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Freund: ON UNDERSTANDING THE SUPREME COURT.

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ON UNDERSTANDING THE SUPREME COURT. By *Paul A. Freund*. Boston: Little, Brown and Company. 1950. Pp. 128. \$3.

A series of three lectures delivered under the auspices of the Julius Rosenthal Foundation at Northwestern Law School in April, 1949, are here reprinted, and present the various factors which Professor Freund believes have influenced the Supreme Court in deciding questions of constitutional law, particularly those involving civil liberties.

In the first section the author, professor of law in Harvard University, has dealt with the divisions in the Court's thinking on civil rights questions. Having been written before the recent deaths of Justices Murphy and Rutledge, the first lecture may not accurately reflect the current balance of the Court. However, the three basic areas of discord are still present. The majority of the Court of early 1949 tended to give greater sanctuary to active rather than passive civil liberties, and splits usually occurred over the clear and present danger test and the relevancy of federalism in relation to the due process clause.

The second lecture is titled "Portrait of a Liberal Judge: Mr. Justice Brandeis." Professor Freund writes from actual experience with the Justice, having served as his clerk, and he presents an excellent study of the traits of Brandeis which are not included in the popular conception of a liberal. Critics called Brandeis "irreverent toward the god of things," but Freund asserts that he was a devoted friend of private capitalism. His liberalism lay in his essential morality of mind, through which he rejected both opportunism and sentimentality, while insisting on a wide knowledge of the facts of the cases and emphasizing jurisdictional and procedural observances. His concept of the role of the state was that the state should provide incentives rather than palliatives; and he felt that the Court's jurisdiction should be limited on every front in order to provide the fullest scope for experimentation by the legislature. These tenets, rather than the more obvious liberalism manifested in his attitude toward stare decisis and his expression of social and economic ideas, earned for Justice Brandeis his appellation.

The final essay outlines the ways in which counsel shape constitutional law, through its responsibility for presenting data, its choice of test cases, and, on the

government's part, its decisions to delay or expedite Supreme Court action.

Professor Freund offers a few suggestions for the future handling of cases involving questions of constitutional law. Such questions should be raised early in the lower courts, but should not be developed to the exclusion of other issues. A reference service, similar to that supplied the legislature, should be set up to provide the statistical data which is now presented in the "Brandeis brief" used by many attorneys practicing before the Supreme Court.

At this time, when the scope of civil liberties is so much in the public eye, this book is eminently worth reading. It offers an insight into the forces which shape the decisions of that body which is ultimately responsible for defining our concept of human rights.