

PROCEEDINGS IN THE  
SUPREME COURT OF THE UNITED STATES  
*In Memory of Mr. Chief Justice Stone*<sup>1</sup>

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WEDNESDAY, MARCH 31, 1948<sup>2</sup>

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Present: MR. CHIEF JUSTICE VINSON, MR. JUSTICE BLACK, MR. JUSTICE REED, MR. JUSTICE FRANKFURTER, MR. JUSTICE DOUGLAS, MR. JUSTICE JACKSON, MR. JUSTICE RUTLEDGE, and MR. JUSTICE BURTON.

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MR. SOLICITOR GENERAL PERLMAN addressed the Court as follows:

May it please this Honorable Court: At a meeting of members of the Bar of the Supreme Court, held on November 12, 1947,<sup>3</sup> resolutions expressing their profound sorrow at the death of Chief Justice Harlan Fiske Stone were offered by a committee, of which the Honorable Dean Acheson was chairman.<sup>4</sup> Addresses on the resolu-

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<sup>1</sup> MR. CHIEF JUSTICE STONE was stricken on the bench on April 22, 1946, and died during the evening of the same day. See 327 U. S. III, v.

<sup>2</sup> Proceedings in memory of MR. JUSTICE McREYNOLDS were held on the same day; but limitations of space prevent their publication in this volume. They will be published in 334 U. S.

<sup>3</sup> The Committee on Arrangements for the meeting of the Bar consisted of Solicitor General Philip B. Perlman, Chairman, Mr. John Lord O'Brian, Mr. Pierce Butler, Mr. John Spalding Flannery, and Mr. Roger Robb.

<sup>4</sup> The Committee on Resolutions consisted of Mr. Dean G. Acheson, Chairman, Mr. Sidney S. Alderman, Judge Florence E. Allen, Mr. James Crawford Biggs, Mr. Bennett Boskey, Mr. William Marshall

tions were made by the Honorable John J. Parker, senior judge of the Fourth Circuit Court of Appeals; Luther Ely Smith, Esquire, of St. Louis, Mo., and the Honorable Herbert Wechsler, of New York.<sup>5</sup> The resolutions, adopted unanimously, are as follows:

## RESOLUTIONS

Chief Justice Stone died in Washington, D. C., on April 22, 1946, while in his twenty-second year of active service as a Justice of the Supreme Court. The members of the Bar of this Court have met in the Supreme Court Building on November 12, 1947, to offer affectionate tribute to his memory and to record with due solemnity their respect for the man and for his distinguished services to his profession and to his Nation.

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Bullitt, Mr. Charles C. Burlingham, Mr. James F. Byrnes, Miss Helen R. Carlross, Mr. Sterling Douglas Carr, Mr. Henry P. Chandler, Mr. Robert F. Cogswell, Mr. Alexis Coudert, Mr. John W. Davis, Mr. Duane R. Dills, Mr. Francis X. Downey, Mr. Charles D. Drayton, Mr. Allison Dunham, Mr. Charles Fahy, Mr. John S. Flannery, Mr. Edward L. Friedman, Mr. Wilbur Friedman, Mr. William L. Frierson, Mr. Warner W. Gardner, Mr. Lloyd K. Garrison, Mr. Walter Gellhorn, Chief Justice D. Lawrence Groner, Mr. Milton Handler, Mr. Thomas E. Harris, Mr. Francis R. Kirkham, Mr. Daniel W. Knowlton, Mr. Adrien C. Leiby, Mr. Monte M. Lemann, Mr. Harold Leventhal, Mr. Louis Lusky, Mr. William P. MacCracken, Jr., Mr. Edward F. McClennen, Mr. Alfred McCormack, Mr. J. Howard McGrath, Mr. Oliver B. Merrill, Jr., Mr. Earl C. Michener, Mr. William D. Mitchell, Mr. George Maurice Morris, Mr. James L. Morrison, Mr. C. Roger Nelson, Mr. Eugene Nickerson, Mr. George Wharton Pepper, Mr. Herbert Prashker, Mr. Donald R. Richberg, Mr. George Rublee, Mr. Eustace Seligman, Mr. Morrison Shafroth, Mr. Young B. Smith, Mr. Robert Stone, Mr. Hatton W. Sumners, Mr. William A. Sutherland, Judge Thomas D. Thacher, Mr. William R. Vallance, Mr. George T. Washington, Mr. Howard C. Westwood, Mr. Alexander Wiley, and Mrs. Mabel Walker Willebrandt.

<sup>5</sup> It is regretted that limitations of space prevent the publication of these addresses in this volume. It is understood that they will be published privately in a memorial volume to be prepared under the supervision of Mr. Charles Elmore Cropley, Clerk of the Court.

Harlan Fiske Stone was born in Chesterfield, N. H., on October 11, 1872. His youth was spent in Amherst, Mass., where he attended the public schools. Perhaps in consequence of these early years, he has always seemed the embodiment of the traditional New England virtues—frugal in habits, careful in his conduct and sturdy in his judgment. He entered Amherst College as a member of the class of 1894. His undergraduate record was enviable, both as a scholar and as a leader of his fellows, and he maintained throughout his life a lively interest in the College, serving as trustee for many years. Following his graduation he was for one year principal and science instructor of the Newburyport High School. In September, 1895, he entered Columbia Law School.

Columbia soon became one of the absorbing interests of his life. As a student there he maintained a high scholastic record, notwithstanding the necessity of earning his expenses by tutoring and by teaching history at Adelphi Academy. He had abiding love for teaching, which requires equally the learning of the scholar and the sympathy and understanding necessary to lead the student. He was delighted, therefore, about a year after receiving his LL. B. in 1898, to be appointed a part-time lecturer at Columbia Law School. During the next six years he taught a great variety of subjects and thus laid the foundation for that intimate familiarity with the law which was so richly to be reflected in the learning of his judicial opinions and the solidity of his judgments.

Concurrently with the satisfaction he achieved as a teacher, he was winning rapid recognition at the New York Bar. In 1903 he had become a partner in Wilmer, Canfield and Stone. Two years later he resigned from the Columbia faculty to devote his time exclusively to practice as a member of Satterlee, Canfield and Stone. He found many attractions in private practice. He enjoyed working out concrete legal problems by reducing complex matters to their simpler fundamentals. As a

practicing lawyer his vast analytical talents and the wisdom of his counsel could be put to the immediate practical benefit of the client who asked his help.

Without relinquishing his work in the law firm, Harlan Stone returned to Columbia in 1910 to become Dean of the Law School. He continued active teaching throughout his thirteen years as Dean. His penetrating writings established him as a leading authority on the law of equity and trusts. In these fields he found his favorite paths, since here above all other branches the law showed its magnificent capacity for flexible adaptation to changing circumstances and to ends broader than the claims of particular litigants. The law of equity, in particular, showed with much clarity that the great role of judge is, as he later put it, to apply "all the resources of the creative mind to the perpetual problem of attuning the law to the world in which it is to function."

Columbia Law School flourished under the wise guidance of Harlan Stone. He had firm ideas as to the importance of the legal profession and the high obligation of the law schools to their students and through them to society. He lent vigorous support to reforms in legal education, but was careful that these should not be made at the sacrifice of a thorough training in the basic groundwork of the law. He took a lively interest in his students, and won their life-long affection by his kindness, his unpretentiousness and his invariable willingness to lend a helping hand. His impartiality and common sense were combined with a self-assurance that encouraged others to draw upon his strength.

During the First World War Harlan Stone served as a member of a very active Board of Inquiry which disposed of the cases of drafted men who had refused on grounds of conscientious objection to perform military service. The problem of the conscientious objector was far less understood by the country in 1918 than it is today, and the difficult task called for the highest degree of patience,

tolerance, and common sense. Shortly after the Board had completed its assignment, Harlan Stone summarized its work and gave account of his own views: "However rigorous the state may be in repressing the commission of acts which are regarded as injurious to the state, it may well stay its hand before it compels the commission of acts which violate the conscience." This was the same scrupulous regard for the rights of conscience which later moved him to write his dissenting opinion in the flag-salute case, perhaps the most dramatically successful dissent in the Court's history.

In 1923 he decided once again to devote his full time to private practice and resigned from Columbia to become a member of Sullivan and Cromwell. But he was not to remain there long. When changes became necessary in the Department of Justice, President Coolidge called upon Harlan Stone, whom he had known since their days at Amherst, to accept the appointment as Attorney General. His name was sent to the Senate on April 2, 1924. The remainder of his life was devoted wholly to the public service. At the Department of Justice he acquired at first-hand a knowledge and appreciation of the hazards and the skills involved in the successful management of a large government agency.

Harlan Stone had thus achieved singular eminence as a lawyer, as a teacher, and as a public servant when President Coolidge, on January 5, 1925, nominated him to the place on the Supreme Court left vacant by the retirement of Justice McKenna. The nomination nevertheless met some opposition in the Senate because of the fear of some, who did not know the man, that his representation of large financial interests during his law practice was evidence of bias and undue conservatism. Those who expressed those fears were glad, in later years, to admit their lack of foundation. Harlan Stone took his seat as an Associate Justice on March 2, 1925. He served on the courts of Taft and Hughes, and on the lat-

ter's retirement was nominated by President Roosevelt to be Chief Justice, taking the oath as Chief Justice on July 3, 1941. His vigorous, single-minded devotion to the work of the Court continued until the moment of his death.

The opinions of Justice Stone number nearly 600, and will be found from the 268th to the 328th United States. They cover the entire range of the Court's business and there is no part of it which has not been shaped by the solid craftsmanship of Harlan Stone. Many branches of the Supreme Court's work were already familiar to him, but many were new. His rapid mastery of patent, admiralty, and public land law, for example, is striking evidence of the adaptability of his learning and skill. Here, as in all of his work, one may see the impressive results of the combination of a forthright character and a powerful intellect. He was able to meet issues squarely because he understood them well.

The accidents of national and legal history served, however, to project into sharper focus the work of Justice Stone in the field of constitutional law. He was peculiarly suited by temperament and by training to discharge the delicate and awesome responsibilities of the judge who must measure an act of the legislature against the organic charter of the Nation. His talents and his wisdom were made available at a time in which they were to prove of especial benefit, for his span of service was to cover a period more critical in the history of the Court than any since the outbreak of the Civil War.

When Justice Stone came to the bench there had already developed within the Court a substantial divergence of views on constitutional issues of high importance to the Nation. Justice Stone brought to the Court an abiding faith in the power of reason and in the historic function of the judiciary. He was hopeful that the differences among his brethren might diminish through the process of deliberation and adjudication. During his first

decade on the Court, however, as the constitutional issues pressed more heavily on the Court, he discovered that the differences were too deeply rooted for such adjustment. More and more often he found himself, in the company of Justices Holmes and Brandeis (and later Justice Cardozo), unable to accept the rigid interpretations and applications of the Constitution to which the majority of the Court adhered with staunch conviction.

Justice Stone took as his bench-mark the words of Chief Justice Marshall, and viewed the Constitution as a broad charter of government "intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs." Its provisions, he has said, were to be read "not with the narrow literalness of a municipal code or a penal statute, but so that its high purposes should illumine every sentence and phrase of the document and be given effect as a part of a harmonious framework of government." His opinions are the solid product of that basic philosophy. His approach to a constitutional issue was essentially pragmatic, with attentive regard to the lessons of experience, and he was wary of generalizations not anchored to the circumstances of particular cases. He was always mindful that judicial interpretations of the Constitution, since they are beyond the power of the legislature to correct, must in the first instance be confined to the case at hand, and, in the second, be open to reconsideration in the light of new experience and greater knowledge and wisdom.

With the shift in constitutional doctrine which occurred during the service of Chief Justice Hughes, Justice Stone had the satisfaction of seeing one after another of his dissenting opinions in constitutional cases become the law of the Court. This, in at least substantial part, was a tribute to his good judgment and sense of proportion and to the persuasiveness of his opinions. Interstate commerce, taxation, and the public regulation of business are among the many fields in which his careful develop-

ment of constitutional limitations and powers has provided a firm basis for continuity and progress. He was ever faithful to his conviction that the Constitution had not adopted any particular set of social and economic ideas, to the exclusion of others which, however wrong they seemed to him, fair-minded men yet might hold. He had a full appreciation of the role of the law in making accommodations between conflicting interests; and he was sensitive to the unique responsibility which our federal system places upon the Supreme Court to work out such accommodations between the national government and the states.

Along with his broad tolerance for economic development and experimentation Justice Stone carried a firm belief that the Supreme Court, together with all other branches of the national and local governments, must exercise constant vigilance to ensure that the rights of the person be preserved inviolate. His opinions reflect his vivid realization of the unceasing responsibility of the courts in helping to assure that our society remain the self-government of free people which the Constitution established.

When he succeeded to the Chief Justiceship, in his sixty-ninth year, Harlan Stone still had the tremendous vitality and the capacity for work that had contributed so much to the fruitfulness of his career as a lawyer, teacher, and judge. The burdens of the office were heavy. Yet he never slackened his pace, and continued to maintain an exemplary record in the prompt dispatch of the Court's business. Some of his most important opinions were those written for the Court on novel questions arising out of the Second World War, where he gave due recognition both to the wartime necessities of the government and to the principles of civil liberty which must be maintained, in war as in peace, by a free society.

Throughout his life Harlan Stone maintained an active interest in the arts. He found an enormous satisfaction

in music, painting, and sculpture. As Chief Justice he became ex officio Chairman of the Board of Trustees of the National Gallery of Art and Chancellor of the Smithsonian Institution; he also served as Chairman of the Folger Shakespeare Library. To these tasks he brought not only wisdom but enthusiasm.

No comment on the career of Harlan Stone can adequately reflect the esteem in which the Bar held him as a man, nor the depth of the affection felt for him by all who knew him. He had a fundamental contentment which reflected the happy family life he shared with his wife, Agnes Harvey Stone, and their two sons. He was genial in manner, delightful in conversation, and always accessible to any who came. He was considerate and tolerant of the opinions of others, though he resisted loose thinking even when it was directed toward a philanthropic purpose.

It is accordingly

*Resolved*, That we, the Bar of the Supreme Court of the United States, express our profound sorrow at the death of Chief Justice Harlan Fiske Stone and our thankfulness for the enduring contributions which this great man and wise judge has made to our profession and to our national life: It is further

*Resolved*, That the Attorney General be asked to present these resolutions to the Court, and to request that they be inscribed upon its permanent records.

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MR. ATTORNEY GENERAL CLARK addressed the Court as follows:

May it please this Honorable Court: We are gathered here today to pay tribute to the memory of Chief Justice Harlan Fiske Stone, a man whose life and works exemplified the highest traditions of our profession. Truly, the law, in actuality, was to this great American and distinguished jurist "a human institution for human needs." He did much to make it so.

Born on October 11, 1872, when Ulysses S. Grant was President of the United States and Salmon P. Chase was Chief Justice presiding over this Court, Harlan Stone rose from the humble surroundings of his birthplace at Chesterfield, New Hampshire, to the highest judicial post in the Nation. Seventy-three years later, on April 22, 1946, he died in the service of his Nation as Chief Justice of the United States. Those three-score and thirteen years were measured by a continuous devotion to the best interests of his fellow man.

From his birthplace in New Hampshire, young Stone moved early with his parents to northern Massachusetts, and it was there that he grew to manhood. His early interest seemed to be farming, and for a while he attended Massachusetts Agricultural College. It is reported—authoritatively—that he was asked to depart from that college for some boisterous pranks. Soon thereafter he entered Amherst College. The change was a fortuitous one—at least insofar as the law has become the beneficiary of his talents. After completing his studies at Amherst, he enrolled at the School of Law of Columbia University. In 1898 he was awarded the degree of Bachelor of Laws, with very high honors, notwithstanding that throughout his law studies he supported himself by teaching and by tutoring. For him, characteristically, it was no more than normal routine to carry responsibilities that would ordinarily require the full time of two men.

He stayed on to teach at the law school. The maturing influence of study in a great diversity of legal subjects marked this important period of his life. For five years subsequent to 1905, he gave up teaching and occupied himself entirely in private practice in New York City. He returned on the call to become Dean of the Columbia University Law School. There he became recognized as one of the great legal educators of his day.

He left the Deanship on the call of the President of the United States to enter Government Service as the At-

torney General of the United States. In the next year, on March 2, 1925, President Coolidge elevated him to Associate Justice of this Court, succeeding to the vacancy left by the retirement of Mr. Justice Joseph McKenna. To this post he brought a wealth of knowledge both in the law and in the affairs of man.

On June 12, 1941, on the retirement of Chief Justice Charles Evans Hughes, President Franklin D. Roosevelt appointed him Chief Justice of the United States—an appointment which was received with universal acclaim. And foremost among those who praised his elevation was the late Senator Norris who had opposed his nomination in 1925 as Associate Justice. "In the years that have passed I became convinced, and am now convinced, that in my opposition to the confirmation of his nomination I was entirely in error," the late Senator confessed in a speech on the floor of the Senate, and added, "I am now about to perform one of the most pleasant duties that has ever come to me in my official life when I cast a vote in favor of his elevation to the highest judicial office in our land."

Harlan Stone had served as Associate Justice for sixteen years, and was to serve as Chief Justice for five more; these twenty-one eventful years of service on this bench covered fully one-eighth of the history of the Court itself. He met the many problems brought to the Court with a judicial tact and fairness that won him universal acclaim as one of the outstanding champions of the dignity of man. This Court was faced again and again with the task of redefining the power of the Government in its relation to persons and property. Crisis after crisis was met giving this Nation the necessary strength to surmount economic chaos and to defeat the armed might of totalitarianism. And all this while fully preserving and enlarging the individual liberties of our people. Harlan Stone played a leading part in the development of this continuous growth of the law. He would have felt, and we know he did feel,

that his effort was only a part of that of a team. He performed his job as did every other good American citizen.

This common touch, this feeling of friendship and brotherhood with every human being, regardless of his station in life, was perhaps the most noteworthy facet of the character of the late Chief Justice. His ability was indeed superb and outstanding, but it was by no means overweening; his character was in truth righteous and determined, but it was not domineering. His was an outlook fundamentally healthy, for throughout his life he had maintained himself in trim—physically, mentally, and spiritually. He was a man who encompassed a wide and diversified field of interests and who was capable of mastering and appreciating each one. Though partisan of all that he considered right and good, yet when he sat in judgment he held himself strictly to a lofty concept of the nature of the judicial function. A judge by the nature of his calling must needs be thus impartial, but the well-nigh perfect detachment of Harlan Stone may serve as a model to all who may follow him.

I shall not attempt a full evaluation of the contribution made by Harlan Fiske Stone to the law, nor can I here do adequate justice to his character or personality. Such an effort, indeed, would be as injudicious here as it would be impossible of attainment, for the progress which the law has made through his efforts is immeasurable in its vast extent. It touches the full field of legal development. The six hundred opinions of which he was the author are milestones along the pathway of legal advancement. With outstanding independence of thought, they have enriched the product of a Court always justly renowned for its independence.

Basically, I think one may say that the feeling that moved him most in his judicial life was one of humility, accompanied by a clear understanding of what he conceived his task to be and a faith in his ability to accomplish it. The law to him was not an absolute; he was not one of those who felt that the work of a Judge con-

sisted, like that of a tailor, simply in taking the measure of legislative enactment to constitutional provision and determining whether the size of the one was too large to fit the other. On the contrary, the law had a direct relationship to changing economic and social needs. It was not a rigid bar or strait-jacket to bind the limbs of man in his development; its function was to assist and not to hinder man's progress.

He did not feel that it was the function of a Judge or of the Court, as he put it, "to sit as a superlegislature, or as triers of the facts on which a legislature is to say what shall or shall not" be done. In dealing, for example, with the complicated question of what instrumentalities of state or federal government might be taxed by the other, he insisted that "the limitation upon the taxing power of each, so far as it affects the other, must receive a practical construction which permits both to function with the minimum of interference each with the other."

His own approach to the judicial function in construing the validity of legislation was stated simply: "Some presumption should be indulged that the [state] legislature had an adequate knowledge of . . . local conditions . . . . On this deserved respect for the judgment of the local lawmaker depends, of course, the presumption in favor of constitutionality, for the validity of a regulation turns "upon the existence of conditions, peculiar to the business under consideration." . . . Moreover, we should not, when the matter is not clear, oppose our notion of the seriousness of the problem or the necessity of the legislation to that of local tribunals . . . . But even if the presumption is not to be indulged, and the burden no longer to be cast on him who attacks the constitutionality of a law, we need not close our eyes to available data throwing light on the problem with which the legislature had to deal."

Often, indeed, during his incumbency on this Bench, it must have given him satisfaction to see that the passing years had proved his point, that many of his dissenting

opinions had come to express the law in the eyes of the majority of the Court. But his feeling was not merely pride because views which he had stated contrary to the majority had finally been proclaimed to be right; it was rather a sense of gratification that the Court had functioned in accordance with what he considered to be a judiciousness necessary and appropriate to it.

His last words from this Bench were, as we all know, fully characteristic of his judicial philosophy. Fifteen years earlier, the Court had decided that admission to citizenship had to be denied an alien who because of religious scruples was unwilling to bear arms in this country's defense. He had dissented from this view, for he felt that the alien's willingness to take the oath of allegiance and to serve the Nation as a noncombatant was sufficient to satisfy the statutory requirements for naturalization. The cases were much discussed, and legislation effecting Stone's views of the matter was several times proposed in the Congress, but was never enacted. Finally, in 1940 and 1942, new statutes on naturalization were passed, but they retained unchanged the language which had been earlier construed by the Court. Stone felt that this amounted to an acceptance by Congress of the Court's previous interpretation, and for him in this field that determination was conclusive. When, in 1946, the question was once more presented to the Supreme Court, although the views of the majority had come to accord with those which Stone had held in his earlier dissent, he felt his former position no longer tenable. In his dissent he said:

"With three other Justices of the Court I dissented in the *Macintosh* and *Bland* cases, for reasons which the Court now adopts as ground for overruling them. Since the Court in three considered earlier opinions has rejected the construction of the statute for which the dissenting Justices contended, the question, which for me is decisive of the present case, is whether Congress has like-

wise rejected that construction by its subsequent legislative action, and has adopted and confirmed the Court's earlier construction of the statutes in question. A study of Congressional action taken with respect to proposals for amendment of the naturalization laws since the decision in the *Schwimmer* case, leads me to conclude that Congress has adopted and confirmed this Court's earlier construction of the naturalization laws. For that reason alone I think that the judgment should be affirmed."

This was his last pronouncement as Chief Justice of the United States. It was dramatically characteristic that this last act was consistent with all the others of his life, that he died as he had lived—courageously and honestly, with the dignity and humility of a man who is at peace with himself and whose philosophy embraces all men in the scheme of government and of life.

Words are inadequate in my effort to express the high esteem and affection in which the late Chief Justice was held as a man, and the very real respect with which his accomplishments as a Judge and his contribution to justice and law must be regarded. The courts, he felt, "are concerned only with the power to enact statutes, and not with their wisdom" and, "while unconstitutional exercise of power by the executive and legislative branches of the Government is subject to judicial restraint, we should remember that the only check upon our exercise of power is our own sense of self-restraint." His abiding faith in the people was expressed in his statement that "For the removal of unwise laws from the statute books appeal lies not to the courts but to the ballot and to the processes of democratic government."

Mr. Chief Justice of the United States and Associate Justices of this Court: In the name of the lawyers of this Nation, and particularly of the Bar of this Court, I respectfully request that the resolution presented to you this morning memorializing the life of the late Chief Justice Harlan Fiske Stone be accepted by you, and that it,

together with the chronicle of these proceedings, be ordered to be kept for all time to come in the records of this Court.

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THE CHIEF JUSTICE said:

Mr. Attorney General: The Court receives with deep gratification the Resolutions expressing tribute to the memory and service of the late Chief Justice. He was taken from us in the active performance of duty. No tribute would have been more highly prized by him than this tribute from the Bar of this Court, which he loved and served so well.

The task of accurately epitomizing, in a few short paragraphs, the life and character of any man is always a difficult one. Human personality is a too richly varied and subtle thing to be captured within the confines of a formula. But in dealing with the career of Harlan Fiske Stone, the magnitude of the task is immeasurably enhanced. For few men have possessed the versatility of the late Chief Justice. Not only did he become one of the great figures in the history of this Court, but his distinguished career included service as a practicing attorney, educator, scholar, and statesman. Nor were his energies and talents confined to his professional activities. His intellectual interests were many and varied; and he was well versed in the arts of friendship.

Harlan Fiske Stone was born at Chesterfield, New Hampshire, in the year 1872. Shortly after his birth, his parents moved to northern Massachusetts; and there he grew to maturity. The childhood of Harlan Fiske Stone was that of a typical New England farm boy. It was at times a rigorous and demanding life, but it was also a life full of satisfactions and one well-calculated to develop independence and self-sufficiency.

After a period of attendance at the Massachusetts Agricultural College, he entered Amherst College in the class of 1894. The wide breadth of his interests and talents

was apparent even at this early period. While at Amherst, he made an enviable academic record and was elected to Phi Beta Kappa. But he was also a campus leader, being three times elected president of his class, and, during his junior and senior years, was a star member of the varsity football team.

In 1895, Harlan Stone entered the Columbia Law School, an institution to which he was to dedicate much of his interests and talents in years to come. He graduated with high honors in 1898, despite the fact that during the period he was required to support himself by such outside activities as teaching and tutoring.

From the time he received his law degree until he entered the service of the Government, some twenty-six years later, Harlan Stone engaged in the active private practice of the law either on a part-time or on a full-time basis. For the six years following his graduation he supplemented his activities as a private practitioner by serving as an instructor at the Columbia Law School. In 1910 he returned to the Law School as Dean, a position which he retained until 1923. The thirteen years in which he served as Dean were years of great constructive development for the Law School. It was also during this period that he established his reputation as an outstanding legal scholar. His work in the law of equity and related subjects remains, even with the passage of the years, the definitive scholarship in those fields.

Following the termination of his academic duties, Harlan Stone engaged in the full-time practice of law in New York City. In April, 1924, he was appointed Attorney General in the cabinet of his former classmate, President Calvin Coolidge. On January 5, 1925, he was nominated Associate Justice of the Supreme Court of the United States.

The appointment of Harlan Stone to the Court was viewed with misgivings in some quarters. Because of the nature of his law practice, he was suspected by some of

possessing the point of view of the large financial interests of the nation to the exclusion of all others. Some criticized his participation in the case of *Ownbey v. Morgan*, 256 U. S. 94 (1921). In that case he had successfully argued in this Court in defense of the constitutionality of a Delaware rule of procedure, relating to attachment cases involving nonresident defendants, which conditioned the defendant's right to appear and contest the merits of the plaintiff's demand upon the defendant's first giving special security, even where the defendant was unable to furnish such security. On February 5, 1925, the Senate confirmed his nomination, however, with only six votes cast in opposition.

After sixteen years of distinguished service on this Court, he was appointed Chief Justice by President Franklin Roosevelt. The appointment was universally acclaimed; and the Senate confirmed the nomination without a dissenting voice being raised. Of the six members who had opposed his confirmation in 1925, two remained in the Senate in 1941 when his nomination as Chief Justice was presented. One of these was Senator George Norris, who stated: "In the years that have passed I became convinced, and am now convinced, that in my opposition to the confirmation of his nomination I was entirely in error."

Harlan Stone served on this Court for twenty-one years—sixteen years as an Associate Justice and five years as Chief Justice. He served during one of the most significant periods in the history of this Court. It was a period of great social readjustment in the nation as a whole. Movement and change were the order of the day. The trend toward a new social equilibrium was felt in every aspect of the nation's life. Inevitably, the impact of the times was felt on this Court. No man played a more vital role in the development of the law during this crucial period than Harlan Stone. Some slight understanding of the importance of the part he played may be

gained by observing that in the entire history of this Court probably no other member lived to see so many views expressed in dissent subsequently accepted by the majority of the Court as the law of the land.

To Harlan Stone, the great hazard to the perpetuation of constitutional government was narrow and illiberal construction of constitutional provisions. As a corollary to that basic proposition, he believed a judge, confronted with constitutional issues, to be under the continuing obligation of guarding against the tendency to confuse his own personal feelings as to the wisdom and expediency of legislation with the question of the constitutionality of that legislation. Self-restraint in the exercise of judicial power was to him an essential prerequisite to the successful functioning of our system of government.

But although insisting that the exercise of judicial power be confined to its proper sphere, he did not hesitate to exert that power fully in cases where it appeared to him that basic safeguards of the fundamental charter had been overstepped. Most frequently, those were cases involving contentions that civil liberties had been denied; and in those opinions some of his most eloquent writing appears. He gave much thought to the problem of preserving individual freedom in the complexities of modern society and under a system of dual sovereignty which characterizes our form of government. He was well aware that the problem is not a simple one and is not one which may be solved by mechanical application of a convenient formula. The "perpetual question of constitutional law," he wrote, is to determine "where the line is to be drawn which marks the boundary between the appropriate field of individual liberty and right and that of government action for the larger good, so as to insure the least sacrifice of both types of social advantage."

But Harlan Stone's contributions were not confined to the field of constitutional law. His written opinions deal with the whole range of problems which come before this

Court; and in considering his contributions in these diverse fields, one cannot but be impressed with the scope of his capacities and the influence of his thought.

As Chief Justice, Harlan Stone displayed the same energy and conscientious devotion to duty which had characterized his earlier service on the Court. He presided over the Court in the dark years of war. Difficult problems arising from the conduct of total war by a democratic nation frequently were presented for adjudication. The period was marked, also, by the continuing development of the Conference of the Senior Circuit Judges and other devices contributing to the improvement of standards of judicial administration in the federal courts.

Harlan Stone was a man of warm human qualities. His broad interests, genial personality, and lack of pretension won for him the respect and affection of his brethren on the Court and an unusually wide circle of friends off the bench. At home, he enjoyed the happy comradeship of his gracious and gifted life's partner and their two worthy sons. I recall with pleasure my own associations with him. I will ever cherish the honor of receiving his designation to serve as Chief Justice of the Emergency Court of Appeals. Our personal and official relations were marked by his never-failing cordiality and his high sense of public responsibility.

While not absorbed by his official duties, he was able to pursue his deep interest in literature and the arts. His intellectual curiosity was insatiable. Few men attain so well-rounded a development of their capacities.

The high place of Harlan Stone in the history of this Court and of this nation is well assured. American jurisprudence has been enriched by his creative touch. His life and character were in complete accord with the finest of democratic traditions.

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THE CHIEF JUSTICE directed that the resolutions be spread upon the minutes of the Court.