

The Roosevelt Court (Book Review)

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mise of the Emergency Price Control Act; but access to the general courts was no longer denied. It is probable that the 81st Congress will reinstate all of these provisions, now contained in the pending bill, to the end that a revived federal rent control law will continue to be available to the government for the protection of the millions of tenants whose best hope for security of tenure in their homes and safety from exactions of excessive rents rests upon a strong law vigorously enforced. With the resurrection of the foregoing sanctions, it is likely that the temporary need for supplemental legislation such as the New York City local rent laws will no longer exist and they will be allowed to lapse. However, this does not apply to the so-called "stand-by" rent control law which the New York State legislature has enacted and kept alive against the possibility of the removal of all federal controls over housing accommodations. It is to be hoped that New York will continue this passive stand-by legislation until the need therefor is finally gone. No one would like to see a recurrence of the hiatus which for twenty-five days in July 1946 caused such havoc and created such chaos throughout the country in cities which lacked the protection afforded by the New York stand-by law.

This reviewer can only hope that the nation will soon find it unnecessary to continue any regulatory control over rents. While justified as a stop gap against inflationary trends and a protection against the emergency, the economy of the country and the social health of its people are much better off without this control in particular, and most economic controls in general.

IRA A. SCHILLER.*

THE ROOSEVELT COURT. By C. Herman Pritchett.¹ New York: The Macmillan Company, 1948. Pp. xvi, 314. \$5.00.

Twelve years ago the iconoclasts took great delight in citing Chief Justice Hughes' aphorism that the Constitution is what the justices of the Supreme Court say it is. It has never been clear to me just why that perfectly obvious dictum was seized upon as ammunition by the reformers, or why they should have derived immense satisfaction in pointing out that the judges of the Court are human. These two propositions are, to put it mildly, patent to anyone who has read even one basic history of the United States.

Professor Pritchett's book, to which he has given the subtitle *A Study in Judicial Politics and Values*, is not addressed to either of these two propositions, although at times it skirts them at uncomfortable length. This, however, is but a minor objection to an otherwise satisfactory and provocative work. It is Professor Pritchett's thesis that the Supreme Court is a political institution acting in a political context, and it is his further thesis that this institution can profitably be studied through an analysis of its nonunanimous opinions. It is in the nonunanimous opinion that Professor Pritchett finds the expression and synthesis of what he calls "the judicial attitude." "A unani-

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mous opinion is a composite and quasi-anonymous product, largely valueless for purposes of understanding the values and motivation of individual justices. A nonunanimous opinion admits the public to the Supreme Court's inner sanctum. In such a case the process of deliberation has failed to produce a conclusion satisfactory to all participants. . . . In informing the public of their divisions and their reasons, the justices also supply information about their attitudes and their values which is available in no other way. For the fact of disagreement demonstrates that the members of the Court are operating on different assumptions, that their inarticulate major premises are dissimilar, that their value systems are differently constructed and weighted, that their political, economic, and social views contrast in important respects."²

The author supports his analysis with statistical data. These data consist in tables, which for the most part show the alignments of the justices in the Court's nonunanimous opinions in many fields of law. These tables, twenty-five in all, the author uses in his search for the "judicial attitude" and in his evaluation of the politics and values of the Court's members. Table XVIII,³ to take a typical example, bears the caption: *Alignments of Justices in Non-unanimous Cases Involving Constitutional Rights of Criminal Defendants in State and Federal Prosecutions, 1941-1946 Terms*. This table is used to indicate the varying degrees of importance the different justices attached to the rights of criminal defendants as those rights conflicted with the rights of governments to law and order. These tables, of course, do not purport to tell why a given justice decided a case as he did. Their function is truly statistical; they show only the position taken by the justices in certain fields of law without reference to the particular issues decided upon in each case. Their value as statistical data, it would seem, lies in the fact that they are useful to mark the contours of "judicial attitudes" but not to establish the existence of these attitudes, and certainly not to establish any norm of predictability.

There are stimulating and well written chapters in this book, particularly the one on civil liberties and judicial supremacy. Professor Pritchett has a direct, forthright, felicitous style, and lucidity is not the least of his attributes as a writer. He is not a lawyer and his book is singularly free from the turgid, legalistic style in which many books of this sort are written. The scope of the book is a wide one; in time, it covers the period 1937-1947, in critical evaluation, its chapters include due process, civil liberties, crime and punishment, regulation of business and labor.

Professor Pritchett describes himself in the preface as "amicus curiae" and no one will say that his assertion is gratuitous. He is sympathetic to the Court's enthusiastic indifference to *stare decisis* and he finds no fault with the multiplicity of its divided opinions. His observation on the immutability of precedent is worth repeating. "There is general agreement that the law must grow, and an omelet cannot be made without breaking eggs."⁴

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² P. xii.

³ P. 162.

⁴ P. 57.

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