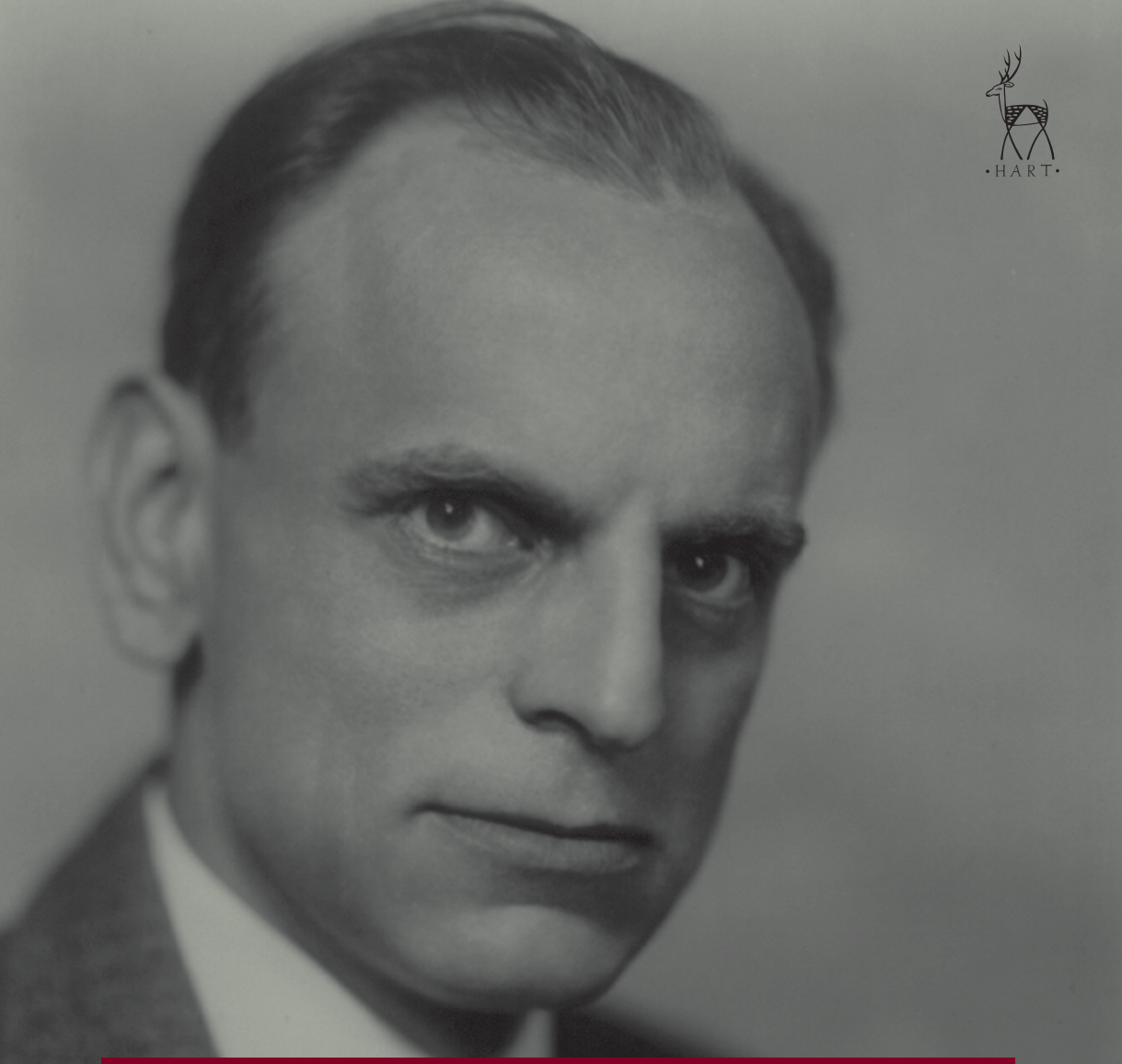

The Triumph, Tragedy and Lost Legacy of James M Landis

A Life on Fire

JUSTIN O'BRIEN

HART

BLOOMSBURY

THE TRIUMPH, TRAGEDY AND LOST LEGACY OF JAMES M LANDIS

James M Landis—scholar, administrator, advocate and political adviser—is known for his seminal contribution to the creation of the modern system of market regulation in the United States. As a highly influential participant in the politics of the New Deal, he drafted the statute which was to become the foundation for securities regulation in the US, and by extension the founding principle of financial market regulation across the world. He was also a complex and in some ways tragic figure, whose glittering career collapsed following the revelation that he had failed to pay tax for a five-year period in the 1950s. The oversight was to cost possible elevation to the Supreme Court, forced prosecution and sentencing in 1963 to one month's imprisonment, commuted to forced hospitalization, and subsequent suspension of licence to practice. This candid and revealing book sets his life in the context of his work as an academic, legislative draftsman, administrator and Dean of Harvard Law School. In rescuing from history Landis' battles and achievements in regulatory design, theory and practice, it speaks directly to the perennial problems in financial market regulation—how to deal with institutions deemed too big to fail, how to regulate the sale of complex financial instruments and the role that the professions can play as gatekeepers of market integrity. It argues that in failing to learn from the lessons of history we limit the capacity of regulatory intervention to facilitate cultural change, without which contemporary responses to financial crises are destined to fail.

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For Mon Anguille

A wisp, a wick that is
its own taper and light
through the weltering dark.

Seamus Heaney, 'A Lough Neagh Sequence'[1]

[1] S Heaney, *A Door into the Dark* (London, Faber and Faber, 1969).

PREFACE

On Wednesday 29 September 2010 the *Financial Times* published a radical pledge. Seventeen senior financiers based in the City of London committed to subjugating the profit motive of trading floors to what was termed 'a larger social and moral purpose which governs and limits how they behave.'[1] Corporate responsibility to society, it was argued, could not be shirked nor delegated by the board and senior management: 'Ultimately, it is the responsibility of the leaders of financial institutions—not their regulators, shareholders or other stakeholders—to create, oversee and imbue their organizations with an enlightened culture based on professionalism and integrity. As leaders of financial institutions we recognize and accept this personal responsibility.'[2] The pledge, coming in the immediate aftermath of the global financial crisis (GFC), provided what appeared to be a demonstrable commitment to higher ethical standards. The public commitment was underscored by a major conference the following week at the Mansion House, the official residence of the Lord Mayor of the City of London. The incumbent, Nick Anstee, termed the pledge a 'manifesto.' It had, he claimed the capacity to 'silence the cynics and the pessimists who doubt the ability of the City to put its house in order.'[3]

The symbolic power of both the pledge and the conference derived from the articulation of a tangible corporate responsibility to society. Both were predicated on an acknowledgment that external oversight, no matter how invasive, could not vouchsafe societal protection. This could only be secured through 'the culture of organizations, and what they see themselves as existing to do, and how they ensure this culture is promoted and strengthened.'[4] The formulation appeared to transcend narrow legal obligation. It repositioned the corporation, particularly one based on financial services, as an agent of societal preferences. This, the signatories agreed, was the foundation stone of trust, without which no sustainable market could function. Nick Anstee warned with prescience, however, that failure would lead, inevitably and necessarily, to external monitoring. Four years later, the initiative lies in tatters. It is both ironic and (perhaps) fitting that the originator of the pledge should have been Marcus Agius, the former chairman of Barclays. He was forced to resign in August 2012 because

[1] M Agius et al, 'Financial Leaders Pledge Excellence and Integrity,' *Financial Times*, 29 September 2010, www.ft.com/intl/cms/s/0/eb26484e-cb2d-11df-95c0-00144feab49a.html#axzz2C8HKL1jb.

[2] Ibid.

[3] For background to conference, see A Hill, 'City's Ethics Awareness Lessons Must Percolate Down,' *Financial Times*, 4 October 2010, www.ft.com/intl/cms/s/0/87bd776e-cfec-11df-bb9e-00144feab49a.html#axzz3EcQP1rMb.

[4] Agius et al, above n 1.

of the bank's complicity in the still burgeoning London Interbank Offered Rate (Libor) manipulation scandal. The implications of the reputational demise of the Barclays chairman extend far beyond personal humiliation. International investigations at the time of writing (September 2014) are demonstrating the existence of a cartel operating at the highest echelons of finance that does much to undermine the coherence and efficacy of the crisis-management procedures put in place in the aftermath of the GFC.

Post-crisis there is always an incentive, if not necessity, for regulators to create new rules to rebuild trust and confidence. Ill-considered in design or implementation they can generate high compliance costs if not necessarily reducing risk. They can also exacerbate adversarial tensions. The current deadlock in Washington over implementation of the Wall Street Reform and Consumer Protection Act of 2010 (Dodd–Frank) replicates (and indeed speeds up) contestation over authority and legitimacy that is depressingly familiar to students of regulatory dynamics. The Public Company Accounting Reform and Investor Protection Act of 2002 (Sarbanes–Oxley), for example, passed in the aftermath of the collapse of Enron and WorldCom, was explicitly designed to embed 'corporate conscience.'[5] In implementation it transmogrified into a huge rent-seeking opportunity for the audit profession. Market conduct regulators saw authority progressively diminished and legitimacy questioned unless delivering an agenda geared towards the facilitation of risk. This risk we were told, repeatedly, had been diversified. It made the system more resilient than at any other time in history. It was indicative that the then chief executive of Citigroup, Chuck Prince, could tell the *Financial Times* in July 2007 that 'when the music stops, in terms of liquidity, things will be complicated. But as long as the music is playing, you've got to get up and dance. We're still dancing.'[6]

The scale of the crisis triggered by the vaporization of the US sub-prime securitization market in August 2007 demonstrated the fragility of a global architecture based on such an exceptionally emaciated conception of responsibility. That mistake was equally apparent in the City of London, where the vaunted risk-based principles-driven regulatory system was shown to be equally dysfunctional. From the perspective of this book, and policy formulation more generally, it is essential to emphasize that, irrespective of whether a rules- or principles-based approach was used to interpret regulatory purpose globally post Sarbanes–Oxley, neither proved capable of embedding restraint or effective risk management. This then raises the question of why?

In part the answer lies in the social mores of global finance. All markets are socially constructed. Their sustainability depends on the strength of the underpinning ecosystem that conditions practice. If through design or unintended consequences that system becomes corrupted there can be no long-term

[5] C Glassman, 'Sarbanes–Oxley and the Idea of "Good" Governance' (speech delivered at the American Society of Corporate Secretaries, Washington, DC, 27 September, 2002).

[6] M Nakamoto and D Wighton, 'Citigroup Chief Stays Bullish on Buy-outs,' *Financial Times*, 9 July 2007, www.ft.com/intl/cms/s/0/80e2987a-2e50-11dc-821c-0000779fd2ac.html#axzz2a0eeMBJF.

solution. The mistake was primarily an ideological one, based on the illusion of free markets and informed by the efficient capital market hypothesis. This controversial theory informed regulatory strategies globally. Its falsification has prompted a veritable avalanche of regulatory reform initiatives. Six years on, however, we remain mired in crisis management. This reflects, in part, the power of the financial services lobby. The stasis is also informed by ongoing contestation over what caused the crisis, degree of responsibility and what constitutes or should constitute the balance between rights and duties in the creation and maintenance of market integrity.

The risks have been intensified by the emergence of a new series of scandals, most notably the manipulation of key financial benchmarks. Critically, the manipulation post-dates the onset of the GFC and the bailouts it prompted of major financial institutions. That traders within the leading UK bank RBS, for example, which was effectively made a ward of state because of prior failure, could be allowed to attempt to manipulate Libor demonstrates all too clearly how pernicious banking culture had become and how disconnected from societal obligation contemporary practice within the industry had become. It is in this context that one must evaluate the reform agenda against the stated purpose of capital markets. Does the emphasis on creating safety nets divert attention from an ongoing malaise that misallocates capital? Can corporate culture be changed, and, if so, how? Crucially, what is or should be the role of the state? Answering these questions necessitates historical and comparative analysis. In this we have no better case study than the New Deal, the last major attempt to change the paradigm governing capital market regulation.

The initial success of the New Deal experiment can be traced to the combination of five ideational and political economy factors. First, the policy imperatives of the initial Roosevelt administration (1933–37) advanced the necessity and legitimacy of state intervention. Second, the policy imperatives were predicated on a rebalancing of private rights and public duties, a strategy that was subsequently overwhelmingly endorsed at the ballot box in 1936. Third, initial judicial skepticism that rendered legislative action unconstitutional was overcome by a progressive whittling away of the influential freedom of contract model, the growing institutionalization of judicial restraint and, in part, through an unconsummated but nevertheless real threat in 1937 to 'pack the court' unless the judiciary accepted political will. Fourth, the nascent administrative agencies, in particular the Securities and Exchange Commission (SEC), placed a 'cop on the beat,' doing much to restore public confidence. Fifth, the initial emphasis was not on direct enforcement but changing industry practice through an associational model of governance. It clearly specified purpose and sought to enroll market actors within a regulatory paradigm that replaced caveat emptor with a disclosure philosophy.

At its core was a belief that sustainable reform could only be achieved at an industry-wide level in which there was an internalization of responsibility. The tragedy is that there remains very little acceptance of that responsibility. Attempts

by business today to limit the remit of the SEC over the granularity of regulation covering internal control mechanisms mirror the charged atmosphere pertaining as Landis was drawing up the legislation that established the agency. Writing in 1934 just before the bill was debated in the US Congress, Landis complained: 'The Stock Exchange Bill is receiving a terrific beating. All the corporate wealth of this country has gone into the attack and carried it all the way to the White House.'[7] Although the legislation was passed that year and the SEC established, its remit and authority waned incrementally at first and dramatically in the 1990s. The reduction in power has consistently failed to ignite public controversy.

In the absence of the kind of catastrophic crisis witnessed in the Great Crash of 1929 or the extent of corporate scandal revisited at the cusp of the millennium, again in 2008 and most recently the exposure of the Libor scandal, battles over financial regulation take piecemeal form through refinements in interpretation of legislative clauses. The fragmented and technical nature of this glacial process masks the cumulative effect of technical change. It can leave an outer shell of protection lacking the structural substance to withstand systemic shocks. Unfortunately, until the exposure of the Libor scandal, we were stuck in this dispiriting rut. In this sense the failure to deliver on the pledge for restraint by the erstwhile chairman of Barclays to the *Financial Times* is talismanic of the sector's bad faith. Society has a right to expect better. Regulators have a duty to ensure protection is offered and political actors an obligation to ensure the lessons of history are learnt.

In the course of writing this book I have amassed a number of intellectual debts, as well as an inordinate amount of air miles. I gratefully acknowledge the substantial financial support provided by the Australian Research Council. Its provision of a Future Fellowship has provided the freedom to engage in sustained research. My colleagues at the Centre for Law, Markets and Regulation (CLMR) at the University of New South Wales have put up with frequent absences and maintained the quality and quantity of analysis that has made our online portal such a significant resource in tracking regulatory policy. In particular I wish to thank my close friend and colleague George Gilligan as well as Scott Donald, Rob Nicholls and Megan Bowman as well as my sparring partner, Dimity Kingsford Smith. Beyond the CLMR, I wish to acknowledge the support of my Dean, David Dixon, who recognized the strategic importance of engaging with industry. This work also necessitated engagement with regulatory authorities and I would particularly like to thank the Australian Securities and Investments Commission for its continued support, in particular Greg Medcraft and Peter Kell. At international level I have learned enormously from interaction with Ashley Alder (Hong Kong), Leonardo Periera (Brazil), Howard Wetston (Ontario), Martin Wheatley (United Kingdom) and David Wright (Secretary General of the International Organization of Securities Commissions). At a practitioner level, I have also benefited greatly from the insights provided by leading

[7] T McCraw, *Prophets of Regulation* (Cambridge, MA, Harvard University Press, 1984) 178.

lawyers Greg Golding, Andrew Lumsden and John Morgan. The chief executive of the Professional Standards Authority, Deen Sanders, has been gracious in his interrogation of how regulatory theory can advance practice, the sine qua non of effective knowledge transfer. Senior academic colleagues in Australia engaged throughout the writing process, in particular John Braithwaite, Thomas Clarke, Olivia Dixon, Pamela Hanrahan, Ian Ramsay, Seumas Miller and Veronica Taylor. I have been exceptionally fortunate in the international network of scholars I interacted with on a regular basis. Charles O'Kelley has been a gracious host in Seattle, providing a refuge to sketch out the structure of this book. Lawrence Lessig and the team at the Edmond J Safra Center for Ethics at Harvard University, in particular Mark Somos, Bill English and Gregg Fields, provided an exceptionally enriching environment to tease out some of the themes in this book, while Colin Scott at University College Dublin provided the space to complete it. Eric Talley at Berkeley and Mel Dubnick at the University of New Hampshire provided much food for thought, as did the exceptionally erudite Dan Coquilette, author of a forthcoming history of Harvard Law School. Judge Jed Rakoff and his brother, Professor Todd Rakoff, were exceptionally helpful and I also wish to acknowledge Robert Morgenthau for agreeing to revisit the events associated with Landis' fall from grace. Sally Wheeler at Queen's University, Belfast, has long been a source of unparalleled knowledge, support, kindness and empathy at both professional and personal level for which I am humbly grateful. All authors require guidance and support from their publishers and Hart Publishing could not have provided more effective stewardship of this manuscript, from commissioning to publication.

As the loci of my research turns once again to present and future trajectories of regulation, I leave the past enriched by the process of historical investigation. The book could not have been completed without the generous support of friends and family and the inspiration provided by my children Elise, Jack, Justin and Saoirse. It is for them and for broader society that this book is designed. Without learning from history we risk repeating it. At its core, financial regulation is a normative exercise. We lose sight of its purpose at our peril. Tracing the lost history of the Landis experiment reminds one of the eel making its journey back to the fathoms of the Sargasso Sea, an image captured so vividly by Seamus Heaney in the epigram that informs this book. Returning to the origins of financial regulation, with Landis as our guide, we can see clearly how the past informs the present and how learning its lessons open up possibilities. They just need to be illuminated, as Elizabeth Headon, *mon anguille*, knows only too well.

Justin O'Brien
Cambridge, MA and Sydney
September 2014

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Introduction

The Trials of James M Landis

'One grasps for shadows the better to comprehend sunlight. One reaches into the past, more clearly to know today and tomorrow. It is the privilege of all who care about education to test the depth and quality of that shadow for there, perhaps more than anywhere, one must try to pierce the brilliance of continuing dawns,' noted James M Landis, the Chairman of the Securities and Exchange Commission (SEC), in a speech delivered at the Catholic University of America in March 1937.[1] Landis, one of the most pivotal figures in establishing and legitimating external oversight of the capital markets, was at the time ruminating whether to return to the academy.

An outsider, born in Tokyo in 1899, Landis had risen to the apex of bureaucratic power. There he had put into practice the ideas that animated the progressive jurist Louis Brandeis, for whom he had clerked after graduating from Harvard Law School. His public service for the Roosevelt administration, his connections in both Washington and New York, and his preference for evidence over unsubstantiated assumption, had guided initial success, including at Harvard itself, where he became a tenured professor in 1929. Not surprisingly, Harvard's law faculty as well as the university itself was keen to see his return to Cambridge to navigate the relationship between Washington and the country's pre-eminent legal educational establishment, not least because of the rapid expansion of the federal bureaucracy.

As a legislative scholar, draftsman and regulator Landis knew few equals, then or since. While other prominent members of the informal Brains Trust that provided advice to Roosevelt were better known at the time, none with the exception of William O Douglas—a mercurial self-promoter who inveigled his way to the SEC and from there to the Supreme Court though the patronage of Landis—had such pronounced influence on regulatory policy. Four years on the frontline of at times vicious battles over whether and how to impose restrictions on freedom to contract in capital markets had, however, taken its toll. The SEC, the agency Landis had been instrumental in designing, had survived Supreme Court challenge, notwithstanding criticism from the bench that its methods risked application of unaccountable and arbitrary power.[2] It was an accusation that Landis treated with barely disguised contempt when in a major speech

[1] JM Landis, 'Address to the Third Annual Eastern Students Conference' (speech delivered at the Catholic University of America, 20 March 1937).

[2] *Jones v Securities and Exchange Commission,* 298 US 1, 24–25 (1936).

in Chicago just ten days before the Catholic University address he accused a majority of the Supreme Court of 'writing their own individual economic prejudices and predilections into the fabric of constitutional law.'[3] Such trenchant criticism of the highest court in the land reflected intellectual bravery. It showed willingness to engage in partisan disputes in equal measure. It also reflected a personal commitment to the praxis between cutting-edge academic research and policy development. For Landis in 1937 a further tactical and strategic challenge remained unresolved: how and through what mechanism to institutionalize the ideational gains of the New Deal?

The challenge consumed him as he oscillated between the academy and regulatory and private practice over the next three decades. It was a quest that was to prove his personal undoing. In 1963 Landis was publicly humiliated in the Federal Court of the Southern District of New York, where he was convicted and sentenced to one month's imprisonment for failing to file income tax returns. Commuted to forced hospitalization on the orders of Chief Justice Sylvester Ryan, the ruling sent an unambiguous message that none could be held above the law.[4] The case and its handling had profound political implications for the Kennedy administration, which had mandated a substantial reorganization of regulatory agencies as a result of specific recommendations made by Landis to the president-elect in December 1960. In prosecuting the architect of the New Deal for what amounted to a misdemeanor, the Department of Justice felt it had little choice. Landis was to become a victim of political expediency.[5] An already brittle personality cracked under the strain. Landis entered a downward spiral into alcoholism and depression. His personal and professional life disintegrated. Despite the suggestion by Chief Justice Ryan that Landis could once more aspire to greatness, the judge was no doubt aware that the defendant would probably never recover. He never did. A year later he was dead, found floating in his swimming pool three weeks after being suspended from legal practice. The tragedy was complete.

On his death in July 1964 the *New York Times* noted that Landis had 'achieved the rare distinction of being regarded as a conservative by liberals and as an extreme liberal by conservatives.'[6] What drove him remained elusive throughout his life. As an early extended profile in *Fortune* magazine put it following his nomination to the SEC in 1933, the 'gaunt, hawk-like, scholarly' professor 'had one talent lacking in certain of his conferees when he came to Washington, he

[3] JM Landis, 'The Power the Court has Appropriated' (speech delivered at Fourth Annual Woman Conference, Chicago, 10 March 1937), reprinted in *Vital Speeches of the Day* (1 April 1937) 358, http://web.ebscohost.com/ehost/pdfviewer/pdfviewer?sid=ea9e0eb3-63db-41a9-bfdd-2960ba8ffd95%40sessionmgr4&vid=2&hid=17. For a full discussion of the speech and its significance, see Chapter 3.

[4] *United States of America v James McCauley Landis*, 63 Cr 654 (1963).

[5] As late as the 1980s, non-payment of income taxes was 'rampant' among law partners in New York City: see D Seligman, 'Middle Age Delinquents,' *Fortune*, 18 December 1989, http://money.cnn.com/magazines/fortune/fortune_archive/1989/12/18/72857/index.htm.

[6] 'James M Landis Found Dead in Swimming Pool of Home,' *New York Times*, 31 July 1964, 1, 21 at 21

knew how to keep his mouth shut. So he remains the unknown that he was the day he stepped off the train from Boston.'[7] He was to remain socially distant throughout his career. He continually sacrificed friendships for the allure and transformative capacity of power to effect social change. Notwithstanding the social awkwardness and somewhat abrasive personality, in his lifetime Landis garnered personal admiration from within his narrow circle of social friends and broad professional respect in equal measure. 'I loved the man dearly. He had a most unusual mind. I mean yes, was he self-destructive? Did he drink too much? Did he? Yes. … [A] remarkable mind and a good human being. Just destroyed himself,' was the plaintive assessment of close colleague and partner in a legal practice, Justin Feldman.[8] A more distant appreciation in the *Harvard Law Review* noted that Landis was 'on fire' as a student.[9] It also epitomized an illustrious public career primarily informed by but not limited to his stewardship of the disclosure paradigm that underpins securities regulation.

Landis was the critical architect of the Securities Act (1933), governing new issuance, and the Securities Exchange Act (1934), which extended regulatory oversight to existing securities and mandated associational governance with the exchanges through the establishment of the SEC.[10] He served on the agency's inaugural board, becoming its second chairman with the public endorsement of his predecessor.[11] As Joe Kennedy left the SEC headquarters he interrupted the first Landis press conference by calling out 'Good-bye Jim. Good luck to you. Knock 'em over.'[12] It was to be the start of a lifelong collaboration with the Kennedy family.[13] By the time of Landis' death three decades later, Joe Kennedy was incapacitated by a serious stroke. The president, groomed for office under

[7] 'Legend of Superman Surrounds James Landis,' *Milwaukee Journal*, 29 July 1934, 5 (extracting *Fortune Magazine*, August 1934 profile).

[8] Interview with Justin Feldman, SEC Historical Society, 22 June 2004, 83, http://3197d6d14b5f19f2f440-5e13d29c4c016cf96cbbfd197c579b45.r81.cf1.rackcdn.com/collection/oral-histories/feldman062204Transcript.pdf; see also *The Reminiscences of Justin Feldman* (Columbia University Oral History Project, 1973) 181 (describing Landis as 'one of the greatest human beings I have ever known').

[9] E Griswold, 'James McCauley Landis 1899–1964' (1964) 78 *Harvard Law Review* 313, 316 ('Surely a man who has done so much should be judged by the best that he can do; and Landis at his best was a great lawyer and legal scholar').

[10] For biographies of Landis, see D Ritchie, *James M Landis, Dean of Regulators* (Cambridge, MA, Harvard University Press, 1980); T McCraw, *Prophets of Regulation* (Cambridge, MA, Harvard University Press, 1984); see also J Braithwaite and P Drahos, 'Globalization of Corporate Regulation and Corporate Citizenship', in F MacMillan (ed), *International Corporate Law Annual* (2003) 26 (describing Landis as a seminal scholar of regulatory strategy).

[11] 'Landis Heads SEC; Succeeds Kennedy,' *New York Times*, 24 September 1935, 1, 37 (quoting Kennedy saying: 'I see no reason in the world why any business interests need have the slightest misgiving that he will not give them the fairest and squarest deal a man can get. I would deem it an honor to have him as a trustee of anything I owned. He is thoroughly cognizant of the importance of the successful administration of these acts in helping to revive the business of the country': 1).

[12] Ibid, 37.

[13] D Nasaw, *The Patriarch: The Remarkable Life and Turbulent Times of Joseph P Kennedy* (New York, Penguin Books, 2012) 769 (noting the appointment of Landis as special advisor to John F Kennedy, the president-elect, in 1960 and articulating that next to family Joseph Kennedy 'trusted no one to watch out for his son as he did Jim Landis').

the watchful direction of Landis, was also dead, victim of assassination in Dallas the previous November. Robert Kennedy, who as Attorney General bore ultimate responsibility for the Landis prosecution, represented the contemporary House of Camelot. Visibly moved by the tragedy that had befallen the key engineer of the administrative process, Robert Kennedy openly wept at Landis' funeral service.[14] It was indicative of wider political remorse that the then Deputy Attorney General, Nicholas Katzenbach, gave the eulogy. Given the inherent conflict of interest associated with Landis' relationship with the Kennedy family, Katzenbach had overseen the investigation and prosecution on the tax charges. Notwithstanding his calculation of the political necessity of prosecution, Katzenbach viewed the Ryan judgment as an 'outrageous demonstration of judicial ego.'[15] Reviewing the evidence it is hard to disagree with the somewhat partial assessment of Arthur Schlesinger that for all concerned the case was 'an unhappy business.'[16] The extent to which it is so is fully revealed in the final chapter of this book, based on remarkable testimony from Robert Morgenthau, the prosecutor in the case and sole surviving participant.

Before evaluating the fall and its impact on regulatory design, it is necessary to reconstruct Landis' importance as a regulatory theorist and practitioner. In so doing the arc of his life and its relevance to contemporary debate on financial regulation can be more accurately presented. Of critical importance in this respect is the integration of technical and normative considerations in regulatory design. The creation of the SEC allowed Landis to experiment with a framework he had first articulated in 1931.[17] Integrating enforcement with attempts to guide industry towards socially beneficial outcomes, Landis never saw the regulatory agency's role as solely that of policing. He maintained that administrative law could, should and did perform a crucial task in operationalizing initial democratic choices and subsequent political mandates. At the same time, he was profoundly aware of the challenge of ensuring appropriate accountability mechanisms, the failure to attend to which would leave the entire project subject to judicial criticism.

Through a combination of tactics and strategy there can be no questioning his mercurial shrewdness in establishing and legitimizing the regulatory state. A

[14] Ritchie, above n 10, 202.

[15] N Katzenbach, *Some of It Was Fun: Working With RFK and LBJ* (New York, WW Norton & Co, 2008) 102 (describing the case of one of the hardest things had to do in the Department of Justice). In a promotional interview for the book, Katzenbach describes the case as 'something that had to be done,' which he argued Landis himself was aware of and accepted but which 'did not amount to a row of beans,' see http://bigthink.com/users/nicholaskatzenbach#!video_idea_id=5612.

[16] A Schlesinger, *Robert Kennedy and his Times* [1978] (New York, Mariner Books, 2002) 391.

[17] JM Landis, 'The Study of Legislation at Law Schools: An Imaginary Inaugural Lecture' (1931) 39 *Harvard Graduates Magazine* 433 ('The criminal penalty, the civil penalty, the resort to the injunctive side of equity, the tripling of damage claims, the informers share, the penalizing force of pure publicity, the licence as a condition of pursuing certain conduct, the confiscation of offending property—these are the samples of the thousand and one devices that the ingenuity of many legislatures has produced. Their effectiveness to control one field and their ineffectiveness to control others remains yet to be explored': 437).

review of his writings and experience demonstrates that throughout his public life Landis had not sought power for material benefit. Instead, the critical animating purpose was to direct progress, address real social needs and face down vested interests, which by virtue of their power had the capacity and resources to subvert democratic will in favor of what he saw as outmoded claims to authority. It was this belief system that informed his extraordinary attack on the Supreme Court in Chicago referenced above.[18] This belief system itself cannot be understood in a vacuum. It was forged as a consequence of his upbringing as a child of missionary parents and further scarified by the horror and carnage of World War One, during which he served as a volunteer for the YMCA. In academic terms, it was honed in the febrile atmosphere of the 1920s, in which the parameters of normal science were stretched as never before, and put into practice as a consequence of Roosevelt's landslide election in 1932.

James McCauley Landis was born in Tokyo on the cusp of the twentieth century. He spent his formative years in Japan, where his parents had dedicated their lives as Presbyterian missionaries. The young Landis was initially educated in what he later reflected was 'one of the most extraordinary schools I ever attended.'[19] By the age of thirteen he had been taught the Greek and Roman classics, including Horace and Cicero, by an 'Irish schoolmaster whose standards were equivalent to those of Harrow and Eton.'[20] It was an experience that was to inform Landis' commitment to educational excellence as he progressed to Princeton and then Harvard, where he secured the highest marks of his class, and one of the best academic records in the history of the law school. As Erwin Griswold, the Dean of Harvard Law School pointed out in an appreciation published after his death

> Landis had a brilliant mind. But it was a restless mind, too. He did not know how to relax. He was always reaching out, seeking new fields, new tasks, new challenges. Perhaps his missionary background had something to do with his constant search for new releases of his energy.[21]

A more personal assessment came from Justin Feldman, his law firm partner, who detected an inner loneliness in Landis informed by his separation from an austere but happy family life at the age of 13 to return to the United States.[22]

Both assessments are reflected in a series of taped interviews Landis gave to Columbia University's Oral History Project in 1963 and 1964. The interviews, conducted as Landis faced prosecution for tax violations, shed considerable light on the forces that forged his driven personality. What becomes clear is the profound presence and absence of his father. 'He was an extraordinary

[18] Landis, above n 3.

[19] *The Reminiscences of James M Landis* (New York, Oral History Collection, Columbia University, 1964) 2.

[20] Ibid.

[21] Griswold, above n 9, 316.

[22] Interview with Justin Feldman, above n 8, 83.