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Book Review

THE SUPREME COURT AND ITS GREAT JUSTICES *by Sidney H. Asch*.¹
Arco Publishing Company, Inc. 1971. 266 pp. \$5.95.

The history of the United States Supreme Court is chronicled in the over four hundred volumes that contain its decisions. But the Court's real impact goes beyond this mass of decisions that in conjunction with the Constitution, form the basis upon which our society functions. The Court is nine men, swept up in the current of society, who somehow must decide those issues which strike at the very core of society itself. By necessity then, these decisions are reflective not only of the principles of law that have been established by the generations that have gone before, but likewise are greatly influenced by the opinions, prejudices, fears and hopes of the men that must make them. Although we are a nation of laws and not of men, the men of the Supreme Court have the awesome power of deciding which of these laws shall stand and how they shall be executed. These approximately one hundred men who have worn the black robe and have been the United States Supreme Court, are the subject of this book.

The author has chosen the fifteen justices whom he feels have had the greatest impact upon the Supreme Court during its his-

1. Justice of the New York State Supreme Court. Member of the graduate faculties of the City University of New York, Mount Sinai Medical School, and New York Law School.

tory. He gives the reader a brief look into the personal histories of these justices, so that we can better understand why they interpreted and construed the law as they did. Once the author has explained the background and philosophy of a particular justice, he then skillfully weaves into his discussion the personalities of the other justices that served on the Court during that justice's tenure. The combination of these giants of the Court, the spirit of the times in which the decisions were made, and the contemporary justices of the period add up to a stimulating and fascinating analysis of the Supreme Court, its workings, its weaknesses and its strengths.

The justices spotlighted by Mr. Asch are: John Jay, John Marshall, Roger B. Taney, Samuel Miller, John M. Harlan (I), Oliver Wendell Holmes, Jr., Louis D. Brandeis, Charles Evans Hughes, Harlan Fiske Stone, Benjamin N. Cardozo, Felix Frankfurter, Robert H. Jackson, Hugo L. Black, William O. Douglas, and Earl Warren. Through the overlapping tenures of these men, the history of the Court can be laid out and dissected. This is what the author has attempted to do, and he has succeeded quite well.

The traditional law school approach to constitutional law has been a case by case examination of the various sections or provisions of the Constitution. Using this method the student acquires a basic understanding of the Constitution and the law. Too often however, the student develops neither an appreciation for the history of the Court, nor a feel for the very important role the Court has played in shaping the United States into the country it is today. The effect the Court has had upon both the good and bad aspects of our present day society is immense. But this effect cannot readily be seen in a section by section analysis of its decisions. It is much like a fable of the blind men and the elephant. If one were to review the Court's decisions on civil rights, he would conclude that the Court is in the forefront in attaining human dignity for all. At the same time, an examination of Court decisions relating to the industrial complex, consumer protection, and labor shows the Court to be a restraint upon the other branches of government. Only an analysis of the Court and its decisions taken as a whole can give us the reasons why.

This book is not, however, a highly technical discussion of the Court and its role in governing our society. Rather, it is much like a "hornbook", in that it highlights the important decisions and personalities of the Court in a very readable manner. The book is as well suited for the lay citizen, as the lawyer. It is not a professional book in the sense that it will help one prepare an

appellate brief on a point of constitutional law. However, the insight that one gains from reading this book will be helpful in presenting a more effective argument to the Court.

The author begins by describing the Court's shaky beginning. The original swearing in ceremony had to be delayed a day because only three of the six justices were present. The next day a fourth justice showed up, and with a bare quorum the Court was sworn in. Meeting in the basement of the Capital Building did not add to the prestige of the fledgling Court. In fact one of the original justices resigned his office to take the position of Chief Justice of the Supreme Court of North Carolina. Of course he may have been influenced by the fact the Court only heard one case during its first term, and that was dismissed on a technicality. Under the guidance of the Chief Justices John Marshall and Roger Taney, the Court rose from this unimpressive beginning to a position of equal dignity with its sister branches of government. The Court unfortunately did not fare as well under subsequent less able leadership.

With the issuance of the *Dred Scott* decision² the Court tumbled into a period of disrespect from which it was not to emerge until the beginning of the twentieth century. The author examines the personalities and philosophies which caused the Court to slip from its position of equality in the second half of the nineteenth century. The twentieth century has found the Court, after a slow start, once again a respected institution. Under the leadership of Chief Justice Earl Warren, and with the assistance of Justices Black and Douglas, the Court has had a very important effect on the lives of all Americans.

The author seems to be particularly impressed with the solidarity Chief Justice Warren brought to the Court. He uses as an example the decision in *Brown v. Board of Education*.³ The year before Earl Warren's first term, the Court had voted 5-4 to uphold school segregation. However, Chief Justice Vinson died before the Court had a chance to announce its opinion. When Warren took the post of Chief Justice, he set about trying to change the result. He also realized that for a decision requiring integration to be

2. *Dred Scott v. Sanford*, 60 U.S. (19 How.) 393 (1857).

3. *Brown v. Board of Educ. of Topeka*, 347 U.S. 483 (1954).

effective it must be the unanimous opinion of the Court. Through his leadership the Court did speak as one voice in declaring segregation unconstitutional.

The author concludes his historical analysis with a look at the Court under its new Chief Justice, Warren Burger, and his attempt to "lower the profile" of the Court. Unfortunately the book went to press prior to the appointments of Powell and Rehnquist to the Court.

The book is short and easily read. Yet it is filled with concise discussions of the philosophies and personalities that have made the Court the important institution it is today. For anyone who has a love for the law, the history, or the Constitution of the United States, this book is required reading.

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