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principle as a rule of law. Perhaps the scarcity of detailed English language studies on the subject hampered us in this regard, but Justice Challies' book is sufficiently detailed and complete to serve as a practical guide, and where its text itself will not suffice its ample citations will facilitate references to sources.

Robert A. Pascal*

CIVIL LIBERTIES AND THE VINSON COURT, by C. Herman Pritchett.

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When Fred Vinson became Chief Justice of the United States in 1946, most of the constitutional issues relating to the scope of federal power under the commerce and taxing clauses and the war power had been resolved by decisions uniformly in favor of national authority. The due process clauses of the Fifth and Fourteenth Amendments had been deprived of vitality as substantive limitations on legislative power in the sphere of economic activity, and civil liberties had become the major area of constitutional limitations and, except for the negative restraints of the commerce clause upon state power, the last outpost of judicial review of legislative action. The developments leading to this state of judicial affairs were treated by Mr. Pritchett in 1948 in a volume entitled *The Roosevelt Court* (New York, The Macmillan Company, 1948), to which the instant volume is a logical sequel, but unlike most sequels the continuation is even better than its precursor.

Because of the circumscribed area of judicial review, aside from an occasional decision like that of the *Steel Seizure* case which involved executive action, Mr. Pritchett gives a fairly complete account of the work of the Vinson Court even though he confines his book to civil liberties. Although he depicts in detail the individual differences of the Justices as revealed in their printed opinions he omits the personal antagonisms which rent the Court from 1946 to 1953, and wisely so because however important such conflicts may have been in determining the course of judicial decision data on them are far too meager to be conclusive. Like *The Roosevelt Court*, *Civil Liberties and the Vinson Court* is a study in judicial values. In executing this

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study Mr. Pritchett first surveys judicial decisions affecting free speech, loyalty programs, the rights of aliens, the equal protection clause as applied to racial segregation, and trial procedure. In so doing Mr. Pritchett not only provides a valuable account of constitutional developments in the area of civil liberties, but also an account of the positions assumed by the individual members of the Court.

Following his review of the principal decisions Mr. Pritchett provides a quantitative analysis of agreements and disagreements among individual judges and of the ratio of concurrence among individual Justices with each other. With characteristic tolerance and modesty Mr. Pritchett makes no great claims for this method as an approach to the study of constitutional law, but he does state that such data are effective "in revealing at any one time the anatomy of opinion on the Court" and in tracing "shifts of judicial positions and the realignments resulting from the appointment of new justices to the Court." (p. 180) Thus from 1946-1948, Vinson, Reed and Burton constituted the center of the Court. With the deaths of Murphy and Rutledge followed by the appointments of Clark and Minton the four Truman appointees joined by Justice Reed dominated the decisions of the court for the next four years with Black and Douglas forming increasingly often a liberal minority and with Frankfurter and Jackson constituting with less frequency a conservative minority. However, under the domination of the Vinson wing of the Court concurrence between the conservatives and the liberals also became more frequent. As might be expected Justice Clark was the most agreeable member of the Court with only fifteen dissents in four years.

Perhaps the best portion of Mr. Pritchett's book is the analysis in the last four chapters of the libertarian activism of Justices Black, Douglas, Murphy and Rutledge; the libertarian restraint of Justice Frankfurter; the values of the Vinson majority; and the relationships between democracy and judicial review, for it is here that the author summarizes the values of the conflicting elements of the Court and presents his conclusions concerning the work of Chief Justice Vinson and his Court. It is in these chapters, too, that the author outlines the conceptions which the justices hold of their judicial role and the obligations imposed upon them by the judicial function. In general Justices Black, Douglas, Murphy and Rutledge envisaged the judiciary as an instrument for cutting through formal concepts to protect

the rights of submerged and unpopular groups even though this may amount to judicial legislation. Justice Frankfurter, who has not always been consistent in civil liberties cases, presents the perplexing phenomenon of a Justice devoted to liberty but unable to advance its cause due to his conceptions of the limitations of judicial review and for that matter of the entire judicial function. Out of deference to Congress, the President, state legislatures and state courts, and from a sense of the judiciary's inadequacy as the least representative of government institutions Justice Frankfurter has refused to impress his personal convictions upon the law even "to the point of complete immobilization, leaving him unable to reach any decision at all in a case." (p. 223)

The remaining Justices who served during this period are designated "the less libertarians" because they were consistently less in favor of civil liberties claims than the other five. Of "the less libertarians" the unpredictable Justice Jackson, largely because of his concern about searches and seizures, was more favorable to civil liberties than the others, with Clark and Burton being somewhat more favorable than Vinson, Minton and Reed. Because Chief Justice Vinson could not become the intellectual leader of his Court as Marshall and Taney did in an earlier period, he had to assume the role of compromiser; and, as Mr. Pritchett points out, he failed in this role on the basis of the statistics of dissent. That someone else might have failed more in this respect the author readily admits. In any event the Chief Justice became "very nearly the most negative member of the Court on libertarian claims." (p. 229)

In the non-unanimous decisions affecting civil liberties, and most of the decisions during this period were not unanimous, a majority of the Vinson Court sustained civil liberties in only a minority of instances. Only in cases involving Negro rights in which the claims of Negroes were sustained in 75% of the cases did a majority of the Vinson Court favor civil liberties; most of the time 39% of aliens' claims were sustained in all the non-unanimous cases, 35% of the claims of criminal defendants in state cases and 43% in federal cases, 25% of the claims in state free speech cases and only 17% in federal free speech cases, for a general average of 35% in all the cases. How did it happen that this record of the Court which had decided many cases that in other years would have been regarded as liberal fell far short of values placed on liberty by the liberal intellectuals? According

to Mr. Pritchett, it was brought about because a majority of the Court mistakenly converted Chief Justice Stone's conception of judicial restraint into judicial abdication, equated democracy and majority rule, and identified judicial review and limited government with minority rule. The questioning of the democratic character of judicial review combined with frequent open disagreements among the Justices, in Mr. Pritchett's opinion, have weakened the moral prestige of the Court.

Although skeptics may cavil at Mr. Pritchett's statistical compilations of the votes of individual judges, they and all others will find his study of civil liberties as interpreted by the Vinson Court extremely valuable. First, Mr. Pritchett provides a complete survey of civil liberties decisions from the October term of 1946 to the October term of 1953. Second, his account of the personal factors involved in judicial decision provides much information on the mental processes of individual Justices. Fourth, he raises important questions concerning the role of judicial review in a representative government which suggests the necessity of further studies of this American institution. Finally, Mr. Pritchett is not so fettered by his statistics as to avoid reaching his independent conclusions or offering significant criticisms of the work of the Court as a whole and of the Justices individually. Future writers will undoubtedly be more concerned with doctrinal developments, but for a long time Mr. Pritchett's book will remain a useful contribution to the literature of constitutional interpretation generally and of civil liberties in particular during the period in which the Court accommodated itself to the cold war and mass hysteria.

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ADMINISTRATIVE LAW: CASES AND MATERIALS, by Louis L. Jaffe.
Prentice-Hall, Inc., New York, 1953. Pp. xvii, 647. \$10.00.

A well-written, compact casebook outstanding for two reasons: brevity and recency. The awkwardness of the task of reviewing a casebook has been recently and very aptly demonstrated in what ought to go down as a masterpiece in legal humorous writing.¹ Yet Jaffe's casebook deserves a few remarks

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1. Wiener, *The Teaching of Military Law in a University Law School*, 5 J. LEGAL EDUC. 475, 483-84 (1953).