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Carl Brent Swisher - 1897 - 1968

C. Herman Pritchett

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In Memoriam

CARL BRENT SWISHER

1897 - 1968

During the summer of 1967, the Board of Officers of the *Villanova Law Review*, in light of the then current movement for a constitutional convention, invited Professor Carl Brent Swisher to submit an article on the topic of a federal constitutional convention. Professor Swisher graciously accepted our invitation, and during the interim from that summer until his passing last June we were in close touch with Professor Swisher.

Unfortunately, our personal knowledge of this outstanding academician is limited. Nonetheless, we could not help but recognize the great personal warmth and generosity that emanated from his correspondence. Our relationship with Professor Swisher was most enjoyable. His credentials are most praiseworthy, yet in a letter of August 1, 1967, he referred to himself as the possessor of "the somewhat ponderous title of Thomas P. Stran Professor Emeritus."

The *Villanova Law Review* joins the Honorable Simon E. Sobeloff and Professor C. Herman Pritchett in mourning the demise of Professor Swisher. We sincerely appreciate their comments in memoriam, and we thank his co-author, Mrs. Patricia Nelson, for her assistance in making final arrangements for the publication of this Article.

Ed.

CARL BRENT SWISHER

Carl Brent Swisher was a distinguished scholar of American public law in the great tradition of Woodrow Wilson and Edward S. Corwin. Like them, he came to the study of legal institutions, not from a training in the law, but as an historian and political scientist. His first two books were judicial biographies of Stephen J. Field and Roger B. Taney. This point of departure enabled him to see the Supreme Court more in terms of the men who had sat on it than the decisions it had handed down. While he might not have been happy with the suggestion, it can be argued that he was one of the first of what are now called "judicial behaviorists."

From biography Swisher moved to constitutional history, but his massive volume, significantly entitled *American Constitutional Development*, was no narrow review of the Supreme Court's experience. He recognized that "judicial decisions alone provide an inadequate basis for an understanding of constitutional development," and his goal was to "reproduce in various ways the interplay of administrations, the Executive, Congress, and the courts, to show the processes by which the Constitution is adapted to the needs of the people as the needs arise and as demands for change are made." It is reassuring to know that this same breadth of outlook and understanding will infuse his volume in the as yet unpublished history of the Supreme Court provided for by the Oliver Wendell Holmes Devise.

A third type of approach to constitutional issues was found in Swisher's two volumes which resulted from university lectureships — *The Growth of Constitutional Power in the United States*, his Walgreen Lectures at the University of Chicago, and *The Supreme Court in Modern Role*, given as the James Stokes Lecturer at New York University. In both he analyzed current constitutional problems against the background of his deep knowledge of historical antecedents. It is significant that the first chapter in the latter volume is entitled, "The Court and the Sweep of History."

Professor Swisher's high standing among his colleagues in his profession is demonstrated by his election to the presidency of both the American and the Southern Political Science Associations. He combined the historian's concern with the past and the political scientist's immersion in the present. He was an inspiration to his students at Johns Hopkins, with whom he worked painstakingly. He was a calm and judicious man, eminently fair in his judgments, but when his wrath was aroused, as it was on at least one noteworthy occasion by what he regarded as bad scholarship (in his review of William

Crosskey's book, *Politics and the Constitution in the History of the United States*, which appeared in the *Saturday Review* for April 4, 1953, on page 33), he could be sharp in his scorn. He had a certain reserve and dignity about him, almost a courtliness of manner. In a way that has now unhappily gone out of fashion, he was a gentleman and a scholar.

*C. Herman Pritchett**