

Wu about Justice Cardozo. "Cardozo I am sure that I should really love if I knew him better. I not only owe to him some praise that I regard as one of the chief rewards of my life, but have noticed such a sensitive delicacy in him that I should tremble lest I should prove unworthy of his regard. All who know him seem to give him a superlative place. I have seen him but once, and then his face greatly impressed me. I believe he is a great and beautiful spirit." (See letter to Dr. Wu, page 199 ff. of opus.)

Thus we could go on quoting beautifully composed passages from these letters to reveal that in Holmes America had a man whose heart was as great as his head.

The reader will find this book infinitely worth while. It has an unusual balance in developing the late Justice Holmes both as a jurist and as a man. The work is splendidly indexed and contains a comprehensive bibliography of the works of Holmes as well as a bibliography of selected articles and books relating to his works.

JOSEPH FREEDMAN

THE STORY OF THE SUPREME COURT — *Ernest Sutherland Bates. Bobbs Merrill. 1936. \$3.00*

This recent book meets the current demand for a history of our United States Supreme Court which connects the recent controversial decisions concerning the New Deal with the history of the court up to that time. It lets us look at the present opinions in the light of past decisions, so that we may obtain some idea of what the Supreme Court holds in store for us.

The author points out that the Supreme Court did not have the vast power it possesses today when it first started on its institutional journey. This power has been gained only after a century and a half of the keenest conflict in which the court has had almost life and death struggles with the President, Congress and the states. As a result of these conflicts, the United States is the only nation which has placed the judiciary above the legislature.

Mr. Bates traces the court from its beginning in the Constitutional Convention through the various Chief Justiceships to the present. It is not a very happy picture, if viewed in the light of modern liberalism. The author demonstrates that the court has been an obstacle in the path of progress during most of its history. Except for occasional flashes of liberalism as practiced by the Taney and the White courts during part of their existences, the court has forced upon the United States the economic philosophy of the propertied class that created the court.

According to the author, the philosophy of capitalism, of which the

court is the most articulate governmental organ, may have been justified at the time Chief Justice Fuller's court gained the ascendancy which the court enjoys today. But the same philosophy as expressed today by the Hughes court in the recent New Deal cases is an anachronism and demonstrates that the court cannot advance any constructive solution of economic problems but merely meets them by affirming the status quo ante.

The book is written from a progressive social and economic viewpoint rather than from a legal one. Consequently, only cases having an effect on outstanding social questions are presented. This is perhaps justified in a "story" of the court, but it tends to distort the work of the court since the book omits the court's invaluable work in fields other than that of Constitutional Law. Since it is a "social story of the Supreme Court" the author does not attempt to criticize the many excerpts from the cases which he presents on their legal soundness. Rather, he points out their effect on the advancement or retardation of American society. Naturally the viewpoint of such a book must be biased, since the author's philosophy of what is social advancement is the core upon which the book is built. At the same time, the bias does not carry over to the historical facts presented. They seem to be the work of careful research. And too, it must be said that Mr. Bates' philosophy of the social world seems to be part of a rising climate of opinion of the day so that this book is contemporaneously justified in its criticism of the court as a social institution.

Mr. Bates sees in legal technicalities, e. g., reasons for refusing jurisdiction, just as effective a means of controlling the country from a social view as directly declaring a law constitutional or unconstitutional.

The author presents a brief sketch of each justice's background and indicates that he believes that it is that background which determines in almost every instance how that justice will vote in the particular case. Since the vast majority of the justices have been corporation or railroad attorneys or steeped in the court's attitude by virtue of lower court service, the court has taken a big-business view.

While everybody may not agree with Mr. Bates that the Supreme Court has too much power, and though the author remains strictly historical in refusing to say whether or not he believes the powers of the court will be restricted, yet everyone, lawyer and layman, should read this brief but intensely interesting story of an institution which has had a greater effect on the United States than any like body has had on any nation. The book is full of highly illuminating personal sidelights. It contains an extensive bibliography for those who wish to go more deeply into the subject. It is very worthwhile. JUSTIN H. FOLKERTH