

# BOOK REVIEWS

ON ACTIVE SERVICE IN PEACE AND WAR. By Henry L. Stimson\* and McGeorge Bundy.\*\* New York: Harper & Brothers, 1947, 1948. Pp. xxii, 698. \$5.00.

This biography-autobiography of our wartime Secretary of War is of deep significance to lawyers. It is, of course, not a text on the law. It is something greater. It is a text on the lawyer—as citizen and public servant. To read the book is to take a postgraduate course giving direction and meaning to all the legal training the lawyer has acquired in school and practice.

Colonel Stimson recognizes the revolution that occurred in his power of thinking and independent reasoning during his stay at Harvard Law School. He points out his later realization of the special ability of the lawyer at all times to defend the liberty of the citizen and, when serving in public office, to defend our laws and Constitution. He also learned, as every lawyer must, that there are two sides to every question; that a fair hearing is required in every controversy; and that the lawyer, as a trained advocate of persuasion, rather than of threats and force, is a stabilizing power in government. Each chapter of the Stimson record illustrates ways in which a great lawyer brings to questions, however unrelated to law, first an insistence on discovering the facts, followed by logical analysis of the problems and a reasoned conclusion, and climaxed by a clear, persistent and persuasive presentation of that conclusion to achieve its acceptance by others. This, plus courage, selflessness, integrity and a realization of what our country's institutions and traditions mean, not only to us but to the whole world, is the key to Colonel Stimson's leadership in America. It is why he stands out with Webster, Clay, Root, and perhaps a bare half dozen others, who had a greater share in shaping our history than some of the Presidents under whom they served.

That Colonel Stimson can see two sides of every question is demonstrated by the book itself. While not attempting

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to change or excuse a single word of what he publicly advocated, or even wrote privately in his diary, he gives us his views in 1947 retrospect, often pointing out what he now believes were his errors. Thus he castigates himself for having been led to endorse Harding's candidacy as the best means of achieving our adherence to the League of Nations. This is no post-war book of the kind with which we are too familiar, justifying the writer's own conduct and attacking and belittling all who dared to disagree. The seeker of confirmation of prejudiced emotions, whether of bitter hatred or idolatrous admiration for this or that personage of our generation, will not enjoy this book. He will find instead a completely documented and measured evaluation of Presidents Theodore Roosevelt, Taft, Hoover, and Franklin D. Roosevelt, under all of whom Colonel Stimson served. He admired their greatness but appreciated their failings, although treating them with sympathy and understanding. Thus, no one has better expressed admiration for Franklin D. Roosevelt's war leadership, and yet Colonel Stimson also notes his slovenliness in administration which resulted in conflicting assignments of duty causing internecine departmental strife.

Colonel Stimson's record teaches the lawyer how to accept defeat. He was an uneasy Republican, opposed to his Party on the tariff and in its recurrent isolationism. When serving under Republican Presidents and, at the end, under a Democratic President, his views often did not prevail. But Colonel Stimson was not a resigner. He remained loyal to his chief, even to the extent of supporting President Taft when the latter was running against his admired leader, Theodore Roosevelt. He kept pressing his views, often seeing them eventually accepted, although sometimes too late.

Although Colonel Stimson was in private practice for many years (1891-1906, 1909-1911, 1913-1928 except for service in World War I, and 1933-1940, a total period equal to that of most lawyers' careers at the bar), this book is limited to his public service, and we are therefore given no detail of the many difficult and important private cases in which he was an advocate. However, we are informed of his first public service, that of United States District Attorney in New York, by appointment of Theodore Roosevelt. There, in the lawyer's professional capacity, Colonel Stimson successfully prosecuted railroad rebate cases; Charles W. Morse for

misuse of bank funds; and the American Sugar Refining Company for customs frauds achieved by tampering with scales on the docks.<sup>1</sup>

Colonel Stimson had served in the National Guard, including active duty in this country, during the Spanish War, but his first civilian contact with the army came as Secretary of War under President Taft from 1911 to 1913. Elihu Root, Colonel Stimson's mentor and law partner, and an earlier Secretary of War, inspired him in his new post. While Secretary, Colonel Stimson strengthened and enforced Root's creation of the General Staff and the office of Chief of Staff. Here he came to know the Army as few Secretaries have, and became experienced in the art of dealing with Congress.

Colonel Stimson was an officer in the first World War, serving for a time at the front. However, the war ended before he had the full opportunity to take over the combat command to which he had been assigned. Here he earned the title of Colonel and acquired that intimate knowledge of the Army in action which was to make him our great War Secretary when, in World War II, he was again called to arms.

No attempt will be made here to cover Colonel Stimson's efforts, unsuccessful at the time, to bring about responsible government in his native State of New York, his successful work in Nicaragua ending revolution and providing free elections, or his proconsular year in 1928 as Governor General of the Philippines. If the acts of others both in the Philippines and in the United States had not made another end inevitable, he would have led the way to self-government in those islands, with the Philippines remaining part of an American Commonwealth of Nations. All this, particularly the Philippine experience, seems almost to have been the work of fate in preparing Colonel Stimson for his final and greatest task.

What was supposed to have been Colonel Stimson's culminating public service was his assignment as Secretary of State under President Hoover. He refused to be considered for appointment as Attorney General at the time because

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1. The customs frauds scheme is similar to that of the frauds successfully prosecuted during the past war where some suppliers of Army field communications wire tampered with testing devices. Strangely, the book does not make note of this later and more important instance under Colonel Stimson's jurisdiction.

he was losing interest in the practice of the law as such, although later, he was at it again in the most important private case of his career.<sup>2</sup> As Secretary of State he achieved a measure of success in naval limitation and in improving relations with Great Britain and South America. In conducting our affairs with South American countries he returned to the earlier United States policy of recognizing revolutionary governments which gained *de facto* control but of embargoing the shipment of arms to rebels. He received unjust criticism for "backing the wrong horse" when he stopped shipment of arms to Brazilian "outs" who nevertheless almost immediately became the "ins." But in the more difficult sphere of preventing the development of events which eventually led to World War II he confesses his failure. It was an impossible time of depression and, above all, of United States military weakness and isolationism. He did not obtain the full support of President Hoover or Great Britain in an attempt to stop Japanese aggression in Manchuria, although he did go on record in refusing to recognize the fruits of aggression. He was not permitted to attempt a solution of the war debt and German reparation problems, nor did he succeed in persuading France to forego pressing her claims against Germany—claims which contributed to Hitler's rise.

Out of office from 1933 to 1940, Colonel Stimson opposed strongly the President's "court-packing" plan and some other New Deal programs. Nevertheless, with the outbreak of war in Europe and the impending fall of France, the President appointed this Republican as Secretary of War because of the strong position which he took against Hitler and in favor of assistance to the Allies. It is this part of Colonel Stimson's account which is of greatest interest to contemporary readers. It was during this period that the writer of this review saw our War Secretary in action. The book is one of the great contributions to war history, the sort of unbiased history we do not usually expect until a generation after the event.

Colonel Stimson aided in the passage of the draft law, helped find the legal basis for the destroyer-Atlantic bases

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2. *Blaustein v. Pan American Petroleum & Transport Co.*, 174 Misc. 601, 21 N. Y. S.2d 651 (1940); 263 App. Div. 97, 31 N. Y. S.2d 934 (1941) (stockholders' action).

exchange, and presented the strongest arguments to Congress in favor of Lend-Lease. He kept himself out of partisan politics and kept the Army free from the influence of either party both in making personnel appointments and in awarding contracts, thus creating a truly National Army. During the difficult year of 1941, when we were neither at peace nor at war, he urged stronger steps against the Axis than the President was then willing to take in light of isolationist opposition.

No man has ever received higher praise than this book gives to General Marshall, whom Colonel Stimson proposed as Commander for the attack across the Channel, although it is acknowledged in retrospect that the President was correct in keeping Marshall in Washington to command the war on all fronts. No one knew better than Colonel Stimson how to manage the delicate relationship between the civilian Secretary and the professional Army. He depended on his military advisers on such matters as the size of the Army and strategy, and defended the Army manfully when military necessity required such steps as the arrangement with Darlan, a rapprochement which prompted criticism in many quarters. When the Army Staff decided that the war could be won only by bold attack on Northern France, he continually urged this upon the President and Churchill. In the end his view was followed, although a year later than he had hoped, and after diversions—successful to be sure—in Africa and Italy. He led the Army in obtaining sufficient appropriations and in training officers and men for the most severe test in our history. He vainly sought from Congress manpower legislation in order to mobilize the country completely for war, but here help from the President came too late.

Although Colonel Stimson makes no complaint, he was not taken to Casablanca, Teheran, Cairo or Yalta. Perhaps if he had been, some unfortunate commitments would not have been made. He brought many of his former State Department interests into his War Department position, as many administrators naturally bring their old job with them to their new. His opposition to the Morgenthau Plan for reducing Germany to an agricultural state, his continued efforts to strengthen the grand alliance with Great Britain and others, his plan for direct negotiations with Russia for control of nuclear fission, his insistence on orderly trial of

the Nazi criminals, all smack more of the duty of a Secretary of State than a Secretary of War, although the problems do bear heavily on military affairs. In preparing for and insisting upon military government in occupied countries, however, he was in the direct line of his duty and the event has proved him correct.

Colonel Stimson's respect for his military advisers did not prevent him from entering into some matters where he believed civilian assistance was needed, as in furthering the use of scientific inventions such as radar, and in improving medical service and intelligence activities. His greatest service was as the responsible chief in the development of the atomic bomb, the greatest discovery—whether for good or ill—in the history of mankind. His defense of its use against Japan is unanswerable.

Colonel Stimson throughout his career, and particularly during the war, attracted a civilian staff of the highest caliber. This may teach us a lesson. Men of ability and energy, themselves capable of holding the top position, find it a joy to work under a great and selfless leader. In his long career Colonel Stimson was never betrayed by an assistant; his aides kept his desk clear of detail; they took on any job, however difficult; and Colonel Stimson gives credit to many of them.

The Secretary is the last man to conceal his own errors. But there are some he does not now recognize. He perhaps too blindly followed his military advisers in their initial mistaken underestimate of Russian strength, as well as their later mistaken overestimate of Japanese strength. It was the latter error in judgment which led to concessions to Russia to obtain her entry into the war against Japan. Colonel Stimson's lack of comprehension of the importance of procurement of materiel led to his formation of the ill-fated Army Specialist Corps. His insistence on creating the Army Specialist Training Program (ASTP) was another error, although undertaken with the best of motives.

A little weak on economics, as he admits, Colonel Stimson took little part in industrial mobilization and Army procurement, without which our armies would have been useless. This he left to his Under-Secretary, Judge Patterson, and others. The book reveals that Colonel Stimson has no true realization of the superhuman job that was here accom-

plished. While he mentions the vagaries of Donald Nelson in the War Production Board, Colonel Stimson had little to do with those things in which American civilians participated and which meant war to them. He does not mention congressional investigations, which then, as now, plagued administrators, or the control of those anti-trust prosecutions which interfered with war production. He was left free by his assistants for matters of highest policy, but other books must be written before the full work of the War Department in winning the war is appreciated.

But for all time Colonel Stimson has given us, modestly to be sure, an example of what a great and intelligent, legally trained advocate can accomplish for our country through high-minded public service.

*Julius H. Amberg†*

**LIBERTY AGAINST GOVERNMENT.** The Rise, Flowering and Decline of a Famous Juridical Concept. By Edward S. Corwin.\* Baton Rouge: Louisiana State University Press, 1948. Pp. xiii, 210. \$3.00.

As Professor Corwin's book makes very clear, legal systems may differ but natural law crops up whenever lawyers of any age or tradition are hard pressed to find a tool to persuade courts that laws should not be enforced. The natural law conception will not easily be downed, and we find it recurrent in our own constitutional history, most recently under the guise of "due process of law."

Even today when old conceptions of due process appear to be strangled by a judiciary in revolt, we find the same familiar notions arising again and again. Professor Corwin finds origins of modern due process in Cicero's conception of "right reason," and shows that from Cicero's day to our own, right reason or its modern manifestation, due process, is invoked by everyone with a grievance against law-making majorities. Cicero of course was a businessman's lawyer, and our own history of due process is largely a commercial chronicle. However, today labor unions claim the right to

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