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interpretation, statutes covering entire subjects, uniform laws, analogical reasoning from legislation, violation of statutes as negligence per se, judicial adaptation of common law to basic legislative changes, and the problem of codification and restatement.

In choosing their materials for the book, the authors have drawn extensively from treatises and law review articles as well as from cases, committee reports and statutes. They seem to have chosen cases or reports, rather than excerpts from articles, whenever satisfactory cases could be found. It would, of course, be impossible to find cases dealing with many of the problems covered in such a book. The selection of cases and materials is very good. I think, however, that it would have been better if the authors had written textual material on many of the topics rather than attempting to cover them by excerpts from articles. When a series of small excerpts from articles is used, continuity of thought is generally lacking, and one can seldom obtain the full meaning from an excerpt taken out of context. The authors have done an excellent job in editing the cases. Seldom have they found it necessary to edit a case so severely as to excise its facts. If the facts of a case are omitted, it is no longer a short story in itself, and often becomes an almost meaningless abstraction.

The book is patterned for a course of four semester hours. The authors say in the preface that the course is given in the third year in their schools and extends through the academic year. It seems preferable to me to give the course in the second year. While the students will undoubtedly learn more from the course if it is postponed until the third year, I think it should be taught earlier as a basis for other courses. Problems of statutory construction constantly arise in second and third year courses, and the student will be much better prepared to cope with them if he has had a course in legislation.

Considering the novelty and magnitude of the task, the compilation of this casebook represents a real contribution to legal education. With the help of such men as Professors Reed and MacDonald, and others in this field, perhaps some day we shall become as adept in teaching legislation as we are in teaching the common law.

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Until a decade ago the conservative role of the United States Supreme Court was given universal credence. Two factors had served to emphasize the traditional check and balance interpretation: the life tenure of federal
justices permitted the enunciation of old political and economic doctrines after they had been discarded by state and federal legislatures; and the domination of national politics by the Republican party after 1869 meant that most judicial appointments before 1937 were made by presidents who looked with suspicion upon any effort to enlarge the scope of federal power. Occasionally a rebel justice left the philosophical fold of his benefactor, but this applied as well to the appointees of Theodore Roosevelt and Woodrow Wilson, the only presidents between Andrew Johnson and Franklin Roosevelt who reflected the change manifested in American life by the Grangers, Populists, Progressives and the growing labor movement. Continuity of control by one party delayed the legislative-judicial war which is always a potential in the divided authority of American government.

Judicial crises have appeared when federal authority was assumed by a new party with a platform and philosophy that contrasted sharply with the old. Jefferson, Jackson and Lincoln ushered in new eras—eras that proved to be uncomfortable for the courts appointed by their predecessors. The renaissance of the Democratic party in 1932 and the so-called Roosevelt Revolution which followed marked the beginning of similar antagonism and led to Roosevelt's dramatic assault on the Court in 1937. Court packing as such failed; but twelve years in office permitted the recalcitrant executive to create a Court of his own choice. Between 1937 and 1943 Roosevelt named eight associate justices and placed his stamp of approval upon Harlan Stone, a Hoover appointee, by elevating him to the Chief Justiceship. Only Roberts remained as the traditional voice of the past. The “revolution” had carried the Court! Lawyers, political scientists and historians waited with mixed emotion but sustained interest for the transformation that would follow. What would a “liberal” Court do to constitutional law? How would such a Court adjust to the conservative reaction that seemed to be apparent even before Roosevelt's death?

The Supreme Court “as reconstituted and redirected by President Roosevelt’s appointees” now has a ten year history. Its legal commitments have accumulated sufficiently to permit an examination and assessment of the effect of the New Deal upon constitutional law and government. Comments on the Court have been profuse. Every major decision and the personality of each justice have provoked theorizing. Nearly anything said about the present Court commands attention but the book under discussion is to be particularly recommended.

C. Herman Pritchett is a University of Chicago professor of political science who for the past eight years has published annual analyses of disagreements among the Supreme Court justices. *The Roosevelt Court* is a study of judicial disagreement during the period 1937-47. One common assumption about the Roosevelt justices is soon proved in error. It was expected that the process
of selection would naturally produce men of similar political, economic and judicial attitudes—that they would all be "yes-men" to their chief. The 1920's and early 1930's had been a period of important dissents and sharp division; it followed that a court named almost entirely by one man would show nearly complete uniformity. Instead it has become "the most unanimous court in history." Thirty of the 1944 decisions were 5-4; by 1946 64% of the cases heard divided the bench. The Roosevelt Court, then, cannot be discussed in terms of majority conclusions. Perhaps it cannot be treated as "a court" at all. Pritchett's thesis is that it must be approached in terms of patterns of disagreement. Majority decisions indicate the position taken by concurring justices on a given issue; it is in dissent that the justices reveal their peculiarities of judgment. When divisions repeatedly throw the same groups of justices into combination with each other the author attributes this to "some underlying differences of the gospel." The most important contributions of the book are its efforts to determine, from the opinions of each of the individuals and factions, the guiding philosophy which prompted them.

The techniques of statistical analysis are used in order to determine the ratio of dissent for each justice and the extent to which coalitions have formed. Included in the text are thirty-five tables and graphs which demonstrate percentages of deviation for each judge in each court term, the frequency of mutual dissents to be found for various combinations of justices, and the record of each juror on such basic issues as economic regulations, civil liberties, and state rights.

The existence of well-defined groups, referred to as left wing and right wing, was clearly evident during the early period, but after 1941 a marked decline was apparent in the cohesiveness of the Court. Apparently, Roosevelt judges were congenial so long as a remnant of the older conservative Court remained; but as the Court was "liberalized" and perhaps as the kind of questions coming up for review changed, early combinations were shaken. Temporarily, blocs could be defined but sharp division lessened. Though the Black, Douglas, Murphy, Rutledge coalition was still visible in 1947 it had lost its old consistency. Agreement between Black and Douglas, 100% from 1938-40, declined to 68% in 1946. On the right and the left "all the justices have more in common with colleagues on the other side of the Court, and less in common with members of their own wing than was previously the case." Extremes of agreement and disagreement have disappeared.

Since all of the Court has accepted the principles of federal regulation inherent in the New Deal, the left wing has distinguished itself through a more positive libertarian stand on civil liberties.

("Roberts had a curious record, the only liberties he considered worthy of protection being those of evacuated Japanese, indicted Nazis and Nazi sympathizers, and the Associated Press.")
BOOK REVIEWS

The Black-Douglas group shows considerable concern too for procedural rights in criminal prosecutions. The opposition, led by Frankfurter and Jackson, places high value on the desirability of states retaining control of their own standards of criminal prosecution.

One popular theory, developed by Schlesinger and others, explains the division on the bench as one between those who would assume an active role for the Court and those who would limit judicial interference whenever a question might be called one of political judgment. Frankfurter adheres to the Holmesian doctrine that the Fourteenth Amendment should not be used to hobble state legislative decisions. In contrast, Murphy holds that "as a judge" he has "no loftier duty or responsibility than to uphold spiritual freedom to its furthest reaches." The activists then are committed to a rigid defense of the Bill of Rights, their associates to a firm policy of self-denial even when they concede personal disapproval of a statute under consideration. For an example, Frankfurter would not have voted for the flag salute law had he been a member of the Minersville School Board, but as a reviewing judge he insisted upon respect for the political wisdom of the lowliest legislature. Pritchett quarrels with this interpretation as incomplete; "for Black is respectful of the legislative judgment—more so than Frankfurter—where economic matters are involved. In the Richmond tax case and the Arizona train limit case, for example, Black voted to uphold legislative actions which Frankfurter helped to overturn . . . Frankfurter's views on legislative supremacy . . . have been elicited mostly in civil liberties cases." Judicial decisions and judicial explanations must be interpreted in terms of the competing values of personal "gospels"! Legal fictions are developed by liberal as well as conservative courts.

Why is the Roosevelt Court the most divided in history? First, there is the danger of overstressing disagreement. The early "honeymoon period" demonstrated that on many vital issues that had torn asunder the preceding Court there was complete unanimity. The constitutionality of most federal legislation can now be taken for granted. Major questions, basic to the New Deal, were settled by the Court before most of the Roosevelt appointees had arrived. Problems solved with mutual satisfaction do not reappear; the court is now faced with the refinement of settled questions and the myriad variations of issues that arise out of them. Once regulatory statutes were accepted, their application raised moot points that highlighted shades of difference not apparent on the old judicial canvas of blacks and whites. The high percentage of difficult cases helps to explain disagreement among justices. The present generation finds modern problems unparalleled in complexity—it is the same with judges. Pritchett explains the judicial burden and certain abrupt departure from precedent as products of the failure of earlier justices to permit a gradual adaptation of the constitution to new circumstances.
Evolutionary change was neglected for too long, and rapid change resulted in a quick accumulation of legal questions.

However, condemnation of the old or the new is not the purpose of The Roosevelt Court. The author's chief goal seems to be to demonstrate the magic of his science of statistics. The value is obvious. It is useful to refer to a chart and discover that Murphy voted 94% strong in behalf of civil liberties and that Jackson's record is by contrast only 30% libertarian. On some questions the judicial cleavage lends itself admirably to chart and diagram. But diagramming is most effective when it points up sharp differences. Minor variations in social and political outlook cannot be measured simply by counting cases roughly classified as "pro-personal liberty" or "anti-government agency."

It would be reasonable to demand the weighting of a major case which involved a broad and fundamental principle. Classification in itself is subject to scrutiny; an important case involves several issues; two justices dissenting to the opinion may do so for very different reasons. These objections are not intended to debunk the values of "mere counting," but to question the validity of those charts which demonstrate small variation and jumbled patterns.

To return to those alignments that can be diagramed in sharp relief, a few corrections in classification and the introduction of factor analysis would probably not alter them materially. But it can be charged that where cleavage is sharp it is also so apparent as to make a graph unnecessary. Even the casual student of the Court is aware of Mr. Justice Murphy's strong sentiments on the Bill of Rights. We may profit from a careful tabulation of differences on the bench, but an explanation of those differences is far more significant. Pritchett became so enchanted with the intricacies of his charts that he neglected his original quest: "What it was in that case and the autobiographies of those justices that led them to disagree with the majority of the Court on the issue there raised." The major part of the book is given to an exhibition of disagreement. The conclusions and interpretations that followed were disappointingly brief. The sensation is that of having labored through a very elaborate and expertly developed mystery tale only to discover that the master detective retires at the crucial moment and leaves the solution of the crime up to the reader. This is particularly aggravating since the detective has revealed himself to be deucedly clever in the development of clues and in incidental judgments handed down along the way.

It is, of course, ridiculous to censor Pritchett because he does not give a definitive analysis of the Roosevelt Court. Fortunately or unfortunately, constitutional history cannot be presented in the succinct form of a whodunit.
But the cautious interpretations which are presented are so expertly handled that their briefness will be a matter of chagrin to the serious student of the Court.

Many more books will be written about the new Court; it is to be hoped that Pritchett will write some of them.

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The serious gap between Soviet legal ideas and the philosophical ideas implicit in Western jurisprudence is emphasized by the recent English edition of A. Y. Vishinsky's *The Law of the Soviet State* (1948). Rudolf Schlesinger, a non-Soviet scholar with a thorough knowledge both of Soviet law and its sociological considerations, has framed a valuable and highly useful reference for bridging the gap in his *Soviet Legal Theory*. By recounting the sociological atmosphere of the U. S. S. R. in terms of the reality of Soviet law, Schlesinger affords a striking vindication of J. L. Brierly's axiom that a merely juridical explanation of any legal system will not suffice and that comprehension must be sought outside the law itself.

Schematically, *Soviet Legal Theory* combines a positivist approach to the special nature of Soviet law with a chronological treatment of Soviet society since 1917. No attempt is made to conceal the rationalizations which creep into Soviet law to make it conform to the socio-economic pattern of the era of the "second revolution" (1929-30) as distinguished from theoretical conceptions in vogue during the period of war communism (1918-21), or from the theoretical foundations of the law in classical Marxism. Vishinsky, who presents the official view on the legal aspects of the second revolution, defends the illegality, in terms of previous Soviet law, of essential measures carried through in the process of "de-kulakization" on the grounds that "the interests of proletarian dictatorship were superior to its own laws and that the solution of the problems of revolutionary transition within the framework of any fixed legal system was impossible." The inevitability of having to pronounce such mystifying statements as this is apparent when Schlesinger reveals the rejection by the prominent Soviet theorist, Pashukanis, of his own earlier explanation of law as an essentially bourgeois institution based on the phenomenon of "commodity exchange" and bound to wither away as socialism was achieved. The "commodity exchange" thesis was that the possessors of