

any interest in "abstractions,"<sup>44</sup> and despite the basic constitutional approach of balancing felt needs against restrictive effects, there is virtually no consideration of possible constitutional requirements.<sup>45</sup> For example, Professor Brown either explicitly accepts,<sup>46</sup> or at least does not object on principle,<sup>47</sup> to membership in the Communist Party being treated as an automatic disqualification for employment. Yet membership in the party was legal for years, still is not an automatic crime, and probably could not constitutionally be made so. Further, the Communist ideal and the Marxist doctrine generated one of the great movements of history. As a matter of political theory and history, it can be asserted that the first amendment was designed to protect the right of the people to exposure to ideas which have vast consequences, as well as to those which have none. Admitting the reality of our power struggle with Russia, the loyalty and security programs are an integral part of a comprehensive legal structure which clashes with this theory and history, and in their full sweep the programs are justified by no countervailing republican political theory that I have ever seen expressed. This clash is a basic issue of our time. I should like to have seen it discussed as such in the book.

BURKE MARSHALL†

THE ANATOMY OF A CONSTITUTIONAL LAW CASE. By Alan F. Westin. New York: The Macmillan Co., 1958. Pp. viii, 183. \$1.60.

PROFESSOR WESTIN'S book, intended to supplement the traditional constitutional law casebook by calling attention to developments which precede, and presumably affect and account for, Supreme Court decisions, is a "documentary portrait," rather than an interpretative monograph, of *Youngstown Sheet & Tube Co. v. Sawyer*,<sup>1</sup> the *Steel Seizure Case* of 1952. Beginning with a summary of the steel crisis drawn from "The News of the Week in Review" of the *New York Times* for April 6, 1952,<sup>2</sup> the book moves chronologically through materials demonstrating President Truman's reasons for the seizure<sup>3</sup> and the industry's response,<sup>4</sup> then follows the resulting litigation step by step. Well-edited selections from the proceedings, briefs, oral arguments, and judicial opinions show how the doctrine of inherent presidential power to seize was early put forward by the Government, only to be jettisoned when it fell under constant attack by the companies. The opinions of District Judge David Pine and six Supreme Court Justices provide contrasting modern statements of the doctrine that the King is under law. Throughout, Westin's comments

44. P. 478.

45. See pp. 408-10.

46. See p. 265.

47. See pp. 381-82.

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1. 343 U.S. 579 (1952).

2. P. 2.

3. Pp. 8, 14.

4. Pp. 18, 46.

make the steps in the case easy to take, keeping the reader aware of developments outside the narrow confines of the case.<sup>5</sup>

No new information about the *Steel Seizure Case* is to be found here; the book's value arises rather from its beginning-to-end treatment of a constitutional law case. This little-used approach<sup>6</sup> has much to commend it. Case histories enable students to observe the effect of competing strategies as a case moves up the appellate ladder and to pinpoint the roles played by all the actors in a litigation, thus leading to an appreciation of the fascinating complexity of the judicial process. The more widespread use of case histories could correct any tendencies to treat constitutional rules in a vacuum, and Supreme Court decisions in terms of one or two factors when in reality countless forces mold each decision. It must be said that the present volume provides little real insight. Yet the possible utility of the case history approach as a tool for understanding the decisionmaking process of the Supreme Court is, to me, its most valuable attribute.

Casebooks are inherently unequal to the task of illustrating the nature of constitutional change. Ordinarily their purpose is limited to the exposition of currently accepted rules. Supplements and new editions ensure that students are alerted to the latest authoritative rulings of the Supreme Court. But if one facet of coping with change is learning the current rules, surely another is ascertaining those factors which account for the Court's departure from old ones. The study of what the Constitution means today should be the beginning rather than the end of formal courses in the subject. Consciously developed and carefully stated theories of constitutional change would not only have obvious serviceability for practicing lawyers but also hold significant educational value for all citizens in achieving a broader understanding of the Supreme Court. One wonders if the snapshot of constitutional law found in the casebook of 1910, 1930, or 1950 does not, in some small degree, account for the cries of outrage currently heard from prominent lawyers, judges, and even professors, over recent Supreme Court overrulings.

As in the art of biography, a central task in the craft of preparing case histories is striking a balance among the various factors which shape the end result. What are the contributions of social environment, of technical developments, of chance, and of personality? The sheer complexity of the subject

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5. In particular, a James Reston column and President Truman's *Memoirs* are used to show how damaging some people believed a strike would be to fulfilling American commitments in the Korean War. Pp. 85, 174-75.

6. Book length studies of Supreme Court cases and their effects include HOPKINS, *DRED SCOTT'S CASE* (1951), on *Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857); TEN BROEK, BARNHART & MATSON, *PREJUDICE, WAR AND THE CONSTITUTION* (1954), and GRODZINS, *AMERICANS BETRAYED* (1949), on *Hirabayashi v. United States*, 320 U.S. 81 (1943), *Korematsu v. United States*, 323 U.S. 214 (1944), and *Ex parte Endo*, 323 U.S. 283 (1944); HILL & GREENBERG, *CITIZEN'S GUIDE TO DESEGREGATION* (1956), and BLAUSTEIN & FERGUSON, *DESEGREGATION AND THE LAW* (1957), on *Brown v. Board of Educ.*, 347 U.S. 483 (1954); VOSE, *CAUCASIANS ONLY* (1959), on *Shelley v. Kraemer*, 334 U.S. 1 (1948). See Fellman, *Book Review*, 280 *ANNALS* 182 (1952), for a list of questions which ought to be answered in case histories.

perhaps accounts for the existence of many narrow and often contradictory interpretations of the Court. For students of any complex subject tend to specialize, and the natural product of specialization is the overemphasis of one conditioning factor where many are present. Another source of contradiction is honest interpretation which attempts to aid understanding by oversimplifying complexity. And then there are the disgruntled of each generation who sum up their view of the Supreme Court in a quip such as "What's the Constitution among friends?" The quips, the conclusions of specialists, and the broad interpretations have been repeated uncritically when the insights which many of them display deserve to be accommodated as part of the knowledge of the subject through evaluation and redefinition. The detailed case history affords an excellent approach to this end. Through the study of cases, we may discover what truth lies in the various views of Supreme Court behavior set out below.

Lest case histories be drawn too narrowly, they might begin by exploring Justice Jackson's view that "the ultimate function of the Supreme Court is nothing less than the arbitration between fundamental and ever-present rival forces or trends in our organized society."<sup>7</sup> He believed that in this way "the technical tactics of constitutional lawsuits" may be seen as "part of a greater strategy of statecraft in our system."<sup>8</sup> And Justice Frankfurter, prior to his appointment to the Court, noted:

From Marshall's day to this the pages of the Supreme Court Reports present a cinematograph of the movements of our society, revealing, under our "peculiar jurisprudence", the clash of forces in terms of ordinary lawsuits resolved by the judicial process. Already the substance of Supreme Court decisions begins to bear the aspects of these times. Subtly the impregnating intellectual climate of an era also affects the Court. This is so by the very nature of our Constitution, by virtue of the vague concepts that have to be applied and the "moods" that have to be conveyed—a very different thing, be it noted, from the shallow implications of Mr. Dooley's "th' supreme court follows th' iliction returns."<sup>9</sup>

A theory that judicial decisions are primarily responses to the machinations of specific pressure groups has also been advanced. In 1908, Arthur F. Bentley wrote that there were "luminous instances of the same group pressures which operate through executives and legislatures, operating also through supreme courts and bringing about changes . . . which must be interpreted

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7. JACKSON, *THE STRUGGLE FOR JUDICIAL SUPREMACY* 311 (1941).

8. *Id.* at 311-12.

9. Frankfurter & Hart, *The Business of the Supreme Court at October Term, 1933*, 48 HARV. L. REV. 238 (1934). Edward S. Corwin has observed "that for considerable intervals it [the Supreme Court] will be found to be under the sway of a particular 'social philosophy,' the operation of which in important cases becomes a matter of fairly easy prediction on the part of those who follow the Court's work with some care." CORWIN, *THE CONSTITUTION AND WHAT IT MEANS TODAY* 253 (12th ed. 1958). Corwin had in mind the outlook of the judges, but apparently, when the *New York Times* declared, the day after the Court announced its decision in the *School Segregation Cases*, that the result had been "inevitable," it was speaking of the "spirit of the times." N.Y. Times, May 18, 1954, p. 28, col. 1.

directly in terms of pressures of group interests."<sup>10</sup> Yet in discussing an example, Bentley explained he did not mean "that the justices consciously forced the law to fit the case, nor that they showed any traces whatever of demagogism or of subserviency to popular clamor."<sup>11</sup> In answer to a similar, but more recent description of the judicial process in terms of access by pressure groups, Walter Berns has said that such groups

must come armed with sound arguments, addressed to reason. The proposition that the judicial process can be understood in terms of the pressure exerted by groups cannot be maintained—unless that pressure takes the form of constitutional arguments. And this kind of pressure may be exerted by an insignificant author of a law review article.<sup>12</sup>

Although it is apparent that important constitutional questions are pressed on to the Supreme Court by organized groups, certainly it by no means follows that this factor necessarily accounts for a particular decision. For one thing, there commonly are important organizations supporting opposing positions. For another, the effectiveness of interest groups in American government generally has recently been questioned.<sup>13</sup>

Even those who emphasize the competing social pressures in American constitutional law have not lost sight of the key role of the lawyers who transformed these pressures into legal arguments. Judge Simeon Baldwin once said that the development of law "is primarily the work of the lawyer. It is the adoption by the judge of what is proposed at the bar."<sup>14</sup> Applying this theory, Benjamin Twiss showed how, in the years between 1880 and 1935, lawyers like John A. Campbell, Joseph H. Choate, and William D. Guthrie linked the currents of economic *laissez faire* to protective rules of constitutional law.<sup>15</sup>

Although the advocates of the last century who placed new concepts before the judges sometimes originated them, as often as not they drew their ideas from the law textbooks. The influence of Thomas M. Cooley, Christopher G. Tiedeman, and John F. Dillon, the most prolific law writers of the day, has been traced in an important study which broadens the work of Twiss. The thesis of this study is that these authorities, "not less than the judges and the lawyers, were responsible for the popularization within their profession of constitutional principles which encompassed the *laissez faire* policies demanded

10. BENTLEY, *THE PROCESS OF GOVERNMENT* 388 (1908).

11. *Id.* at 393.

12. BERNs, *FREEDOM, VIRTUE AND THE FIRST AMENDMENT* 133 (1957). His criticism was leveled at TRUMAN, *THE GOVERNMENT PROCESS* (1951), especially ch. 15.

13. For a general critique, see Kariel, *Political Science in the United States: Reflections on One of its Trends*, 4 *POLITICAL STUDIES* 113 (1956).

14. Quoted in TWISS, *LAWYERS AND THE CONSTITUTION* 2 (1942).

15. TWISS, *LAWYERS AND THE CONSTITUTION* (1942).

That a similar role has been played by lawyers on other questions in other eras is suggested by the careers of Daniel Webster and Thurgood Marshall, but the precise place of counsel in relation to other factors in Supreme Court cases remains to be spelled out. For a classic discussion, see the chapter on constitutional law and Daniel Webster in 1 WARREN, *THE SUPREME COURT IN UNITED STATES HISTORY 686-728* (rev. ed. 1923). On Thurgood Marshall, see REDDING, *THE LONESOME ROAD* 315-29 (1958). See also FRANK, *MARBLE PALACE* 97-101 (1958).

by industrial capitalists."<sup>16</sup> Thus, textbooks, and those other books which form or express the social conscience or outlook of an age may be even more important than the law men.<sup>17</sup> Diligent research might discover that the judges were swayed by reading outside the case itself.<sup>18</sup>

The most obvious formal means for the passage of ideas or doctrines to the justices—the record, the briefs, and oral argument—have received credit from time to time.<sup>19</sup> In preparing detailed case histories an appraisal may be made between the overall effectiveness of each side of a litigation.

The backgrounds of Supreme Court Justices are often isolated as the determinants of a decision. When a majority of the Court ruled a state minimum wage law invalid, Mr. Justice Stone found it "difficult to imagine any grounds, other than our own personal economic predilections," for the decision.<sup>20</sup> Some scholars, like Fred Rodell, have seen a direct inescapable line between personal, social, and economic background and constitutional decisions.<sup>21</sup> Yet in a recent study John Schmidhauser states that "investigation of the relative influence of social background factors upon judicial interpretation has scarcely progressed beyond the speculative stage."<sup>22</sup> His conclusion to a preliminary study was that the influence of background factors has been only to set "implicit limits on the scope of theoretical decision-making possibilities."<sup>23</sup>

Judicial biography cannot end with social background as the major determinant of policy preferences, for men take on new commitments as judges. It may be, as Pritchett and others have claimed, that judicial attitudes toward values can be plotted to show a conservative-liberal split on the Supreme Court.<sup>24</sup> Others have departed altogether from analyzing judicial behavior and

16. JACOBS, *LAW WRITERS AND THE COURTS V* (1954).

17. The alleged influence of SPENCER, *SOCIAL STATICS* (1851), is legend. But, see also GOLDMARK, *FATIGUE AND EFFICIENCY* (1912).

The medium of innovation changes so that in our own day the law reviews appear to lead the way toward new formulations of law. See Newland, *Legal Periodicals and the United States Supreme Court*, 3 *MIDWEST J. POL. SCI.* 58 (1959). A related study is Merryman, *The Authority of Authority: What the California Supreme Court Cited in 1950*, 6 *STAN. L. REV.* 613 (1954).

18. See Armstrong, *What Do the Justices Read? Books of Interest to Supreme Court Members*, 35 *A.B.A.J.* 295 (1949).

19. See generally WIENER, *EFFECTIVE APPELLATE ADVOCACY* (1950); Harlan, *What Part Does the Oral Argument Play in the Conduct of an Appeal*, in U.S. FOURTH CIRCUIT JUDICIAL CONFERENCE, *REPORT* (1955).

20. *Morehead v. New York ex rel. Tipaldo*, 298 U.S. 587, 633 (1936) (dissenting opinion).

When the Court ruled that state courts may not constitutionally award damages when a racial restrictive covenant is broken, Mr. Chief Justice Vinson felt his colleagues had followed their personal "predilections on social policy" and "a simple self-serving process of argument" in reaching the result. *Barrows v. Jackson*, 346 U.S. 249, 266, 269 (1953) (dissenting opinion).

21. See generally RODELL, *NINE MEN* (1955).

22. Schmidhauser, *The Justices of the Supreme Court: A Collective Portrait*, 3 *MIDWEST J. POL. SCI.* 1, 2 (1959).

23. *Id.* at 49.

24. See PRITCHETT, *THE ROOSEVELT COURT* (1948); PRITCHETT, *CIVIL LIBERTIES AND THE VINSON COURT* (1954).

conceived of decisionmaking as a game or in terms of a mathematical model.<sup>25</sup> A danger in these approaches, as with the emphasis on social factors, arises when the quality of judicial open-mindedness is underplayed.<sup>26</sup> The extent to which judges can effectively antisepticize personal views or passions in given cases will be difficult to say, but it is a factor which cannot be excluded from analysis.

The crowning complexity in the judicial process of the Supreme Court—the interaction among the Justices—is surely the most difficult to grasp. Popular writing about the Court has often given great play to the personal animosities which arise between Justices.<sup>27</sup> A recent account by Westin himself, based on his extensive study of the life of the first Mr. Justice Harlan, shows that these rivalries may bear on such seeming trivialities as the framing of a headnote in the Court reports.<sup>28</sup> It is not clear how much actual decisions may be colored by this factor. Indeed, the intra-Court picture made available in Alexander Bickel's study of Brandeis emphasizes reason and statesmanship in the internal deliberations of the Justices.<sup>29</sup> The requirements of secrecy, the length of time which passes between decision and disclosure, indeed, the inconclusive nature of the debate over full disclosure—all contrive to make accurate contemporary analysis of the factor of interaction difficult.<sup>30</sup> For these reasons case histories might best deal with decisions of times past. But the difficulty of getting the facts should not exclude mention of the place of interaction within the Court from the larger framework of detailed case histories. In fact, one of the advantages of a case history is that it can focus on the particular Justices, their relationships and deliberations rather than on an institution which has, in the course of time, varied enormously.<sup>31</sup>

25. See Schubert, *The Study of Judicial Decision-Making as an Aspect of Political Behavior*, 52 AM. POL. SCI. REV. 1007 (1958); Kort, *Predicting Supreme Court Decisions Mathematically: A Quantitative Analysis of the "Right to Counsel" Cases*, 51 AM. POL. SCI. REV. 1 (1957); Fisher, *The Mathematical Analysis of Supreme Court Decisions: The Use and Abuse of Quantitative Methods*, 52 AM. POL. SCI. REV. 321 (1958); Roche, *Political Science and Science Fiction*, 52 AM. POL. SCI. REV. 1026 (1958).

26. It has been said for Mr. Justice Brandeis that "almost the paramount quality of a good judge was the capacity to be reached by reason, the freedom from self-pride that without embarrassment permits a change of mind." Freund, *Introduction to BICKEL, THE UNPUBLISHED OPINIONS OF MR. JUSTICE BRANDEIS* at xx (1957). See also FREUND, *ON UNDERSTANDING THE SUPREME COURT* 45-75 (1949). And Mr. Justice Frankfurter, speaking of "the qualities which should be sought for in members of the Supreme Court," has said: "The first requisite is disinterestedness; the second requisite is disinterestedness; the third is disinterestedness." Frankfurter, *Judge Henry W. Edgerton*, 43 CORNELL L.Q. 161, 162 (1957).

27. See, e.g., PEARSON, *THE NINE OLD MEN* (1937); Schlesinger, *Supreme Court 1947*, *Fortune*, Jan. 1947, p. 73.

28. Westin, *Stephen J. Field and the Headnote to O'Neil v. Vermont: A Snapshot of the Fuller Court at Work*, 67 YALE L.J. 363 (1958).

29. BICKEL, *op. cit. supra* note 26.

30. Discussions of this problem are to be found in *id.* at vii-ix; Westin, *Book Review*, 66 YALE L.J. 462, 468-69 (1957).

31. In this latter connection, studies which treat the Court as an ever-changing "small group" contribute a helpful thought. Snyder, *The Supreme Court as a Small Group*, 36 SOCIAL FORCES 232 (1958).

Although *The Anatomy of a Constitutional Law Case* touches many of these factors, none is examined systematically. One reason for this failure is Westin's concern with the wisdom of the decision—with evaluating judicial statesmanship—rather than with how and why the decision was made. His questions for analysis suggested to students at the end of the book bear on the rightness of the decision.<sup>32</sup> This is the conventional approach, a valuable one for political scientists and lawyers who follow the work of the Court. Yet it seems to me that if this was Westin's main purpose, or even a secondary purpose, he should have provided the reader with more appropriate information on which to form such a judgment. For example, inclusion of the affidavits prepared for the President by Secretary of Defense Lovett and other officials at the time of the seizure,<sup>33</sup> along with evaluations made by economists after the crisis was over, would have enabled the student to evaluate the correctness of the economic analyses on which the President acted. As it is, Westin's book partly touches the wisdom of decision and partly the process of decision. Both might have been brought off; as it is neither approach is adequately followed through.

To justify the title and achieve his idea of "an explanatory model,"<sup>34</sup> Westin needed to ask appropriate questions about the development of the case and, if necessary, seek new information. At many points in the book the failure to ask a pertinent question, to provide alternative explanations or to include additional information causes disappointment.

Documents alone could scarcely reveal the liabilities which the Truman administration carried into the *Steel Seizure Case*. The President's weakness as a lameduck, following his announcement in March 1952 that he would not seek reelection, is mentioned,<sup>35</sup> but the evident confusion among his legal advisors is not. The author tells us that the resignation of J. Howard McGrath and the failure of the Senate to confirm the appointment of James McGranary left the President without an Attorney General for the duration of the crisis,<sup>36</sup> but there is no indication what difference this made, if any. There is no explanation of the traditional function of the Attorney General, the Solicitor General, the Assistant Attorney General, the Counsel to the President, or the General Counsel of the Department of Commerce; and we are told little about the men holding these positions and their roles in the case. Westin notes that in December, 1951, "the President had been informed by his 'top advisors' that they doubted whether there was any 'sound legal basis' for seizing the steel mills,"<sup>37</sup> but that by April, "lawyers in the Justice and Defense Departments were set to work studying legal bases for Government intervention."<sup>38</sup> Against this one is permitted to wonder why Assistant Attorney General

32. P. 179.

33. See, e.g., 98 CONG. REC. 5848-52 (1952).

34. P. v.

35. P. 2.

36. P. 7.

37. P. 7.

38. *Ibid.*

Holmes Baldrige asserted neither statutory nor express constitutional grounds to support seizure but relied only on "inherent, implied or residual powers" in responding to Judge Pine's questions about his "client's" power.<sup>39</sup> And despite the characterization of Solicitor General Philip Perlman as Acting Attorney General and "top legal counselor,"<sup>40</sup> it is unclear who led the retreat from that high ground. I have the impression that the President did what he felt was expedient, and a rather ragged and uncoordinated group of Government lawyers then tried to pick up the pieces. Others have said that the Government suffered from self-inflicted wounds. But the relationship between the White House and the Justice Department is not explored in the book. Thus we cannot learn whether carelessness or suicidal impulses shaped the Government's case.

On the other side, one wonders in what measure the victory of the companies in the *Steel Seizure Case* was attributable to their outstanding counsel. A trace of the notion that large corporations have the advantage of top counsel is contained in the book. "Twenty lawyers appeared for the companies and three for the Government" in the Court of Appeals and this ratio apparently held throughout.<sup>41</sup> If this factor is noteworthy, what inference is to be drawn from the imbalance? And individually how should the talents of the attorneys be rated? All we are told about the attorneys for the companies is that John W. Davis was "a Wall Street lawyer, former Solicitor General of the United States, presidential candidate of the Democratic Party in 1924, and a veteran of hundreds of arguments before the Supreme Court."<sup>42</sup> Even if the ultimate question of significance were reserved, it would be enlightening to know something of the twenty-seven lawyers named in the *United States Reports* as being on the brief submitted to the Supreme Court for the seven steel companies.<sup>43</sup> I would also like to know how the work was divided and how it was coordinated. Finally, to what does the author attribute the unerring management of the companies' case?

Some of these omissions may be accounted for by the editor's explanation that his attempt was "to recreate, as far as possible, the factual and emotional setting of 1952."<sup>44</sup> To this end, "the reader has been given approximately the same facts and rumors which were available to the judges when the steel crisis was unfolding."<sup>45</sup> However, there is no query about whether the Justices of the Supreme Court knew either more or less about the developing crisis than was known to conscientious readers of the *New York Times*. More important is the unadorned assumption that the rumors available to the judges are of significance. How can one know what rumors were heard? How can their effect on the judgment be gauged? And what is the student to make of President Truman's complaint that "news stories and editorials decrying seizure and

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39. P. 62.

40. P. 7.

41. P. 75.

42. P. 112.

43. 343 U.S. 579, 581 (1952).

44. P. 177.

45. *Ibid.*



inflaming public opinion were prejudging and deciding the case at the very time the Court itself was hearing arguments for both sides"?<sup>46</sup> What weight should be given to the fact that the companies protested seizure through newspaper advertisements? "The Steel Companies in the Wage Dispute" had begun activities in December, 1951 and the advertisements ceased more than a week before Judge Pine's decision on April 29th. Moreover, the only action suggested was a letterwriting campaign to Congress. My impression is that the Supreme Court has not, since 1937 at least, been notably close to the views of newspaper advertisers or editorial writers. Nor does the report of the Gallup Poll showing that forty-three per cent of their national sample disapproved of the steel seizure, while thirty-five per cent approved, and twenty-two per cent had no opinion seem to prove anything.<sup>47</sup>

In a section entitled "Disqualification and the Fortunes of Judicial Roulette,"<sup>48</sup> the point appears to be that it made a difference that District Judge Walter Bastian, who was first assigned the case, disqualified himself and that the case was then heard by Judge Pine. Judge Bastian withdrew because he owned a thousand dollars' worth of stock in the Sharon Steel Corporation and yet Judge Pine, whose wife owned a thousand dollars' worth of stock in the Bethlehem Steel Company, then heard the case. Would Bastian have decided differently than Pine? We do not know. And, except for the suggestion that the assignment of judges is a chancy business, we are given no hint of how such a question might be answered. A discussion of the system of assigning judges in that court would have been helpful. But if the lower court had acted differently, what bearing would this have had on the ultimate disposition in the Supreme Court? Again, we do not know, but I believe that such questions should have been raised directly rather than inferentially.

The section on the Supreme Court is one of the strongest in the book, for here Westin is able to draw upon his impressive knowledge of the history of the institution. Because the "inside story" of the *Steel Seizure Case* is not available, it was necessary, if anything were to be said, to discuss the inner workings of the Court in other cases and in earlier periods. This was a sensible approach. Indeed, one may hope that Westin will some day enlarge upon his treatment of "How the Supreme Court Reaches Decisions."<sup>49</sup> Thumbnail sketches of the nine men who decided the *Steel Seizure Case* are included with the range of business before them during the 1951 term. The fact that we can only speculate about how these Justices reached a decision in this case underlines the difficulties of doing a thorough case history on a contemporary case. But hopefully this obstacle as well as the other difficulties in the way of determining how changes in constitutional law come about will eventually increase interest in writing other detailed case histories.

CLEMENT E. VOSE†

46. P. 172.

47. Pp. 135-36.

48. Pp. 53-55.

49. Pp. 125-34.

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