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BOOK REVIEW

BENCHMARKS, by Henry J. Friendly. Chicago: University of Chicago Press, 1967. Pp. 324. \$7.95.

This interesting and diverse book is a collection of lectures and other writings by the author, who is a well known Judge of the United States Court of Appeals for the Second Circuit. Judge Friendly writes, not as an observer, but as an experienced participant in the drama of contemporary constitutional change. His opinions on the questions involved are stated with the support and development of logic, precedent, and policy considerations that few authors can marshal. It is apparent from the text that Judge Friendly enjoys the use of the English language. He not only enjoys its use, but also sets that language to the furtherance of important purposes. In one chapter he extols the particular talents and sensibilities of one or another of the great judges of this century. In another chapter, he gathers his great experience and understanding to examine the policy considerations of the Supreme Court in *Erie Railroad Co. v. Tompkins*, 304 U. S. 64 (1938). In still another chapter Judge Friendly constructively criticizes the majority opinion in *Miranda v. Arizona*, 384 U.S. 436 (1966), with directness and candor as is seldom seen in published commentaries on any Supreme Court opinion. His discussion of the policy of the Supreme Court in making its legislative pronouncement in deciding the few selected cases then under review, questions not only the method of deciding, but the objective wisdom of the opinion itself. The author contends that *Miranda* leaves no room for local experimentation. He asserts that such rigidity leaves no room for the correction of mistakes or excesses as may prove to have been incorporated by the decision. From this statement he excepts only a constitutional amendment, or a shift in the majority of the Court. Judge Friendly further asserts that the Supreme Court should not have undertaken to decree a universal criminal procedure to be used by the police and courts of all state and federal jurisdictions, particularly where the procedure was devised on the basis of the chosen cases before it and the limited investigative capacity of the Supreme Court.

Despite Judge Friendly's disagreement with the Supreme Court in *Miranda* he repeatedly asserts that he does wholeheartedly

support the announced purpose of the decision. He goes further to adjure all courts and police officials affected by the decision to follow its requirements without equivocation, so that a true record of experience under the decision can be made.

Another part of this fascinating book deals with the need for more definite standards for administrative agency action in the federal government. It is probable that specialists in administrative law or executives in the agencies themselves may find reason to fault the author's treatment of so vast a subject in so short a space. However, for all but those experts Judge Friendly's chapters on administrative agencies offer new insights into their useful functioning as a part of modern government. His comments are devoid of bias in favor of the functions of the courts or Congress over the functions of agencies.

He regards the judicial, legislative and executive functions of the government as being equal to each other. He further asserts that each of these arms of government will have overlapping powers; and that each arm has a manner of functioning peculiar to itself. The author sees little value in describing a particular act of an administrative agency as "legislative" or "judicial", even if such appellation is softened with a "quasi". We are urged to recognize administrative agency action as a separate form of governmental action; and that their proper functioning would be promoted if this distinction were generally understood.

The foregoing examples have been offered to suggest the scope and flavor of this book. However, no single reading of it will plumb the depths there presented.

In summary the writer's text is unpretentious, though knowledgeable. His arguments are stated plainly to anyone familiar with the federal system.

Judge Friendly is not only a master in the law, he is an accomplished student of the whole government of this country. The principal contribution of this book is that it removes the facade of governmental institutions so that the interested reader may examine and compare their relative functions unfettered by old biases and misapprehensions of the parts of government unfamiliar to him.

The author appears to have found abundant satisfaction in his quest for knowledge and improvement of our government. His success suggests a similar path for others.

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