Stephen J. Field, Craftsman of the Law

George Shipman
West Virginia University

Follow this and additional works at: https://researchrepository.wvu.edu/wvlr

Part of the Legal Biography Commons

Recommended Citation
Available at: https://researchrepository.wvu.edu/wvlr/vol38/iss1/22

This Book Review is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.

Mr. Justice Field’s tenure upon the Supreme Court of the United States spans the years from 1863 to 1897. Here is a period of profound constitutional significance. It was marked by the broadening of the exercise of Federal powers on the one hand, due largely to the sweeping economic changes, industrial and agricultural development following the Civil War, and on the other, the augmentation of the jurisdiction of the Federal Courts over state legislation resulting from the adoption of the Fourteenth Amendment. A nascent nationalism was emerging which looked to the Federal government for the positive solution of extremely complex economic problems to which the fundamentalist laissez faire doctrine seemed inapplicable. The Court was faced with the problem of the articulation of constitutional standards in harmony with economic facts.

Dr. Swisher has aimed at a realistic biography. He has drawn upon a variety of evidence to reconstruct the man and the judge as his contemporaries saw him. Field readily lends himself to dramatization. Reared in the atmosphere of a Puritan clergyman’s family, living at an early age with missionaries in the Near East, and graduated from Williams College in 1837, he finally turned to the study and practise of law with his prominent and successful brother David Dudley Field. The gold rush took him to California where joining law and politics he established himself as one of the leaders in the life of that youthful state. From the chief justiceship of the Supreme Court of California, Lincoln chose him for appointment to an associate justiceship on the Supreme Court of the United States. Field’s life in California was packed with dramatic incidents, characteristically frontier. This interesting detail the author has most effectively presented.

By far the most significant part of Field’s career was that spent upon the bench of the Supreme Court of the United States. Chapters dealing with his constitutional interpretation are “The Supreme Court and Sectionalism”, “Greenbacks in the Scales of Justice”, “The Public Interest”, and “The Income Tax”. Those treating chiefly cases decided in the Federal Courts in California are “Chinese Immigration”, “The Octopus”, and “The Terry Tragedy”. “Groomed for the Presidency”; and “More Politics” treat the abortive attempt to nominate Field as the Democratic candidate for the Presidency.
BOOK REVIEWS

The constitutional decisions to which the author devotes his attention are those which stand out most prominently in their spectacular political importance. The cases dealing with the constitutionality of the post war legislation, test oaths and reconstruction acts, and the legal tender litigation bulk large in any narrative of the Supreme Court in this period. Viewed with more perspective, however, other phases of the work of the Court have been of infinitely greater abiding influence. It is certainly to be regretted that the author did not give some attention to Field’s opinions dealing with the division of jurisdiction between state and national governments in the regulation of commerce. Almost equally important were his views with regard to the situs of debts for the purpose of taxation in the states. In the Foreign-Held Bonds Case Field set forth a theory which has lately been revived by the Court to avert the unfortunate consequences of double taxation. 1 Numerous other examples could be pointed out to reveal the not so spectacular but decidedly influential character of Field’s work in casting the law of the Constitution into its present form. It should likewise be pointed out that in his construction of Federal powers, while an ardent nationalist, Field had a decidedly clear cut notion of the proper scope of governmental activity which he did not hesitate to apply as an inherent restraint upon the legislative power of Congress. 2

In Field’s theory of private rights under the Constitution equally characteristic views should be emphasized. His broad interpretation of the protection of the Federal Bill of Rights certainly deserves considerable notice. 3 Similarly Field’s theory of the protection secured property by the contract clause was sufficiently unusual to merit some special attention. 4 Of paramount

1 In Savings Society v. Multnomah County, 169 U. S. 421, 18 S. Ct. 392, decided in 1898 after Field had left the bench, the doctrine of the Foreign-Held Bonds Case was so strictly applied as to rob it of its practical importance. Blackstone v. Miller, 188 U. S. 189, 23 S. Ct. 277 (1902), for all practical purposes overruled Field’s theory. In 1928, however, in Farmer’s Loan and Trust Company v. Minnesota, 280 U. S. 204, 50 S. Ct. 98 (1930), the Court expressly reversed its position in Blackstone v. Miller and returned to Field’s statement of general principle in the Foreign-Held Bonds Case for an authoritative exposition of the law.

2 See particularly Field’s opinions in Bridge Company v. United States, 105 U. S. 470, 26 L. ed. 1148 (1881); Railroad Company v. Richmond, 19 Wall. 594, 22 L. ed. 173 (1874); and United States v. Trans-Missouri Freight Association, 166 U. S. 290, 17 S. Ct. 540 (1897).


4 A few of Field’s characteristic opinions selected at random are those in
significance in the development of the theory of the Fourteenth Amendment was Field's emphasis upon the privileges and immunities of United States citizenship as the part of the Amendment which secured the rights of individuals against legislative impairment. To Field the protection of due process of law was, apparently, little more than the guaranty of regular procedure. In Field's theory a substantive interpretation of due process of law never appeared. It should not be overlooked, however, that the substantive protection to private rights which Field sought to secure by a broad interpretation of the privileges of United States citizenship were subsequently embraced within an interpretation of due process of law, a connection which Field had never contemplated.

It is not the purpose of the reviewer to criticize the author for not doing something which he never set out to do. While the reviewer believes that an entirely different and more analytical treatment would likewise illumine the career of Justice Field, he is quite willing to admit the value of the more colorful narrative procedure which Dr. Swisher has undertaken. This treatment is particularly applicable when the biography of an outstanding political figure is undertaken. When the subject's great importance lies not so much in spectacular incidents of his life, but in the less colorful routine work of the Supreme Court in which he participated for more than a third of a century, a different emphasis is to be preferred. The author has accomplished an excellently presented narrative of Stephen J. Field, the man, as he appeared to his contemporaries. As an attempt to weigh Field as the craftsman of the Constitution, however, this work is too superficial to be satisfactory.

GEORGE SHIPMAN.