Nine Men (Fred Rodell, 1955)

J. Allen Smith

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BOOK REVIEWS


The wit of Fred Rodell’s new book belies its profundity; Nine Men is a scholarly work on the Supreme Court that ranks with the two earlier major histories, Warren’s¹ and Myers’.² Rodell is not so thorough as Warren. He does mention the major decisions that have affected the economy of the nation, but he is largely interested in civil liberties. Moreover, he almost omits any discussion of the Court as a dispenser of power between the states and the nation and among the several branches of the federal government. Warren’s great history is, of course, a history; Rodell’s study, though called a political history, is really a demonstration that individuals (presidents who appoint justices; past presidents of the American Bar Association who tend to disapprove appointments; and especially the justices) with preferences and compulsions are in fact the law. The conclusion for the reader to derive is that textual law study is at best a course in semantics, or, in other words, what Rodell really teaches at Yale.

Rodell differs, and fortunately so, from Gustavus Myers in that Myers felt that the Court operates within a capitalistic framework to keep the people in their economic place. Rodell, to the contrary, writes with a concern not for the Court but for the justices, of whom he prefers the strong, the intelligent, and the bons vivants. He tries to fit selected justices into an evolutionary tradition dedicated to raising the individual rather than the group dignity of man, a view that may make lovers of the status quo uncomfortable but that stems from pioneer Americanism rather than Central-European class struggles. Rodell is so old-fashioned he still believes in free speech!

The only recent book comparable to Nine Men, both as to substance and style, is Harvard Professor Paul A. Freund’s On Understanding the Supreme Court. Freund’s prose suggests Pater; Rodell in his best passages smacks of Swift. Freund believes that law is a system and that jurisprudence as a whole is greater than the individual men enmeshed in its processes. He writes of ideas more easily than of personalities. Rodell believes that man is greater than his tools and

¹The Supreme Court in United States History (1922).
²History of the Supreme Court of the United States (1911).

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that self‐knowledge is still the key both to wisdom and goodness. Freund writes of one justice, Brandeis; Rodell writes of all of them. He best knows Douglas, whom he describes as the modern Brandeis, but is perhaps even more en rapport with Holmes and Black. Both writers seek finally an ethical basis for action. Freund suggests the need of "a bias against bias"; Rodell seeks an honest declaration and even affirmation of one's prejudices. The distinction is a fine one that perhaps arises from Freund's emphasis on legal analysis, Rodell's penchant for intuition.

The book has minor flaws. Rodell insists on using his old quip that appeared in one of his magazine articles years ago about Burton's "plodding along in pursuit of old cases to use as precedent like a lady shopper trying to match colors" (p. 310). The remark is not funny today and is definitely unkind, since, as Rodell reluctantly admits, Burton has made real progress on the bench. Then, too, some of his remarks about Frankfurter are in questionable taste.

Within its thesis the book is superb. One brilliant profile follows another. Landmark cases are explained not in legalistic norms but in terms of what people were fighting what other people for what practical prizes and of how and why certain judges decided the way they did. Whether we agree with Rodell in all respects or not, his book is as important to legal history as Strachey is to English biography; and, what is strange, the enfant terrible of Yale Law School, more than anyone of the Nine Men now sitting, most resembles the Yankee from Olympus.

J. Allen Smith
Associate Professor of Law
Vanderbilt University