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Our Eleventh Chief Justice

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OUR ELEVENTH CHIEF JUSTICE

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WHEN the news of the resignation of Chief Justice William Howard Taft was announced to the public on February 3, 1930, because of the serious illness which later resulted in his death on March 8th, there came with startling suddenness the news that President Hoover had forwarded to the Senate, within four hours, the appointment of Charles Evans Hughes to fill the vacancy thus created, but since it met with country-wide acclamation no one thought that it would meet with any particular objection in the Senate. Seldom has a President acted upon so grave an appointment with such speed. Thereupon, the appointment was referred to the Judiciary Committee of the Senate and on February 10th that committee, through Senator Norris, its Chairman, favorably reported the nomination and Senator Watson asked for unanimous consent for its immediate consideration. Objections were made by Mr. Blease of South Carolina, and thereupon followed on four successive days a fight on Mr. Hughes' confirmation which gained great momentum and attracted the attention of the whole country and has been referred to variously, as "The Hughes Rebellion" and "The Fight on the Supreme Court". Stainless in his personal reputation, distinguished for intellectual stature, with a fine record for public service and a world-wide eminence as a statesman and jurist, he was formidably challenged by Senator after Senator as lacking the supreme qualification of judicial impartiality, as being, on the contrary, the outstanding representative of legal, economic and social reaction and as the foremost champion of property rights *versus* human rights and as lacking in sensibility in accepting appointment to the Court from which he had once seen fit to resign to become a candidate for the Presidency. The newspapers and periodicals throughout the country became interested in the confirmation fight and the echoes of it will be long in fading away.

Editorial comment in opposition to the Hughes appointment in the Senate called attention to the fact of the changing character of the cases and controversies coming before the Supreme Court for consideration. It was pointed out that

whereas, aside from the major cases broadly interpretative of the Constitution, the mass of the cases in its early history were of minor importance, that by 1925 nearly half of the cases concerned the control of economic enterprise, taxation, adjustment among the states, anti-trust cases and cases arising under the commerce and due process clauses of the Constitution and under the 14th Amendment. In that year, 1925, an Act was passed amending the Judicial Code and defining the jurisdiction of the Circuit Court of Appeals and of the Supreme Court (Act of February 13, 1925) which relieved the Supreme Court of ordinary common law and statutory cases altogether and confined its province exclusively to relationships among the various governmental units of our federal system and the relationship between the individual and the State or National Government. Its function is now mainly that of interpreting the Constitution. The Court is more and more considering the meaning in particular controversies of words such as "life," "liberty," "property," "regulate commerce . . . among the several states," "privilege and immunities of citizens," "due process of law," and "equal protection of the law." More and more the Supreme Court is becoming a supreme policy-making body, a Curia Regis, as it were, which differs from our other branches of government chiefly in that its nine members hold their appointive positions for life and are, therefore, not responsible directly to public opinion.

Appointments to the Supreme Court, by reason of these changes, are of increasing and transcendental importance and the responsibility of the President is consequently all the more grave.

It is urged by the more liberally minded that the Court has shown a distinct bias in judgment on contentious social and economic questions, a bias from which its own minority, consisting largely of the same Justices in each case, viz., Holmes, Brandeis and Stone, has consistently dissented. The two groups in the Supreme Court represent more fundamentally divergent social philosophies and attitudes of mind, conservative and liberal, than do the two major political parties in Congress.

Through a line of decisions growing ever more severe,

it is submitted, the majority of the Supreme Court has limited the ability of organized labor not merely to exert its influence, but to protect its very existence. In the *Hitchman Case, Hitchman Coal, etc., Co. v. Mitchell,* 245 U. S. 229, it validated the "yellow dog contract" in a way which made illegal the attempt to organize workers who have been forced, as a condition of employment, to sign away their rights to join a Union. In *Truax v. Corrigan,* 257 U. S. 312, it declared that a state could not pass a valid law prohibiting the use of the injunction in labor disputes. It has, in the *Duplex Printing* and the *Bedford Stone Cutters* cases, *Duplex Printing Press Co. v. Deering,* 254 U. S. 443, *Bedford Cut Stone Co. v. Journeymen Stone Cutters Association,* 274 U. S. 677, denied the right of Unions to refuse to work on materials made by non-union labor, if these materials were shipped in interstate commerce. It has denied the right of Congress to pass child-labor laws, *Hammer v. Dagenhart,* 247 U. S. 251, *Bailey v. Drexel Furniture Co.,* 259 U. S. 20, and of the states to enforce mandatory minimum wage laws, *Adkins v. Childrens Hospital,* 261 U. S. 525. At the same time it has enlarged the scope of organized capital by applying the "rule of reason" in numerous anti-trust cases.

It is also urged by adherents of these views of the activities of the Court that it has denied the right of the public to regulate public utilities by numerous specific rulings and has continually enforced higher valuations; that it substituted its own judgment for that of the expert Interstate Commerce Commission in the *O'Fallon Case, St. Louis & O'Fallon Ry. Co. v. United States,* 49 Sup. Ct. 385, and by its decision in the case of *United Railway and Electrical Company v. West, et al,* decided January 6, 1930, it has required the citizens of Baltimore to pay tramway car fares sufficient to return 8 per cent on a valuation based upon present cost of reproduction and has included in the assets of the Company its franchise to operate at a valuation of $5,000,000.00. All of these tendencies are cited as examples of the changing economics of the Supreme Court.

If these tendencies are correctly interpreted there should be a scrupulous examination of nominees to the Court and

constant and unrelenting criticism of its decisions, rather than considering it a sacrosanct retreat of abstract justice.

Below a brief account will be given of the debate which took place in the Senate prior to Mr. Hughes confirmation by that body on February 13, 1930, and his induction into office February 24, 1930. As stated above, objection was made to unanimous consent for the immediate consideration of the nomination when it was reported to the Senate, by the Judiciary Committee Chairman, Mr. Norris, on February 10th. Mr. Norris then made a preliminary address concerning the nomination although it was not before that body at that time. He objected to Mr. Hughes' confirmation at that time principally on two grounds. First, that Mr. Hughes had resigned from the Supreme Court to become a candidate for the Presidency of the United States; that he had left that high judicial tribunal to enter the arena of partisan political debate and after his ambitions in the political field had failed of realization he should not be reappointed to the Supreme Court and particularly not be promoted to the position of Chief Justice. Second, that we had reached a time in our history when the power and influence of monopoly and organized wealth are reaching into every governmental activity; that combinations and mergers are of every-day occurrence, extending to every line of business and commercial enterprise, there never having been a time in the history of our country when combined wealth has wielded as great an influence in the commercial and political world as is being wielded at the present time; that no man in public life so exemplifies the influence of powerful combinations in the political and financial world as does Mr. Hughes; that almost invariably he has represented corporations of almost untold wealth; that because of the supposed influence which he might exert upon the Supreme Court, he was enabled to charge almost unlimited fees for his services; that during his active practice, he has been associated with men of immense wealth and lived in an atmosphere of luxury which can only come from immense fortunes and great combinations and that therefore his viewpoint is clouded and his decisions would be all in favor of big business. All of these things, Mr. Norris thought, disqualified Mr. Hughes to serve again upon the Supreme Court.

On the following day, February 11th, the Tariff debate was interrupted to consider Mr. Hughes' nomination. Mr. Borah thereupon led the attack. His line of argument against Mr. Hughes' confirmation was that the Supreme Court is more and more engaged in the consideration of public utility valuation cases and rate cases; that in the Supreme Court there are two distinct legal and economic view points, represented on the one side by the majority of the court, and on the other, for the most part, by Justices Holmes, Brandeis and Stone. Mr. Borah conceded that Mr. Hughes is a man of high standing, one of the distinguished Americans of the day, a man of wide reputation and acknowledged ability. Without any reflection upon his integrity, he submitted that a Chief Justice should not be placed upon the Supreme Court who held the legal and economic views which Mr. Hughes holds, with respect to property rights as opposed to personal rights.

He raised the point that Mr. Hughes had appeared in the Newberry case, wherein Newberry, as candidate for the Senate from the State of Michigan, was charged in an indictment with the criminal offense of having violated the Federal Corrupt Practices Act, and was afterwards convicted. In that case Mr. Hughes contended before the Supreme Court that the Congress of the United States had no control, no power of the original sources of activity which would result in the selection of a Senator of the United States. His contention was that the Federal Government was without power to protest against corruption on the part of those who were seeking nomination at the hands of the people for a place in the Senate of the United States. Mr. Borah called the attention of the Senate to the fact that Mr. Hughes had served as attorney for the American Petroleum Institute; that he had appeared for the Interborough Company of New York in its effort to collect increased fares; that he had appeared for the Meat Packers in an attempt on their part to modify the decree which had been entered against them; that he had appeared for the American Jersey Pottery Company when it was charged with a violation of the Sherman Anti-Trust Law, and likewise for the American Malleable Castings Iron Company charged with violating the same law. Mr. Blease of South Carolina thereupon called the attention of the Senate to the

fact that this is only the second time that a Justice of the Supreme Court, who had resigned, was appointed Chief Justice of the United States, but that in the previous case of Mr. Rutledge, after serving six months as such, his appointment was not confirmed.

Following this, Mr. Glass of Virginia, expressed his opposition to the confirmation of Mr. Hughes, first, upon his lack of sensibility, that is, that a person who had once served upon the Supreme Court and who had resigned to become a candidate for a political office should not again accept the appointment upon that court; and, second, because of the decision of the court in the famous *Shreveport* case, the opinion in which was written by Mr. Hughes. Mr. Glass felt that in the *Shreveport* decision every right that a state had possessed of control of intrastate traffic was literally stripped from it, and since that decision, the Interstate Commerce Commission has reached out time and time again and arrogated to itself necessary powers, in one instance at least which the Congress of the United States itself does not possess. In the progress of the debate which followed, Mr. Wagner and Mr. Copeland, Senators from New York and both Democrats, came to Mr. Hughes defense, as did Mr. Gillett, Republican of Massachusetts.

On February 12th and 13th, the debate on the confirmation of Mr. Hughes continued, led by Dill of Washington, Brookhart of Iowa, Wheeler of Montana, La Follette of Wisconsin, Nye of North Dakota, and again by Senator Norris and others. The principal defense of Mr. Hughes was made by Senator Glenn of Illinois who in a masterful characterization of Mr. Hughes as a lawyer, statesman and jurist, gave a justification of his legal and economic views. Randell of Louisiana and Shortridge of California also spoke in his defense. The opposition gained momentum as the fight progressed, but the proponents of Mr. Hughes had the necessary votes and were not greatly worried, remaining confident throughout the debate.

In addition to the points raised in opposition to Mr. Hughes, previously mentioned, the broad question of the right of the Supreme Court to declare acts of Congress unconstitutional was discussed as being a usurpation of power on the

part of the Court; Mr. Hughes' contention in the case of *Federal Radio Commission v. General Electric Company,* 280 U. S. (preliminary print) 17A, that the great Radio Corporations of America had a vested right in perpetuity to channels of communication through the air because of priority of appropriation, was viewed with alarm; the decision of the Court in the *Baltimore Tramway Case* decided January 6, 1930, deciding that, "It is a settled rule of this Court that the rate base is present value, and it would be wholly illogical not to adopt this for depreciation," was cited as the most extreme case in public utility valuation; and it was also urged that Mr. Hughes being the oldest man ever to be appointed to the Court was too old to accept the position.

The vote was taken late in the day on February 13th, resulting in 52 for confirmation and 26 against, with 18 not voting. Altogether, the debate was kept upon a fairly high plane. Mr. Hughes' whole public life was submitted to the closest scrutiny and criticism, but all conceded his high character, honesty and personal integrity. Yet as stated earlier in this article, it served to focus the attention of the Nation on the attitude of some members of the Senate at least, toward the Supreme Court and to cause much editorial comment of the same general nature throughout the country.

In view of the interest aroused by the appointment of Mr. Hughes to the office of Chief Justice of the Supreme Court of the United States it may be opportune once more to review his life and character, his experience upon the Supreme Court, as Secretary of State and as a member of the World Court.

It is stated that one day when Mr. Hughes was Secretary of State a group of neophytes in the consular service filed into his outer office to get a word of inspiration from their Chief, for the careers upon which they were about to embark. Mr. Hughes told them, "The man who succeeds in his work in any position where there are a great many burdens and demands is the man who can keep his head and intelligence, at the same time giving the impression of a man adequate to the exigency." This expression, "adequate to the exigency," very aptly characterizes Mr. Hughes himself. He has ever been "adequate to the exigency."

What an amazing record we have in Mr. Hughes' career! At the age of 44 we find him Governor of the great State of New York, serving two terms; at the age of 48 he becomes Justice of the Supreme Court of the United States, serving with distinction for a period of six years; at 54, he resigns from the Supreme Court to accept the Republican nomination for the Presidency, and after an ill-omened campaign marching to its extraordinary conclusion on the night when Mr. Hughes went to bed thinking himself President-elect, he awakes the next morning to find himself a private citizen; then follows a period of remunerative practice at the Bar, after which, at the age of 59, he becomes Secretary of State of the United States; then he serves at the Washington Conference for the Limitation of Armaments, and at the Conference of the American Republics meeting at Havana last year; then follows a period of private practice interspersed with distinguished service and his duties as a Judge of the Permanent Court of International Justice at The Hague, and now, at the age of 68, the Eleventh Chief Justice of the Supreme Court of the United States!

Charles Evans Hughes was born at Glen Falls, New York, April 11, 1862, the son of Reverend David Charles and Mary Catherine (Connelly) Hughes. His father was a Baptist minister, and the effects of the training which that implies may readily be seen in the life of the distinguished son. He entered Colgate university at the age of 14 and from 1876 to 1878 he attended there. He received his A.B. degree at Brown University in 1881, and the A.M. degree in 1884, from the same school. He went to New York in 1882 and began the study of law, in the office of General Stewart L. Woodford and at Columbia Law School, graduating in 1884 and being admitted to the Bar the same year. He won the Prize Fellowship at Columbia Law School and was a Fellow there from 1884 to 1887.

After his admission to the Bar, he became a clerk, from 1884 to 1891, in the office of Chamberlain, Carter & Hornblower of New York City, which was a notable corporation firm. It is said that more than 100 distinguished lawyers have served in that office. During 1891-93 he was Professor of Law at Cornell University and special lecturer at New York Uni-

versity Law School from 1893 to 1900. In 1888 he had married Antoinette Carter, the daughter of the senior member of the firm. Four children were born of this marriage and it is interesting to note that Charles Evans Hughes, Jr., became Solicitor-General of the United States, resigning that office upon the appointment of his father to the Supreme Court as Chief Justice.

Mr. Hughes' career then expanded rapidly. For the next ten years he applied himself diligently to a study of the history, philosophy and practice of the law. He was a precise, methodically-minded man, extremely careful with the proprieties, never disposed to break the conventions, studying the law and law systems as he found them. The firm was known as Carter, Hughes & Cravath from 1887 to 1891 and Carter, Hughes & Dwight from 1893 to 1904.

Until 1904, Mr. Hughes was perfecting himself in the knowledge of corporation and general law, serving on many important cases with such distinguished men as James Coolidge Carter and Joseph Hodges Choate, but up to that time he was comparatively unknown to the general public. He first attracted popular notice in his capacity as counsel for the Stevens Gas Commission, a legislative committee of New York state which was appointed to investigate the price of gas. The result of this committee's findings was the passage of the law fixing the rate for gas in New York City. Afterwards this law was long contested, but its constitutionality was finally upheld by the Supreme Court of the United States.

In 1905, the great insurance scandal broke and the New York Legislature appointed the Armstrong Insurance Commission, and Mr. Hughes, who was already becoming an authority on insurance law, was chosen as the Committee's Council. His admirable conduct of this case brought his name before the general public and brought him rapidly to the attention of the country, as he displayed uncommon skill and proficiency in unearthing certain parts of the vast system of insurance corruption through which the directors, brokers, promoters, syndicates of magnates and retainers, members of companies, lobbyists, and politicians enriched themselves at the expense of the policyholders. Point after point he patiently brought out as to the involved and concealed circum-

stances of the long continued loot and corruption. Reputations of many men long acclaimed for their respectability were blasted, and others were ruined by these revelations. Mr. Hughes' masterful handling of the great array of facts and his splendid and fearless cross-examination of witnesses day after day was the marvel of the profession. For at least two months he subjected Thomas F. Ryan to the most merciless cross-examination.

In 1905 he declined the Republican nomination for the office of Mayor of New York City and in 1906 he served as special assistant to the Attorney-General of the United States in the coal investigation, but his handling of the insurance investigation had brought him before the public to the extent that he could not resist accepting the nomination for Governor of New York for the Republican party, and in 1906 was elected to the office, defeating his formidable opponent, William Randolph Hearst, and serving from January 1, 1907, to October 6, 1910.

The administration of Governor Hughes was an unceasing fight for reform. In his first message to the Legislature he recommended, among other things, a Public Service Commission law, extension of the Corrupt Practices Act, the Massachusetts ballot, direct primaries, laws for the protection of women and children in factories, pure food and election laws. The Public Service Commission Law was passed and the suggestions for labor laws were carried out but the remainder of the program was defeated. The Direct Primary Bill was defeated after a long struggle. The Governor carried the matter to the people in several public addresses and called an extraordinary session for a reconsideration of the bill but it was again defeated. Finally, in 1913 under the administration of Governor Glynn, the Short Ballot Act was passed. Race-track gambling was made unlawful in 1908. On the whole, the administration of Governor Hughes was impartial and progressive and won the approval of a majority of the people of the State and his national reputation was greatly enhanced.

In April, 1910, by a strange coincidence, William Howard Taft, then President of the United States and now Mr. Hughes' predecessor in the office of Chief Justice of the

United States Supreme Court, appointed Mr. Hughes as an Associate Justice of the Supreme Court. The Senate acted favorably on his appointment May 2, and on October 10, 1910, he took office. For a period of almost six years he served with distinction on the Supreme Bench—the nature and character of his decisions will be discussed later in this article.

In 1908 he was the choice of the majority of the New York delegation to the Republican National Convention but sufficient strength could not be obtained to secure his nomination. Mr. Hughes was suggested as nominee at the convention of the Republican Party in Chicago in 1912, but he refused to permit his name to be considered. After a personal interview with Justice Hughes at Lake Placid, New York, Rabbi Stephen S. Wise was quoted in the New York Tribune of June 21, 1912, in part as follows: "He would decline the nomination if tendered him. Why? The Supreme Court must not be dragged into politics. A Judge of the Supreme Court should not be available, though he be nominally eligible for elective office. The moment he assumes the judicial office he ceases to be a partisan and knows, or should know, no partisan obligation. The moment he accepts a party nomination, one or more things happen and happen explicably."

But three years later, having succeeded in staving off the nomination to the Presidency in 1912, if it may be expressed in that way, the urge came in 1916, to Justice Hughes to become a candidate for President, and in view of the situation as it then existed, he accepted the nomination and conducted a vigorous campaign. His defeat for that office by Woodrow Wilson, who received 277 electoral votes to Mr. Hughes' 254, is a matter of history which does not need to be expanded upon here. It is interesting to note that in the Senate fight on Mr. Hughes' confirmation, his resignation from the Supreme Court to accept the nomination for the Presidency was one of the principal things urged by his opponents, and likewise the question as to the ethics of his practicing before the Supreme Court during the interim was used strongly against him. Was it right for Mr. Hughes to practice before the Supreme Court after his retirement as a member of it? Was it right for him to return and plead the cases of corporation clients before the body of men with whom he had become inti-

mately associated during his membership upon the Court? The example of Chief Justice Taft himself was cited and it was stated that he had established such a standard and such a rule and precedent in ethics, when, upon his retirement from the Presidency, he announced that he would not practice his profession before the Supreme Court, because he had appointed a majority of the members of that body. Perhaps the cases are not at all alike, but still a doubtful point of ethics is raised in the comparison of the conduct of the two men, and it was so urged by Mr. Hughes' opponents during the confirmation debate. From 1917 to 1921, he was a member of the law firm of Hughes, Round, Schuman and Dwight in New York City and an immense quantity of important litigation was handled by that firm, the services of Mr. Hughes being greatly in demand in those cases requiring argument before the Supreme Court.

From 1921 to 1925, he served as Secretary of State under President Harding and President Coolidge. His predecessor in office, Colby, liked to be clever, whereas Hughes liked to be clear. He had a program, and he knew that with the Senate still bitter over Wilson and the League of Nations, he could not hope to put this program through without public support. This support he obtained through the newspapers. He talked to the country daily, taking the people into his confidence as far as he could. The editor of "Mirrors of Washington" said of him, "He makes foreign relations hold front pages with the Stillman Divorce Case." Secretary Hughes seemed to be a wizard in the handling of the press during the time of the Washington Arms Conference. As Secretary of State he set his goal at the largest practical measure of international cooperation. He preached the doctrine of enlightened self-interest. The interests of the United States after the war demanded that she abandon her policy of aloofness. His admirable handling of the International Conference on the Limitations of Armaments, as its chairman, his persistent advocacy of our entry into the World Court, his subsequent service on that Court and his work in the interest of Pan-American friendship were notable contributions to the cause of peace and good will, and will place him as one of our greatest Secretaries of State. He emerged from the Conference on the Limitation of Armaments in 1921 a world figure.

He represented the United States as Commissioner Plenipotentiary at the Sixth International Conference of American States at the City of Havana in February, 1928. Later in collaboration with Secretary Kellogg, he served at the memorable Conference on Conciliation and Arbitration at Washington, which resulted in the General Treaty of Inter-American Arbitration and the General Convention of Inter-American Conciliation, both of which were signed by the Plenipotentiaries of 20 American nations. His competent labors, his scholarship, diplomacy and statesmanship were of the highest and rarest kind and did much to aid in the highly successful outcome of these conferences. The result of the negotiations of Mr. Hughes and Mr. Kellogg may be ultimately known in history as the Pax-Americana. His admirable conduct of the office during so critical a period in our history will unquestionably cause him to be ranked as one of the greatest among our many distinguished Secretaries of State.

On May 1, 1929, he sailed from New York as Judge of the Permanent Court of International Justice, commonly referred to as the World Court. Tributes were paid to him by many leading Americans in such terms as "No worthier representative could be chosen," "A great lawyer, a great statesman, a strong personality is called to a great opportunity," "The beginning of a new and enlarged opportunity for distinguished service" and "No better selection could have been made." Prior to this, on January 25, 1929, the Bronx County Bar Association had tendered Mr. Hughes a banquet at which the Hon. William D. Guthrie, reviewed in most eloquent terms, the life and service of the new appointee. That address is to be found in the "American Bar Association Journal" for May, 1929.

Now, with his appointment as Chief Justice of the United States, an office which is second only to that of the Presidency, Mr. Hughes enters a new period of service. It is a long way from the days of the insurance investigation when he was spoken of as "an example of the good man in politics", from his other years as a teacher of Greek and Latin in the Delaware Academy at Delhi, N. Y., and a plodding professor of law at Cornell and New York Universities, and the busy days of his active practice at the bar. Mr. Hughes' career has

been dramatic in the extreme. For more than 25 years he has been in the spotlight, always "adequate to the exigency."

As a lawyer, he represents quite a contrast with the type of advocate represented by William Pinkney and Rufus Choate or the constitutional lawyer of the type of Webster, Clay and Calhoun. He is the modern type of business lawyer, clear, cool, logical, mathematical, capable of digesting immense quantities of business details, analyzing business policies and presenting them clearly to the courts. If Elihu Root represents one of the first of the modern corporation type of lawyers, capable of acting as Counsellor to business executives in great combinations and merger movements, Mr. Hughes is of the same type and perhaps even a more advanced type; yet, withal, a man of broad viewpoint, with more of a flair for public service, and of undertaking searching investigations and involved matters of litigation which bring to the forefront his amazing analytical ability. Both in the interval between his resignation from the Supreme Court and his taking office as Secretary of State and from the time he left that position until this present appointment, the character of his practice has been largely that of representing large business, insurance and public utility corporations. From 1925 until his appointment to the Supreme Court, he appeared in 54 cases before that body. The list of these cases was released for publication by Senator Norris on February 8th, and presents a formidable array of important cases decided or to be decided by the Supreme Court.

If we should like to know what manner of Chief Justice he will make, it would be well to examine his previous record on the Court. When Mr. Hughes went on the Supreme Court in 1910 he was without any previous judicial experience. During the six years he served on that "more than Amphictyonic Council," as William Pinkney long ago designated the Supreme Court in his argument in the *Neriede Case,* he wrote 150 opinions, including a half dozen dissenting opinions. Altogether he dissented 23 times. The task of the Supreme Court during these latter years has been rather to clarify principles and to apply them to intricate problems of modern life than to interpret the Constitution along broad lines. For the most part, the Supreme Court in the last generation has been

developing the due process clause as found in the 14th and 15th amendments to the Constitution and the Commerce Clause, since, for the most part, the other clauses of the Constitution had previously been interpreted. We think of Marshall as having the most decisive weight in the interpretation of the constitution, yet we are astonished by the fact that his great constitutional opinions number only 42. It is quite probable that the decisions rendered by Mr. Hughes during the six years on the Supreme Court were of far more importance than those of Marshall. In 16 *Columbia Law Review,* 565 (1916), Arthur M. Allen gives an illuminating discussion of "The Opinions of Mr. Justice Hughes."

It is there pointed out that Justice Hughes' miscellaneous legal opinions cover questions of admiralty, the rights of Indians, domestic relations, the jurisdiction of the courts, questions of practice and evidence, trusts and restraints of trade, construction of statutes, trade-marks, copyrights, the customs laws, riparian rights, patents, wills, bankruptcy, Pure Food laws, the relation of master and servant and a variety of other subjects. In many of these decisions most important property and personal rights were involved.

It is also pointed out there that his constitutional opinions cover a wide range comprising the interpretation of the 13th Amendment in *Bailey v. Alabama* (1911) 219 U. S. 219; questions relating to the validity of state statutes fixing the liability of the railroads as employers as in *Chicago, Burlington & Quincy Railroad v. McGuire* (1911) 219 U. S. 549; the question of the right of the courts to compel the production of documents in criminal cases in *Wilson v. United States* (1911) 221 U. S. 361; questions involving the Interstate Commerce Commission in *Baltimore & Ohio Railroad v. The Interstate Commerce Commission,* (1911) 221 U. S. 612; the validity of an eight hour law for women in *Miller v. Wilson* (1915) 236 U. S. 373; and double jeopardy in the case of *Graham v. West Virginia* (1912) 224 U. S. 616.

Justice Hughes' greatest contributions to American constitutional law were made in a number of important cases involving the relative powers of the states and the Federal Government over intrastate commerce, and the questions relating to the rights of the states to regulate rates imposed

by public service corporations. The most important of these cases are the *Minnesota Rate Cases* (1913) 320 U. S. 352; *Houston & Texas Railroad v. United States* (1914) 234 U. S. 342 and *Northern Pacific Railway v. North Dakota* (1915) 236 U. S. 585, which virtually took away from the state commissions the right to regulate intrastate rates.

The opinions of Justice Hughes failed to disclose any expressions of his own personal economic views or any feeling that the constitution itself needs to be sacredly guarded against the encroachments of modern civilization. They show a close concentration upon the facts of the particular case, an entire suppression of personality, the lack of rhetorical devices of any kind and in their way are models of judicial expression. None of them shows anything but a purely impersonal and impartial discussion of the principles involved in the instant case, yet in the Senate the fear was repeatedly expressed that his personal bias, his personal economic and social views and his bias toward his clients would influence his interpretation of the Constitution. It clearly appears from his opinions that on the great questions affecting labor he was at no time reactionary, but that he viewed such problems with a broad and sane sympathy and it must be remembered that he represented a labor union in the *Coronado Case,* after leaving the Court. Upon the trust question he has been in favor of the "rule of reason", while in public utility valuation cases he has been the leading advocate of the doctrine of the fixing of rates on present values, that is, cost of reproduction, and thus in line with the views of the majority of the Court, but necessarily opposed to those of Justice Brandeis and Justice Holmes. His decisions in these two fields will be watched with the greatest interest.

His scholarly attainments are best represented by his discussion of the foundations, methods and achievements of the United States Supreme Court published in 1928 as the *"Supreme Court of the United States,"* a series of lectures which he delivered at Columbia University in 1927. This book discusses the foundations of the Supreme Court, gives a description of the Court at work, its organization and methods, and its achievements in cementing the union. A very interesting phase of the book is his discussion of liberty, property and social justice as interpreted by the Supreme Court. It is most

interesting to have an interpretation of the work of the Court by one who has served on the Court itself. His other published works are *"Conditions of Progress in Democratic Government"* (Yale Lectures) 1909 and *"The Pathway of Peace and Other Addresses,"* 1925.

Mr. Hughes is a fellow of Brown University, a Trustee of the University of Chicago, and during the war, he served as chairman of the Tariff Appeals Board for New York City. In 1918 he was appointed by President Wilson as special assistant to the Attorney-General in charge of the aircraft inquiry.

He was President of the New York State Bar Association for 1917-18; President of the Legal Aid Society of New York for 1917-19; President of the New York County Lawyers' Association 1919-20; and has always been active in American Bar Association work and President of that Association in 1924, at the time of the pilgrimage of the American lawyers to London. There he had the honor of delivering an oration in Westminster Hall, the great hall of William Rufus. His address made a profound impression on all who heard it. Mr. Hughes spoke for the legal profession of the United States before the dignitaries and leaders of the British, Canadian and American Bars. As our representative and spokesman, his eloquence rose to the occasion. He was thereafter elected and acclaimed an Honorary Bencher of the Middle Temple. Following this he spoke on our behalf at the Palace of Justice in Paris, to the French Bar, in lofty and inspiring language.

From the foregoing it would appear that, notwithstanding the criticism and comment brought about by the appointment of Mr. Hughes to the office of Chief Justice of the Supreme Court of the United States, his distinguished career symbolizes the highest and best standards and traditions of the American Bar; that his preparedness, industry and competency, indeed his genius, have been demonstrated in the varied private and public services of his life; that his eminent qualifications for the position, his splendid talents and his brilliant successes in the past, all augur well that he will fill with honor the lofty position held in the past by Marshall and Taney, by Waite and Fuller and White and by his immediate predecessor, the late William Howard Taft.