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## Charles Evans Hughes. By Merlo J. Pusey.

Lois L. Crissey

*University at Buffalo School of Law*

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## BOOK REVIEW

CHARLES EVANS HUGHES. By Merlo J. Pusey. New York: The MacMillan Company, 1951. Pp. xvi, 829. \$15.00.

From the time Charles Evans Hughes began his clerkship in the firm of Chamberlain, Carter & Hornblower until his retirement as Chief Justice of the United States Supreme Court, this peer of jurists left an indelible mark on every phase of activity which he undertook. Nevertheless, it is certain that many of his contemporaries subjected him to unfavorable criticism. Part of the critical comment against Hughes is no doubt due to the frigidity with which he struck the public. The author attempts to negate this criticism by laying bare the facts of Hughes' public and private life.

In his early years at the bar most of his firm's work was in the commercial field, and because of his talent, he handled the work of many corporations. Despite his legal services to the monied people, he maintained an objective mind. Hughes' first public appointments were as counsel for the investigations of the great financial empires developed by the New York gas and insurance companies. Without invectiveness he used his lawyer-like techniques of cross-examination to elicit enough information from the executives of the gas trust to expose inflated capitalization and enormous profits. Rarely had the public seen such a thorough and persistent investigator. The net result of the inquiry was considerably lower utility rates and a state regulatory commission. Hughes emerged from this undertaking a man destined to serve the public in the future.

Shortly thereafter, he became Governor of New York. As an investigator he had realized the need for regulatory commissions, and he immediately pressed for the establishment of administrative agencies; as a "crusader for democracy," he championed social legislation. Much of the legislation which he sponsored was not enacted until after he left Albany, because of opposition by politicians of his own party, but the hard-fighting Governor is credited with proposing such legislation as workmen's compensation laws and improved child-labor laws. It is hard to believe that thirty years later this same man and his court would be accused of thwarting the common will of the overwhelming majority of the American people.<sup>1</sup>

In 1910 Hughes ascended to the Supreme Court and served six years as an Associate Justice. To the lawyer the chapters of the book dealing with his life on the bench are the most disappointing. No doubt the author possessed much valuable information which would give insight into the decisions handed down while Hughes sat on the bench. Unfortunately, discussion of the cases is limited to a recapitulation of the holdings of the more important decisions. Occasionally the

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1. P. 766.

penciled remarks of the concurring justices on the proof sheets of the opinions are indicated, more to give a human touch to the biography than to show legal significance. This dearth of background information might be a valid criticism of a book written solely for the legal profession. However, Mr. Pusey is a biographer, and as such writes for the general public, who do not wish to become enmeshed in a lot of legal intricacies.

The author apparently feels Hughes' stint as Secretary of State was of great importance, for he devotes half of the second volume to this four-year segment of Hughes' life. Greater significance is given by Mr. Pusey to the jurist's term in the Cabinet than by history books generally. Perhaps this is because the succeeding years have completely undone what Hughes accomplished at the Washington Conference. However, he handled the post-war problems with adroitness, and the United States' emergence as one of the leaders of Nations, at a time when the administration which he was serving was riddled with ineptness, is partly due to Hughes' strong character and diplomatic leadership.

In 1930, after a bitter fight for senatorial confirmation, Charles Evans Hughes became the eleventh Chief Justice of the United States Supreme Court. The storm which arose over his appointment was perhaps indicative of the controversy that was to come in 1937. Hughes no doubt attempted to hit the middle of the road in making his decisions. Mr. Pusey suggests that "One of the most striking characteristics of Hughes' work on the bench was his high degree of objectivity. He was neither a crusader, standpatter, nor reactionary; he was an open-minded judge."<sup>2</sup> Hughes himself said he was neither a liberal nor a conservative. He thought these terms were mere labels. However Hughes stood politically, he voted with the majority in throwing out much New Deal legislation on constitutional grounds. To be sure, as Mr. Pusey points out, Justices Brandeis, Stone and Cardozo stood with Hughes on eight out of twelve New Deal cases. About the time President Roosevelt felt called upon to instigate the famous Court-Packing Bill in order to protect his New Deal legislative program, there seemed to be an about-face in the decisions coming from the Supreme Court. The Court upheld a state minimum-wage law in the *West Coast Hotel* case,<sup>3</sup> when just nine months previous a similar law had been held unconstitutional.<sup>4</sup> The reversal, due to a change in Mr. Justice Roberts' vote, was actually made prior to the introduction of the Court Plan in the Senate, but the opinion was handed down in the midst of the controversy. It appeared the reversal was due to pressure. Hughes, in his Biographical Notes, denied this, maintaining that the change was entirely within the Court. It

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2. P. 691.

3. *West Coast Hotel Co. v. Parrish*, 300 U. S. 379 (1937).

4. *Morehead v. New York ex rel. Tipaldo*, 298 U. S. 587 (1936).

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should be noted, parenthetically, that Hughes stood with the minority in the *Tipaldo* case. With a favorable decision on the National Labor Relations Act,<sup>5</sup> the Court Bill was sure to be defeated.

The question remains whether the Court-Packing scare changed the trend of the Supreme Court decisions, or whether the prior Court decisions brought about more carefully drafted legislation. Despite the exigencies of the situation, however, Hughes was able to hold his court together, and the Supreme Court came out of the storm as strong as ever. Pusey indicates that this is largely due to Hughes' restraint in the heat of the argument.

Perhaps the greatest attribute of Pusey's book is the removal of the cloak of austerity from Hughes. The delightful moments showing the Justice as a devoted family man contrast with his hard-driving qualities as an administrator. Much warmth is also added to his character by verbatim excerpts from his private letters to his wife. Such qualities contribute materially to Hughes' stature.

There is no dispute that Hughes was a great constitutional justice. His precisely written opinions show that he was able to cut through extraneous and confusing material to the very core of the problem. As a public servant he was subject to censure, and although more harm than good is done by giving complete credence to such remarks, Hughes was only human and thus most probably committed errors. But Mr. Pusey is so eager to explain away any criticism of the Chief Justice that the reader may well become skeptical, and in this reviewer's opinion, the value of *Charles Evans Hughes* as a historical biography is somewhat undermined by the impression thus created.

Lois L. Crissey\*

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5. *N. L. R. B. v. Jones & Laughlin Steel Corp.*, 301 U. S. 1 (1937).

\*Librarian, Univ. of Buffalo Law School; Member of the New York Bar