Mr. Justice Holmes and the Supreme Court. By Felix Frankfurter

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Mr. Justice Holmes and the Supreme Court. By Felix Frankfurter. Harvard University Press. 1938. $1.50.

The role of the Supreme Court in general, and of Justice Holmes in particular, in resolving some of the conflicts of recent and contemporary America is brought into sharp focus in these lectures, part of the program of the Committee on Extracurricular Reading in American History of Harvard University. The breadth of the lectures is indicated by their titles: Property and Society; Civil Liberties and the Individual; and the Federal System.

During his thirty years' membership on the Supreme Court, all the controversies of a society which had but recently developed from agrarian simplicity to scientific and technological complexity were presented for judicial interpretation. Corrective legislation, advanced by the "square deal" of the first Roosevelt, the "new freedom" of Wilson, and the Progressivism of the senior La Follette presented all the conflicts again brought to attention by the New Deal. "One of the eternal conflicts out of which life is made up," wrote Mr. Holmes, "is that between the effort of every man to get the most he can for his services, and that of society, disguised under the name of capital, to get his services for the least possible return. Combination on the one side is patent and powerful. Combination on the other is the necessary and desirable counterpart, if the battle is to be carried on in a fair and equal way."

Mr. Holmes' broad humanity and tolerant generosity concerning Civil Liberties, in peace time and under a War Espionage act, are expertly explained by the author. "Just as he (Justice Holmes) would allow experiments in economics which he himself viewed with doubt and distrust, so he would protect speech that offended his taste and wisdom. At bottom both attitudes came from a central faith and a governing scepticism. Since the whole or truth has not yet been, and is not likely to be, brought up from its bottomless well, the first duty of an educated man was to doubt his major premise even while he continued to act on it. This was the sceptical conviction with which he distrusted dogma, whether economic or intellectual."

The author combines the role of historian with that of a brilliant student of constitutional law and the result is most satisfactory. The Constitution, "not a printed finality," but a process, assumes its rightful place as a vital part in the turbulent trends of history.

Edward Martin.