavior.

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Customer Reviews

Note: has grouped together reviews of several different editions of this book; this review is for The Path of the Law (Little Books of Wisdom). More than a century after it was written, this is still the most important essay about law ever written, in part because lawyers are still arguing over exactly what it means. People from all across the political spectrum have used it to buttress their ideological arguments, which to my NON-legally trained mind ought to constitute something of a warning. Of

course the most basic reason for this is that one of the axes Holmes has grinding here is a brief in favor of the school of thought known as legal pragmatism, the idea that law can (and SHOULD) be separated from logic, from history, and most important of all from morality. Up to a point this is simply unarguable; law (like almost anything else you can imagine) can always benefit from a good dose of businesslike pragmatism. The trouble comes when you take pragmatism too far, as you must when you are trying to justify replacing God with Darwin. There is an old joke among philosophers about how Pragmatism was rejected because it didn't work; there's a reason Social Darwinism so often ends in gulags and mass graves. The trouble is that while pragmatism makes for a good basic approach to law (or anything else for that matter), it is no substitute for basic principles. Morals free "survival of the fittest" results in life that is "nasty, brutish, and short" for those who don't measure up to being the "fittest".

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