
Evaluation of the work and personality of the late Mr. Justice Jackson has only begun. Yet it is not too soon to assert that he has earned a secure place in the history of the Supreme Court as one of its most interesting and colorful personages. No doubt, a part of his fascination stems from the contrasts and contrarieties of his character. That he was a man of solid and outstanding talents, few would care to deny. But it is also true that his brilliance was accompanied by more than the usual measure of eccentricity. Those fortunate enough to have known him will testify to his charm and the warmth of his friendship. Yet, on attack, his sarcasm would bite and his scorn could sting. It ought not to be inferred, however, that Mr. Justice Jackson is of interest only or primarily because of the enigmatic and paradoxical quirks of his personality. One of his uncontestable claims for historical attention lies in the quality of his written expression. At its best, his prose has rarely been matched in sheer force and persuasiveness. Probably more than one law-school instructor presiding over a discussion of, say, the dissenting opinion in Ashcraft v. Tennessee,¹ has looked on in dismay while Jackson’s language worked something close to paralysis on the critical faculties of his class. But perhaps the basic explanation of his fascination and influence lies in his fierce insistence that the path he trod should be his own and in his formidable candor. He was not made for the role of disciple and obviously scorned discipleship in others. This independence of spirit led him to no strange goals. His values were, on the whole, traditional and conservative. But if his ultimate objectives were shared by others, living and dead, the pattern of his thought was distinctly of his own construction.

It would be pleasant to report that this little book, published posthumously, may be taken as Justice Jackson’s valedictory in which significant light is shed on the man and his thought or on the great theme he selected for discussion. Unfortunately, neither assertion can fairly be made—which, of course, is not to say that these pages are devoid of interest and importance. The book consists of three undelivered lectures which were intended to be given at Harvard in the winter following the Justice’s death. More work remained to be done. We are told by his law clerk and his son, who capably prepared the manuscript for publication, that several more drafts were contemplated. Nevertheless, the main

¹ 322 U.S. 143, 156 et seq. (1944).
outline and much of the detail of the argument as it would finally have been presented are probably here.

Despite the polishing which was yet to be done, the lectures had already acquired a considerable verbal sheen. Compelling sentences and paragraphs can be discovered throughout the work. Thus, the author writes: "Not one of the basic power conflicts which precipitated the Roosevelt struggle against the judiciary has been eliminated or settled, and the old conflict between the branches of the Government remains, ready to break out again whenever the provocation becomes sufficient." Again: "In Great Britain, to observe civil liberties is good politics and to transgress the rights of the individual or the minority is bad politics. In the United States, I cannot say that this is so." And typically: "When the court moved to Washington in 1800, it was provided with no books, which probably accounts for the high quality of early opinions."

The first lecture sounds the note of alarm and disquiet which was heard so frequently in Justice Jackson's judicial opinions. "The fact is that we face a rival, secularized system of faith and order spread with a religious fervor not witnessed since the tides of Islamic fanaticism receded." Already we have departed from our historical idealism: "It is true that we have suffered some intellectual demoralization, which has proceeded far—to the point where speculative freedom is regarded as the equivalent of revolutionary action." Nor does the author offer easy optimism as to our capacity to meet successfully the modern challenge. The second lecture, entitled "The Supreme Court as a Law Court," is notable chiefly for the Justice's statement of unqualified opposition to the continuance of diversity jurisdiction in the federal courts.

It is, however, in the third lecture that the main burden of the argument is found. The Justice takes upon himself the task of determining the extent to which the Supreme Court may be relied upon "to maintain the form of government we have established and prefer." A series of typical and critical issues are surveyed: executive against legislature, federalism, civil liberty, and others. In each area the Court, because it is a "political institution," has a role to play. But, according to Justice Jackson, in none of these can the Court's action be really decisive. Hence, ultimate reliance upon it is misplaced. Thus, discussing the problems of individual freedom, he says: "It is my belief that the attitude of a society and of its organized political forces, rather than its legal machinery, is the controlling force in the character of free institutions."

The point is a sober one and in recent years has been frequently made, though not often so effectually as in these lectures. Certainly it is true that a free society can not preserve those political values which it "has established and prefers" by delegating the responsibility for their nourishment and protection to a judicial tribunal or any other institution. There is no keeper of the people's conscience in such a society but the people themselves. It is no doubt true that the source of many of our difficulties has been our willingness

2 P. 9 3 P. 82 4 P. 30 6 P. 8 6 P. 7 7 P. 2 8 P. 81.
to attempt delegation of nondelegable duties. But surely this is not the end of
the matter. What role, if any, does the Court have to play in the creation of
such responsible citizenship, given the institutional development which has
actually occurred during a century and a half? It is not difficult to suggest
areas where vigorous defense of individual rights by the Court seems to have
encouraged intelligent political response, rather than the contrary. The cases
involving judicial supervision of state criminal procedures under the Fourteenth
Amendment, of which Justice Jackson was generally critical, may provide one
eample. The doctrines which have so spectacularly developed in the field may
be criticized for the tensions created and for their numerous irrationalities. And
yet it is demonstrable that in many particular situations, the Court has opened
the way to sensible local legislative action by identifying and dramatizing prob-
lems which tend to become submerged and obscured in the welter of public
issues confronting any modern legislature. Conceding that the Court has a
limited role to play in the preservation of our political values, may it not be
true, however, that, in the situation which actually confronts us, it is an in-
dispensable role? These are intriguing questions. One might wish that Mr.
Justice Jackson had given them more explicit consideration.

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Few Western legal theories have been more strongly criticized by Soviet
jurists than that of the so-called pure theory of law. It is, therefore, quite fitting
that Hans Kelsen, the founder and leading advocate of that theory, should now
see fit to write this acute analysis of Communist theories of law. Dr. Kelsen, at
the outset, frankly confesses his own ignorance of the Russian language; his
work is based upon German, French, and English translations of the works of
leading Soviet writers. It cannot be denied that this dependence upon trans-
lated material makes the basis for the Kelsen study far from adequate from a
theoretical point of view. At the same time, in this reviewer's opinion, it is far
more preferable to have this study upon Kelsen's terms than not to have it at
all. Certainly, it is more fruitful to have Kelsen devote his juristic genius to
translations of Soviet writers than to have a second-rate jurist, who happens to
possess the necessary linguistic knowledge, do a similar job upon the Russian
originals.

Dr. Kelsen starts his analysis by a critique of the doctrinal base of Soviet
legal theory—namely, the Marx-Engels theory of State and law. As almost
everyone knows, the dominant feature in the Marx-Engels theory is the doctrine
of the "withering away" of the State and law. What is not so well known, how-
ever, is what this doctrine really means in practice. According to a celebrated