

*Law School of Harvard University,*

*Cambridge, Mass.*

S.S. Britannic  
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Dear Stone:

Your very kind letter about my piece in Fortune has gone unacknowledged all this time, for a thousand and one things had to be done before setting out on a year's exile. But my thoughts turned towards you often, for the last two weeks were considerably occupied with the 1932 Term. (By the way, since Landis was busy in Washington in connection with the regulations under the Securities Act, Henry Hart – whom you will recall as Brandeis' secretary two years ago – collaborated with me this time.) We endeavored to strike some accounting of the last decade of the Court's conduct of business, and to make some observations that flowed from the analysis, as well as to give some indications – the obvious ones – of what the substantive tasks of the Court in the future are likely to be and how they must be wisely met. I wish this series were not so strictly confined to the discussion of the ways of doing business – procedure in its large meaning – for one could have said some interesting things about doctrinal changes during the last Term. [If only the theological tradition were not so strong upon our profession, or rather if it did not lie so heavily upon some of its leading ministers like the Chief, then there would be more forthrightness in opinions – things would be called by their real names instead of pretending that it is all a logical unfolding and that cases inconsistent with each other can be reconciled.] Fifty, even sixty years ago, Holmes luminously taught us that the job of adjudication is not logical unfolding, and the insiders know it. [I just wonder how long the pretense will be kept up. It is supposedly done in the interest of confidence in the law on the part of the people, but it's playing with fire. More and more they will discover that constitutional

adjudications especially are not logical compulsions. It is far better to make an appeal to reason and fair-dealing rather than to expect confidence to be derived from the pretense of necessity and verbal dogma. All of which is a roundabout way of saying that a very interesting Term lies ahead of you. And I shall be reading the opinions of the Court with the intensified interest that absence from home generates in the faithful.

Your encouraging remarks about the Securities Act only tend to throw into even more lurid relief the concerted efforts of leading issuing houses and their leading lawyers to chloroform the Securities Act. During the Hundred Days of the Administration, the old crowd, whose combined greed and ignorance so largely brought us where we are, were still in the storm cellar, or at least they did not dare to oppose the terrific tide of popular support behind the President. But they have regained their courage or their old habits, and the word has gone forth, as I happen to know, to resist the various economic policies with which the administration is seeking to prevent the recurrence of old abuses and to get us into the clear.] Of course I strongly believe in vigorous and informed opposition. And certainly friendly critics are an indispensable need for any President, and so too for F.D.R. But it is quite another thing, for instance, for a leading law firm to tell a client who wants to do refinancing, “to forget all about it until after Congress meets, and we can get the Securities Act repealed or amended”, and to that end in the meantime, it is desirable, so the leading law firm continued, to have no respectable financing done in order to prove that the Securities Act prevents it. They know not what they do. Apparently they have read the history of railroad and utility regulation to no purpose – or perhaps they have not read it at all.

Of course you are profoundly right in calling for further regulation of financial huggermuggers and excesses, especially in the misuses of the exchanges. There, too, because

sensible and needed and conservative regulations will be resisted, the chances are very good that some day we may get legislation not as wise as it should be. In reading Danielian's article in the October Atlantic and refreshing my recollection of testimony like Whitney's, I just wonder whether folk like Whitney are more brazen than they are stupid or more stupid than they are braze in expecting credence for their views.

You have done your notable share in perhaps the needed field of government, namely, expert and dependable personnel. As you know, Griswold is staying on, and I have no doubt thanks to the President's action upon your views. So also Hoover, whose job, as you know, is still the envy of incompetent greed. But in his smiling way, there is great firmness behind the President's resolves, and thanks to you, that vital post of the government will not be surrendered to partisan incompetents. The President's response to these two instances of your recommendation tempts me to say that as things come up from time to time which you think should reach his ears, you ought to feel free to communicate them. Of course if you prefer to use me as a conduit rather than to do it directly, I hope you will do so.

What an exciting year it will be, and even exciting to watch from the detachment and peace and beauty of Oxford. After all, in these days of quick and full means of communication, one will be able to watch events from Oxford under added spur of trying to give the fair meaning of events in America to the greatly interested Englishmen. My preoccupation of course will be Oxford itself – that is, to sink myself in the life of the students and the younger dons, the free and informal association with whom is, I suppose, the chief expectation of my visit. And it will be good after all these years to find my own bearings, to see the currents of American legal and political life in their wider reaches and to trace them, if possible, to their watersheds. And apart from all clash and confusion of politics and economics, it surely ought to discipline mind and

feeling and enlarge insight, to sink into the ancient ways and partake of the continuity of the history of centuries that I suppose is Oxford. And also it is good, occasionally, to take inner stock. I am sorry that I shall not be in Cambridge the year that Marshall returns, but I look forward to seeing him when I get back.

I shall wait with the greatest eagerness your Court's handling of the recalcitrant Manton. Your restraining order – all that you alone could do - is a grand beginning. To those of us who love the federal courts Manton cannot but appear as the greatest enemy they have had in our time.

With all good wishes and warm regards,

F.F.

Hon. Harlan F. Stone