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Book Review (reviewing Carl Brent Swisher, Stephen J. Field-- Craftsman of the Law (1930))

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process of law. The author further demands the salutary control over executive law making and application that would be furnished by judicial review under conditions that would not be too burdensome and uncertain for the subject. It is in this connection that the author contends for the development of a wholesome body of administrative law in harmony with the traditional principles of the general legal system, although he does not favor the establishment of a separate system of tribunals for this purpose. This he conceives to be essential unless "we are prepared to admit that the whole constitutional center of gravity has moved from the legislature to the executive; unless we are willing to be governed not by ourselves through our representatives but by officials who are responsible to no electorate; unless, in short, we are disposed to revise the whole theory and practice of the constitution which has so long been our boast." It must be admitted that the suggestions fit eminently into a theory that stresses the importance of government by an elected parliament, and that conceives of the judiciary as a most important device for insuring government by law instead of by men.

The author has been concerned wholly with a situation that seems to have been developing in the British government at an accelerated pace during and since the war. It would be a mistake, however, to view his discussion as having no value for ourselves. Some of the evils against which his criticisms are directed are less likely to arise among us because of the salutary restrictions on legislative, executive, and administrative action developed from our constitutional theories of the separation of powers and due process in its application to procedure. Other of the evils adverted to are as likely to exist among us as among the British. The dangers to the citizen's liberty and other interests that arise in a highly developed bureaucracy have been strikingly indicated by the author, and his discussion at least contains a warning to us. That constitutes, in fact, the principal value of the book for us. It should be noted that the author's style is clear and precise. There are several appendices of which the first, which strongly opposes the rendering by courts of what we would call advisory opinions, will be found the most interesting and important.

University of Minnesota Law School. HENRY ROTTSCHAEFER

STEPHEN J. FIELD—CRAFTSMAN OF THE LAW. By Carl Brent Swisher. Washington: Published by The Brookings Institution, 1930. Pp. viii, 473.

Lovers of good biography, whether they be lawyers or laymen, should find in this volume a valuable addition to our too scanty collection of biographies of great American judges. Students of the judicial process as it is exemplified in the work of the Supreme Court of the United States will find much in the volume which is suggestive and valuable. To that considerable class of people who accept literally the dogma that "this is a government not of laws, but of men," a perusal of this book should be an educative, if disillusioning, experience.

Stephen J. Field was beyond doubt one of the most vital and colorful personalities the accident of political appointment has brought to the bench of our highest court. The great powers of his mind, the strength of his convictions, and his stubborn and dominating will

would under almost any conditions have assured him a place of influence and distinction on any court. He left a much deeper impress upon the law of California than other able judges who sat for much longer periods than he upon the Supreme Court of that state. Yet it may be doubted that his great talents and his unusual personal qualities adequately explain his profound influence in molding the attitudes and doctrines of the nation's high court, an influence equalled or surpassed only by that of Chief Justice Marshall and perhaps Chief Justice Taney.

The full explanation, Mr. Swisher recognizes, must rather be found in the conditions in the midst of which Field pursued his dramatic and varied career, in the ideas motivating the society in which he lived. He typified to an extraordinary degree the strength and the weakness of his age. It was a period of deep economic and social change. The natural resources of the country were being exploited with unprecedented rapidity and ruthlessness. The nation was undergoing a transformation from an agricultural to an industrial economy. Capital was accumulating at a rapid rate, chiefly under corporate control. Financial power was becoming centralized in the hands of a small fraction of the population. Labor's consciousness of its interests as a class and the necessity for organization for the effective protection thereof was growing.

How inevitable it was that bitter conflicts of interest should emerge from this welter of economic and social forces and that efforts should have been made by means of legislation to resolve these conflicts and to modify the course and direction of this economic evolution. Under our constitutional system it became the duty of the court of which Field was a member to define the limits within which such legislative power might be exercised. The justices found awaiting them the Fourteenth Amendment and the Commerce Clause, the "convenient vagueness" of whose terms left them free to write their social and economic philosophies into their definitions of these limits, under the guise of interpretation of such phrases as "due process of law," "equal protection of the laws," and "interstate commerce." Combining as Field did extraordinary powers of intellect and will, knowledge of the common law, and large capacity for work with a natural rights philosophy which was in accord with the prevailing ideas of the day, it is not surprising that he should have played so dominating a part in shaping the contours of the law.

The doctrines of *laissez faire* found a fertile soil in this country during the period of Field's judicial labors. The attitude of mind of which these doctrines are at once product and cause finds a natural rights philosophy with its doctrines of vested rights and privileges a congenial one. Legislative regulation cannot be carried very far without coming into collision with rights and privileges of free user of property, clothed in the hallowed garb of vested interests, or without impairing the freedom of the individual to secure to himself by contract and conduct all the advantages he is able, by virtue of superior talents or economic position, to win over his fellow men. *Laissez faire* therefore appears as a logical corollary to the philosophy of natural rights in which Field so passionately believed, since only through voluntary or constitutionally enforced abstention from legislative interference with the free play of economic forces could adequate protection of these interests of property and individual liberty be assured. It was not so much that the California justice and those

of like belief consciously or deliberately preferred the individual to the social interest, for they could scarcely conceive the possibility of real conflict between them. The true and ultimate social interest in their view lay in the maximum of protection of property acquisitions and the freedom of the individual from legal restraints. It has often been observed that Field's notable dissenting opinions, beginning with the *Slaughter-House* case and running down through the *Granger* cases, have supplied most of the ideational content for subsequent opinions of the Supreme Court in cases striking down social legislation as violative of freedom of contract, the ideas and concepts which Justice Holmes has for so many years valiantly resisted and sought to destroy.

True it is, as Mr. Swisher points out, that Justice Field did not always hold this point of view. On the contrary, he wrote opinions during his earlier years on the Supreme Court of California which were markedly liberal in tone. But as he grew older he became the conservative natural rights judge par excellence. The biographer has provided through his research much interesting material regarding Field's family, his childhood and young manhood in a pious New England family environment, his education, his brief period of professional practice with his famous brother in New York, and his subsequent colorful and dramatic years as a California lawyer and judge. He has made an earnest, if not altogether successful, effort to analyze and interpret his subject's personality and the motivations of his conduct both on and off the bench in terms of these earlier environmental factors and experiences as well as in the light of political, social, and intellectual pressures to which he was subjected during his Washington years. Fortunately Mr. Swisher was not blinded by his admiration for his subject to the fact that that subject was a *very human* person. He therefore does not hesitate to recognize political ambition and other selfish considerations as among the factors coloring his judicial attitudes and, indeed, perceptibly influencing certain of his decisions, such as in the later *Chinese Exclusion* cases. He is not among those who regard as well-nigh treasonable the view that men do not cease to be men, even when they occupy so exalted a place as the bench of the Supreme Court of the United States. Indeed so objective is the biographer's attitude toward his evidence that he is even able to forbear dogmatic denials of the charges of corruption levelled at Field while he was upon the state bench, merely observing that the charges cannot be said to be sustained by the available evidence. This objectivity is also apparent in the chapters dealing with the tragic quarrel with Terry, the *Greenback* cases, and the Hayes-Tilden election controversy.

Despite its admirable qualities, it cannot safely be asserted that the book will ultimately rank high as a study in judicial behaviorism. That thousands will derive pleasure from its interesting and readable portrayal of an extraordinary career there can be little doubt.

ARTHUR H. KENT.

SOCIAL POLITICS AND MODERN DEMOCRACIES. Volumes I, II. By Charles W. Pitkin. New York: The Macmillan Co., 1931. Pp. xxxiv, 794.

The major purpose of this work is to present the development of social legislation and administration in England and France, with