Indiana Law Journal

Volume 4 | Issue 3 Article 5

12-1928

The Supreme Court

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REVIEWS

THE SUPREME COURT*

The reviewer feels obliged to confess disappointment in this book, a disappointment due not to any failure of the author in performance of the task which he assumed but to the extent of the hopes aroused by the extremely broad nature of the full title.[1] When an ex-justice of our highest court purports to write of its "foundation, methods and achievements" in such a manner as to constitute an "interpretation," one may be pardoned for expecting something more than a conventional exposition of the history of the Court, of the mechanics of decision and of the leading doctrines of American constitutional law. One gets but little more, however, from this book. Approximately two-thirds of the space is devoted to the Court's "achievements"—a condensed exposition of the leading constitutional cases. "Foundations" and "methods" divide the other third between them. The former gives a brief survey of the history of the Court's creation. The latter consists of a sketch of the formalities of the Court's work, beginning with a discussion of judicial appointments and the place of the Court in popular esteem, and continuing through the position of the chief justice, conferences, oral argument, written opinions, dissent, reargument and rehearing, judicial tenure and superannuation. But there is virtually no attention paid to the technique of constitutional interpretation, as distinguished from the formal rules which purport to guide it, nor to the problem of why cases are decided as they are. Yet these seem salient matters in an "interpretation." Perhaps the nearest approach to them occurs in the recognition that the individual views of the judges count heavily in the application of constitutional standards[2] and again in a noble passage in defense of dissenting opinions.[3]

Aside from the frustration of the hopes raised by the title, no

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* *Supreme Court of the United States*, by Charles Evans Hughes. New York: Columbia University Press. 1928 pp. vii, 269.

(1) The Supreme Court of the United States—Its Foundation, Methods and Achievements—An Interpretation.

(2) "When the Court is dealing with the question whether a legislative act is arbitrary, and transcends the limits of reason which are deemed to be embraced in the fundamental conception of due process of law or of equal protection of the laws, it may be difficult to draw the line between what is regarded as wholly unreasonable and what is deemed to be unwise. It is doubtless true that men holding strong convictions as to the wisdom of legislation may easily pass to the position that it is wholly unreasonable." p. 38.

(3) "A dissent in a court of last resort is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting judge believes the court to have been betrayed." p. 68.

adverse criticism can be made. The style is clear, concise and interesting, while the content is calculated to give the layman, for whom the book is primarily intended (as were the lectures upon which it is based), a short but adequate survey of the leading doctrines of our constitutional law and of the influence of the Court in the working of our constitutional system. As to the judicial process itself, if the book does not carry the layman beyond the external mechanism and the conventional canons of construction, it at least does not unsettle him by a superficially clever raillery that creates more dangerous illusions in the place of those it destroys.

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