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# Nine Men, A Political History of the Supreme Court From 1790 to 1955 by Fred Rodell

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inherent in the responsibilities of full ownership. As a matter of fact, the margin system does the binder system one better, for the speculator also gets the current dividend income of the stocks he has purchased on margin.

In conclusion, I am left with one great area of wonderment. Some people say today "beware lest it happen again"; some talk, which Mr. Galbraith assures us was characteristic of 1928 and early 1929 seems to be appearing again. The National City Bank of New York (one of that most revered of all types of economic institutions) in its Monthly Letter for November, 1955, quotes from a speech of Dr. Arthur F. Burns, Chairman of the Council of Economic Advisers (a position of high authority, particularly sounding of being "in on things" financial) as aptly describing the situation in saying "In an economy like ours, poised on a high plateau, neither the threat of inflation nor of recession can ever be very distant." (Certainly Mr. Galbraith would call this "incantation" or perhaps "reality by affirmance"). My wonderment: what does the non-speculating investor do with his money to keep from being crushed along with the speculators when the indices enter "a generally downward trend" from, say 450 to 50? It could happen. It did, you know.

D. C. OSMOND\*

**NINE MEN.** A political history of the Supreme Court from 1790 to 1955, by Fred Rodell, New York, Random House, 1955, 338 pages, \$5.00.

Fred Rodell, professor of law at Yale University, has recently completed a short history of the Supreme Court. He set for himself a difficult task: that of compressing the court's 165 year history into 300-odd pages. He has done an admirable job in his distinctive and pungent journalistic style.

Mr. Rodell is the author of many articles and several books in and about the law. Most of his writings have been directed at the every-day reader and not at his fellow legal technicians. The present volume is likewise aimed at the larger group of readers, but it may well cause more of a stir among lawyers and students of the law.

Although his style and phraseology might seem to indicate it, Mr. Rodell is not merely a popularizer. He knows the technical ins and outs of the law and the courts, and he has a carefully considered position in regard to his subject. If Mr. Rodell's philosophy of law can be categorized, I suppose it would come under the "legal realist" heading. His present-day Supreme Court heroes are Justices Black and Douglas. In his political outlook, Mr.

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Rodell states that he is a "liberal." His convictions on law and politics are important keys to an understanding of his book, for he frankly states at the outset that his analysis of the court and its work is colored by those convictions. On this score, Mr. Rodell is as good as his word, for he tends generally to see his judicial heroes and villains in the light of their "liberalism" or "conservatism."

In Mr. Rodell's thinking the Supreme Court is primarily a political institution, the most powerful branch of our three-part system of government. He views the Court as virtually without an effective limitation on its power because it can overrule the acts of the other two branches. He builds a considerable case in demonstrating the Court's vast power not only as the final arbiter of the Constitution, but also as the interpreter of legislative and executive action. Furthermore, he argues that a large number of our citizens have veiled the Court in an aura of sanctity and have accorded the judges an objectivity and wisdom in their decisions far beyond that which the judges, as mere men, deserve.

The author endorses the theory that the only way to understand the work of the judges is to understand as much as possible about the judges as human beings. It is important to know their backgrounds, their political, economic and social viewpoints, their personal characteristics. The judges are men making policy decisions in a powerful — Mr. Rodell would say the most powerful — organ of government.

My argument with Mr. Rodell is that he proves too much. No one would deny that the Court has tremendous power. But the assertion that the nine justices of the Supreme Court are the most powerful and irresponsible men governing other men, overlooks the great positive powers in the hands of the executive and Congress, in contrast to the negative, veto powers of the Court. Furthermore, those powers in the executive and Congress, in addition to the power in the people to amend the Constitution, act as an efficient check on the power of the Court, viz., for an extreme example, the effect of Roosevelt's court-packing threat. And to explain the rejection by the Court in the early 1930's of a railway retirement act simply on the basis of the fact that the majority of the justices had at one time represented railroad corporations, and others had been sympathetic to them in other ways, is a gross oversimplification of the judicial process. Whatever the tangled skein of reasoning that comprises a judge's decision, it cannot be explained that easily even in a decision which seems obvious to a legal realist.

Although I believe the book is subject to criticism for overstating the power position of the Court and for understating the basis for judicial decisions, it nevertheless contains highly readable discussions of outstanding justices and important decisions. Mr Rodell's admiration for Marshall is

undaunted in spite of the great Chief Justice's uncompromising conservatism. The author's analysis of the work of Taney's court in the more liberal turn of decisions after those of Marshall's court and the denouement in the *Dred Scott* case is presented in a fascinating chronology. To me, however, the most interesting chapters deal with the "nine old men" and their battle with the New Deal, and with the Roosevelt replacements and their battles with themselves. I have said before that Mr. Rodell's style is that of a journalist. And in his reporting of the judicial struggles of the 1930's and 1940's he is at his best, for he was a close observer of the dramatic judicial episodes, with the advantage of acquaintanceship with some of the participants.

Mr. Rodell's account of the court will no doubt find disfavor with a number of readers. He is at times irreverent in his description of an august institution. He professes to dislike lawyers and the technical language of their profession. He can be biting in his criticism of justices with whom he disagrees. But as to this last, conservatives cannot criticize him for a one-sided favoritism of liberals, nor can liberals criticize him for a similar leaning toward conservatives. Although Mr. Rodell tends to favor liberals, he has an honest admiration for an able, straight-forward conservative.

I recommend *Nine Men* as a highly readable history of a distinctly American institution. Whether the book will be popular or not will depend upon whether Mr. Rodell's personality and convictions are popular — for they are indelibly imprinted in the book.

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