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## Book Note

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## BOOK NOTES

THE SUPREME COURT FROM TAFT TO WARREN. BY ALPHEUS THOMAS MASON. Baton Rouge: Louisiana State University Press, 1958. Pp. vii, 250. \$4.95.

Mr. Mason's latest book is a plea for understanding of what he believes to be the United States Supreme Court's institutional foundations in our democratic society. The author's thesis is developed chiefly through analysis of the judicial traits of three of the Court's Chief Justices—Taft, Hughes, and Stone.

Although Taft's construction of the commerce clause was consistently broad, his interpretation of other national powers was far from liberal. Thus developed the sharp split between the Conservative Right headed by the Chief Justice and the Liberal Left composed of Holmes, Brandeis, and Stone. Taft's innate conservatism and engaging personality inevitably left their deep imprint on the Court's decisions. Dean Pound has criticized the Taft Court as indulging in a "carnival of unconstitutionality" in order to press the protection of property rights, and Mr. Mason labels the Court a "super legislature." Near the end of his term, Taft's fear of the ascending Left became an obsession with him. Justices of his camp were invited to his home on Sunday afternoons in order to lay plans to frustrate dissent among the "unpatriotic" and "disloyal." To Mason, the cleavage was not one between Left and Right, but was "rooted in fundamental differences as to the nature of the judicial function," with Taft and his cohorts believing that certain property rights were beyond the ken of experimentation, while the minority believed that experimentation is essential to a dynamic society.

The tenure of Charles Evans Hughes is well remembered for the Roosevelt Court-packing attempt. Hughes' political maneuvers in averting the scheme are likened to the political triumph of Marshall in *Marbury v. Madison*. However, Hughes' judicial approach undergoes harsh criticism. According to Mason, the appearance of solidarity on the bench and of continuity in decision were of supreme importance to the Chief Justice. Even in the most striking about-face ever staged by the Court (sustaining the revamped New Deal policies), Hughes' opinions sound as if there is an abiding consistency between the Court's later decisions and the wholesale invalidation of Roosevelt's first program. The many Hughes admirers are likely to be upset by Mason's analysis.

As might be expected, Stone fares much better under Mason's

searching eye. (Mason is the author of *Harlan Fiske Stone: Pillar of the Law*.) Just as Stone had aligned himself against those in the Taft Court who read their individual economic preferences into the Constitution, Stone as Chief Justice was aligned against the extreme leftists for like reason. Stone's judicial guide-posts were self-restraint tempered by a faith in "free government" and the intelligent application of judicial review.

Mr. Mason brings home his several points in the final two chapters. The cult of "Robeism," the idea that judges perform mystical tasks beyond the layman's comprehension, is uprooted. Judges are human; they *make* the law, not find it. High among the Court's duties is the protection of minority rights. The Court, an essentially political institution, must keep the nation's political channels unclogged. "Judicial hands-off in economic matters is perfectly consistent with judicial activism designed to preserve the integrity of the political process." Recognition of the Court's policy-making function will aid both the public and the Justices themselves. Only then can intelligent criticism (which is much to be desired) be leveled at the Court.

The book is well worth the reading. The factual data is well documented, and the analytical propositions are at times thought-provoking. Supporters of the Warren Court will welcome Mr. Mason with open arms, for that Court has moved swiftly toward many of the ideals of the ideal Court which Mr. Mason pictures.

*Jerry Moss*