
BOOK REVIEWS

PUBLIC CONTROL OF BUSINESS. *Selected Opinions by Harlan Fiske Stone. Edited by Alfred Lief. Howell, Soskin Co., New York. 1941.*

This book gives the initial impression of careful organization of material. The impression is dissipated by reading. The editor has gathered together the various opinions of Mr. Justice Stone under several heads including "Competition and Monopoly", "Employer Obligations to Labor", "Corporate Practices", "Public Utility Rate-Making", "Taxing Government Instrumentalities", "Regulation by the States", and "State Taxing Powers". Unfortunately, the opinions grouped under these several heads may or may not have a significant relationship to each other. The result is that the reader finds himself constantly trying, often with little success, to relate the various excerpts from Justice Stone's opinions to each other. The book would have more value if the editor had extracted from the various opinions the basic philosophy which underlies them all.

Mr. Lief suggests, in his biographical sketch of Justice Stone, one of the basic doctrines appearing in many of his opinions. This is the theory that the law is a system whose logic must yield to the test of experience. Though rejecting the concept that popular notions of justice should control the judicial function, Stone has constantly followed the theory that the steady pressure of facts must condition judicial action. It would have been interesting and illuminating if the editor had taken time to show the development of this theory in the various decisions quoted.

Similarly, the Justice enunciates in one of his opinions a theory of the meaning of the 14th Amendment which is of great importance. He says, "The vague and general pronouncement of the 14th Amendment against deprivation of liberty without due process of law is a limitation of legislative power, not a formula for its exercise. It does not purport to say in what particular manner that power shall be exerted." This theory has been applied by the Supreme Court through the opinions of Justice Stone in several instances in support of the proposition that the courts cannot and should not them-

selves exercise a legislative function in destroying legislation as to the economic wisdom of which there may be some doubt. The importance of this judicial theory in revivifying the doctrine of separation of powers is enormous.

Again in the field of administrative tribunals by which so many of the duties of government are performed today, Stone has expressed a proposition upon which much legislation and many judicial opinions relating to such tribunals are based. Stone writes, "The Clayton Act was designed to prevent abuses growing from deficiencies due to the generality of the Sherman Anti-Trust Act. It sought to accomplish that end by conferring upon the Commission the power to strike at specific practices. In this, as in most schemes for regulation by administrative bodies, there must be a balance between the general and the particular. When the courts are faced with interpretation of the particular, administration breaks down and the manifest purpose of the legislature is defeated unless it is recognized that, surrounding granted powers, there must be a *penumbra* which will give scope for practical operation. In carrying such schemes into operation, the function of courts is constructive, not destructive, to make them, wherever reasonably possible, effective agencies for law enforcement and not to destroy them."

The above illustrations are sufficient to show how much more fully the author might have developed the implications of the decisions quoted by the analytical approach rather than by the simple process of clipping excerpts from opinions and placing them together under broadly applicable topical headings. In the manner in which this book is put together it serves to show the breadth of the topics on which Justice Stone appears to be well-informed and the liberality of his general point of view but it seems to me to fail of its major purpose, that of showing clearly how a great mind operating on many diverse subjects can mold its views around a few fundamental theories.

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