

BOOK REVIEWS

HUGO BLACK, A STUDY IN JUDICIAL PROCESS. By Charlotte Williams. The Johns Hopkins Press, 1950. Pp. vii, 208. \$3.50.

In clear prose, the author of *Hugo Black, A Study in Judicial Process* chronicles some of the better known events in Mr. Justice Black's senatorial career, and summarizes his more important judicial opinions. As shown by the "notes" printed in the appendix, her principal source materials were newspaper files, magazine articles, and the United States Supreme Court Reports. Obviously the author did not talk with the Justice, and I doubt that she talked with any of his former law clerks, or his former colleagues in the United States Senate.

The book is not a biography. In her preface, the author quickly informs the reader that it is only "an examination of the official career" of Mr. Justice Black. The examination that follows is sketchy. One gets no sense of the dignity of the man, his warm humanity, his deep understanding of human affairs, his love of the law, his highly developed legal craftsmanship, his belief in the intrinsic value of hard work, his brilliant intellect, or his amazing physical vitality. The book doesn't even contain his picture. And the author makes no attempt to correlate the tremendous breadth of Mr. Justice Black's pre-court experience with his work on the court.

Nor, despite its subtitle, is the book "a study in judicial process." From her summary of Mr. Justice Black's opinions and votes, the author concludes that "about the only element common to all is the thread of the common man's interest, mediate or immediate, in the outcome of the contest." In a Christian society, concern for the common man's interest is a desirable, if not a necessary, quality in judges; and surely Mr. Justice Black has such a concern. Never has he yielded, as some of his brethren have, to the subtle but strong pressures which the wealthy and powerful constantly exert upon judges of all ranks. Never has he allowed any desire to be accepted in prominent social circles to temper his judgment. He is far too great a man for that.

To attempt to explain Mr. Justice Black's judicial philosophy however as nothing more than an acute concern for the common man is quite superficial. No jurist's philosophy can be reduced to one or two "common threads"; of necessity, it must be composed of many different "threads" woven together in a most complicated way. But if there is one single concern or belief that influences Mr. Justice Black's judicial decisions more than other concerns, I think it is this: a profound sense of the value of individual dignity and freedom, and a belief that this value can best be protected and promoted by a wide dispersion of power through many public

and private social institutions. In some cases this concern may appear on the surface to be a "concern for the common man." But in other cases—for example, cases involving taxation of Indian property or income, and some of the more recent picketing cases—it may appear to ignore the interests of the common man. And so Mr. Justice Black's decisions have sustained federal administrative rulings where the federal agencies have made an honest attempt to regulate powerful corporations in the public interest. But when such agencies as the Interstate Commerce Commission or the Patent Office acquire the viewpoints of the corporations that they are supposed to regulate, the Justice will have the courts step in and try to restore the balance. When the national security is threatened with armed invasion, as immediately after Pearl Harbor, Mr. Justice Black will not interfere with the military removal from their homes of many innocent persons who might be sympathetic to the purposes of the potential invaders. But when the immediate threat of invasion is removed, he will insist that the military restore to the civil courts their peace time authority. And when the growth of giant insurance corporations, controlling billions of dollars in assets, and operating in all 48 states, makes effective state regulation of such companies impossible, Mr. Justice Black will find that the Commerce Clause subjects these companies to federal regulation—the only force big enough to cope with them. I think that the Justice's faith in jury trial and civil liberties and his belief that courts rarely should void legislative enactments may be explained, partly at least, by his concern for the dispersal of decision-making.

The book closes on a most unfortunate note. The author observes that, "It is probable that Justice Black belongs to that school of thought which holds that every judge, consciously or unconsciously, writes into his opinions his own economic, social, and political ideas and that the notion of judicial impartiality is little more than a myth. At any rate he has gone to no pains to disguise the fact that he himself has positive ideas of rightness which he believes should be embodied in the law and when he incorporates these in his opinions he feels little necessity for apology or rationalization." Such an observation is nonsense. Already I have seen it quoted in a local newspaper by a columnist who follows the line that almost everything done by the federal government in the past 18 years has been a terrible mistake. For him it was further evidence that the Supreme Court is not "impartial" but only a puppet of the Administration. I doubt that Mr. Justice Black belongs to any school of "functional jurisprudence". While I was working with him in 1943, he devoted much of a summer's reading to the exponents of this jurisprudence without being wholly convinced. He invited at least one such exponent to luncheon for a talk about it and politely argued, I thought most successfully, with his guest's viewpoint. Much of the best work done by the Justice in his fourteen years on the court has been to urge that the areas in which the court historically has exercised its economic or social predilections should be reduced. And I am sure that a man as careful of his time as Mr. Justice Black would not spend the hours which he

spends in reading litigants' briefs and the precedents they quote, if he decided cases solely upon the basis of "his own economic, social and political ideas."

Charles F. Luce.†

CHARLES EVANS HUGHES AND THE SUPREME COURT. By Samuel Hendel. King's Crown Press, Columbia University, N. Y. C., 1951. Pp. xii, 337. \$4.50.

On August 27, 1948, Charles Evans Hughes died in retirement on Cape Cod. His eighty-six years had spanned the decades from the administration of Lincoln to that of Truman. His career as public servant, in the true sense of that term, was nearly as inclusive. A complete biography of Hughes would be also a valuable work of reference in the field of American history. The particular facet of Hughes' life covered by this volume is his relationship to the Court. Of necessity, it will stir the reader's curiosity about Hughes in a broader sense. That can only be beneficial, because Hughes is an outstanding example of the lawyer in public service, and an implicit answer to the critics of the profession.

In 1930, Hughes was appointed Chief Justice of the Supreme Court, his confirmation being opposed vigorously by Senate liberals of his own party. Economic disaster was already facing the nation, and the forces were already set in motion which were to lead to the Court's greatest crisis.

To the Court, Hughes brought a formidable background of experience in all three branches of government. His original rise to prominence had been founded upon his work as counsel for a legislative committee; he had been an outstandingly able Governor of New York; he had previously served on the Supreme Court in the more placid Taft era; he had been Secretary of State in the Harding cabinet. His role as Presidential candidate in the somewhat unusual 1916 campaign had been only one of the high points in his years of service to the Republican party. Thus, the practical workings of politics were not strange to him.

There was far too much flexibility and tolerance in Hughes' philosophy of life, for him to fit into the neat category of "conservator of the vested interests" to which some liberals wanted to assign him. He had an unshakeable regard for maintaining the prestige of the judiciary and in particular, the Supreme Court. But he wanted the Court to exercise caution before considering steps that would invade the province of legislative discretion.

In the hectic time of 1936, when the "court-packing" battle reached its peak, Hughes found himself in an odd position. He must have found it essentially repugnant to have the Court become a center of political con-

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troverly. His desire to preserve the prestige of the Court must have brought to mind the thought that part of that prestige consisted of keeping the Court out of the position of an obstacle to the legitimate progress of the nation. Long ago, he had spoken of judicial review of certain administrative activities of Government in this way:

"No more insidious assault could be made upon the independence and esteem of the judiciary than to burden it with these questions of administration,—questions which lie close to the public impatience and in regard to which the people are going to insist on having administration by officers directly accountable to them."¹

In any event, Hughes disposed of any real danger that the Roosevelt "reorganization" proposal might pass: his letter to Senator Wheeler clearly exposed the fallacy of the argument that the Court should be reorganized because of overwork.

There followed shortly the resignation from the Court of Justice Van Devanter, an ironclad opponent of New Deal reform measures in a sense which Hughes had never been.

The next phase was a series of Court decisions which the lay public interpreted widely as meaning that the Court was backing down and giving the Roosevelt administration that victory by decision which it had not attained by legislation. This is a question which can never really be definitely answered. The author says:

"It would tax credibility to assume that Chief Justice Hughes and Mr. Justice Roberts who exercised a balance of power in the Court were unaware and unconcerned about the political significance of these decisions. . . . Hughes and, to a lesser extent, Roberts, had earlier revealed some appreciation for and sympathy with the need for extensions of government power over the economy. But, doubtless, they also realized that if the Court continued to block social reform, in the face of an unprecedented political mandate to the Administration, it was the Court and not the New Deal which would ultimately be shorn of power."

Significantly, Hughes himself had always disputed the theory that judges were mere robots, applying abstract principles, Constitutional or otherwise, in a chill vacuum devoid of subjective influences. He had said:

"We are under a Constitution, but *the Constitution is what the judges say it is*, and the judiciary is the safeguard of our liberty and of our property under the Constitution."

Whether or not the Court did reverse its course under pressure may never be determined. Decisions prior to the "court-packing" battle had shown Hughes knew that economic and historical realities must enter into

1. P. 11.

the considerations of the Court. In the drought-ridden Thirties, conditions approaching anarchy had developed in parts of the Midwestern farm belt. Relief for debtors took the form of moratoria. In sustaining a Mortgage Moratorium Act passed by the Minnesota legislature, Hughes' opinion clearly showed that he knew the realities of the time as well as did the New Deal administrators. He noted that:

"The policy of protecting contracts against impairment presupposes the maintenance of a government by virtue of which contractual relations are worth while,—a government which retains adequate authority to secure the peace and good order of society." ²

The *Blaisdell* case had reflected the troubled times in the farm belt. Other court decisions of the period concerned the better known efforts at Governmental bootstrap-lifting in the field of industry. During all this time, Hughes was at the helm. In 1941, when the economic storm was giving way to one of another variety, he resigned with a warm commendation from the President. The genuine nature of this warmth is justifiably questioned by the author; in any event, Roosevelt probably had a healthy respect for the opponent who represented the symbol of one of the New Deal's few clearcut defeats. The Court's prestige had come through the battles unscathed, which probably was the most pleasing aspect to Hughes. In fact, the affair may have revealed to the practical politician a previously unrecognized vein of deep respect for the Court's integrity on the part of the lay citizen.

To those who want to categorize public figures as being, after the European fashion, of the Left, Center, or Right, Charles Evans Hughes is not an ideal subject. Certainly a conservative, his was an intelligent and sane conservatism.

An interesting subject for speculation by political historians has been the probable course of American and world history if Charles Evans Hughes instead of Woodrow Wilson had won the 1916 Presidential election. The possibilities are fascinating. But they cannot obscure the fact that Charles Evans Hughes has had a tremendous impact on our recent history. His role as Chief Justice was probably, by the chance of history, comparable in stature most nearly to that of Marshall or Taney. The history of the Court will be judged in the future by certain crucial turning points or peaks. It was on one of these historical occasions that Hughes was Chief Justice of our court of last resort.

Mr. Hendel has done an excellent job of handling his subject matter. In addition, reference to the footnotes will give a clear documentation of the author's sources—something that is often wanting in books of this type.

William S. Murray. †

2. Home Building & Loan Ass'n. v. Blaisdell, 290 U.S. 398, 435 (1934).

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BOOK NOTES

A COMMENTARY ON THE CHARTER OF THE UNITED NATIONS. By Norman Bentwich and Andrew Martin. The Macmillan Company, New York, 1950. Pp. xxviii, 239. \$2.75.

Here, concise and well written, is a complete commentary on the Charter done by two well known British experts for the edification of inexpert readers. The book is addressed primarily to the general public and not to the specialist in law or administration. Thus addressed, and correspondingly compressed, it provides further illustration of the difficulties which confront the scholar or technician who essays to write for the general or non-technical reader. Frequently it is difficult to achieve a simplicity of expression without becoming more dogmatic than the subject warrants. Always it is difficult to keep a concise and popular treatment in sound historical perspective. Our present authors have not been wholly successful in surmounting either of these difficulties. That would have been too much to expect. What they set out to do, nevertheless, they have done well. Specialists will find the latest edition of the *Commentary* by Goodrich and Hambro a more useful guide. General readers, on the other hand, should find in the Bentwich and Martin as much as they need for most purposes and they will find it effectively and reliably presented. There is an introductory essay on the Charter's evolution. Texts of the Covenant of the League of Nations, the Charter of the United Nations, and the Statute of the International Court of Justice are included as appendices. There is a useful index.

Edwin D. Dickinson. †

SECURITY, LOYALTY, AND SCIENCE. By Walter Gellhorn. Cornell University Press, Ithaca, 1950. Pp. 234 + 49. \$3.00.

To one not familiar with the field, it comes as a surprise that "security" and "loyalty" are terms of art. The distinction between the two types of investigations of public employees is one of the foundations of Professor Gellhorn's argument; and it also marks the point in his book beyond which a discriminating reader might not wish to go.

The recent series of cases involving loyalty investigations of federal employees have produced an overlarge amount of literature on the subject. The relation of these "witch-hunts" to the requirements of due process, to freedom of speech, and to the widespread acceptance of the doubtful

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logic of "guilt by association" has been debated from all conceivable points of view. To add to this welter of material seems fruitless; yet that is exactly what the last half of Professor Gellhorn's book does.

But the book is far from a total disappointment. The chapters which are concerned with "security" as opposed to "loyalty" checks constitute a thorough, painstaking and convincing presentation of the case against secrecy in scientific affairs. The cost of secrecy is as difficult to measure accurately as is its value; but seldom if ever have the dangers of compartmentalization and regimentation of scientific effort been so clearly analyzed. These chapters are a real contribution to the subject. The ideas set forth deserve close evaluation by every thinking American, whether lawyer or layman.

BOOKS RECEIVED

- BASIC DOCUMENTS OF INTERNATIONAL RELATIONS.** Edited by Frederick H. Hartmann. McGraw-Hill Series in Political Science, McGraw-Hill Book Co., Inc., New York, 1951. Pp. xv, 312. \$3.25.
- CORPORATE MEETINGS, MINUTES & RESOLUTIONS (3d Edition).** By Lillian Doris and Edith J. Friedman. Prentice-Hall, Inc., New York, 1951. Pp. xxiii, 1114. \$12.50.
- THE CUSTOMS UNION ISSUE.** By Jacob Viner. Carnegie Endowment for International Peace, New York, 1950. Pp. viii, 221. \$2.50.
- CASES AND MATERIALS ON FEDERAL INCOME TAXATION.** By Stanley S. Surrey and William C. Warren. The Foundation Press, Inc., Brooklyn, 1950. Pp. xxxiv, 1166. \$9.00.
- DE IURE PRAEAE COMMENTARIUS BY HUGO GROTIUS.** Edited by James Brown Scott. Volume I—Translation of the Original Manuscript by Gladys L. Williams, with the collaboration of Walter H. Zeydel. Volume II—Reproduction of the Original Manuscript. The Clarendon Press, Oxford, 1950. Pp. Vol. I, xxxiv, 438; Vol. II, 163. 84s.
- ECONOMICS—AN INTRODUCTORY ANALYSIS (2d Edition).** By Paul A. Samuelson. McGraw-Hill Book Co., New York, 1951. Pp. xxii, 762. \$5.00.
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- GAMBLING: SHOULD IT BE LEGALIZED.** By Virgil W. Peterson. Charles C. Thomas, Springfield, Ill., 1951. Pp. viii, 158. \$2.75.
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- UNDERMINING THE CONSTITUTION—A HISTORY OF LAWLESS GOVERNMENT.** By Thomas James Norton. The Delvin-Adair Company, New York, 1950. Pp. xiv, 351. \$3.00.
- VOTING AND THE HANDLING OF DISPUTES IN THE SECURITY COUNCIL.** By Eduardo Jiménez de Aréchaga. Carnegie Endowment for International Peace, New York, 1950. Pp. 189. \$2.00.
- WEST GERMAN VULGAR LAW—THE LAW OF PROPERTY.** By Ernst Levy. American Philosophical Society, Philadelphia, 1951. Pp. xix, 305. \$5.00.