Fordham Law Review

Volume 24 | Issue 3 Article 12

1955

Book Reviews

BOOK REVIEWS

SOVIET MILITARY LAW AND ADMINISTRATION AND DOCUMENTS ON SOVIET MILITARY LAW AND ADMINISTRATION. By Harold J. Berman and Miroslav Kerner. Cambridge: Harvard University Press. Pp. xiv, 208. Pp. xi, 164.

Although Soviet Russia has often been described as a "military dictatorship," and even though it is a matter of common knowledge that no police state, whether communist or fascist, has long endured without a well-organized military power structure, it is strange that books on Soviet military law and its administration have not thus far appeared by the score. Such a lack is particularly bizarre when one realizes that it is such power that gives the "cold war" significance of untold proportions. World peace and tranquility unquestionably have been seriously disturbed because of the free-world's fear of the presumed Soviet military power.

Nevertheless, the existing treatises on the subject either do not treat recent developments in Soviet military law and administration[1] or are primarily concerned with the nature and extent of Communist Party police controls, which are but one aspect of the Soviet military structure and its administration.[2] The need for a book to throw some light upon this phase of Soviet activity was perceived by the authors who indicate at the outset that although the Soviet military establishment is of "crucial importance in the Soviet social, economic and political order, relatively little scholarly effort has been devoted to the study of its internal structure."[3]

The general public is already indebted to the Russian Research Center of Harvard University for some enlightenment as to Soviet politics, policy and psychology. The latest contribution of this Center, which has endeavored to carry out interdisciplinary studies of Russian institutions and behavior, is "Soviet Military Law and Administration" by Professor Harold J. Berman[4] of the Harvard Law School and Mr. Miroslav Kerner, who served as a colonel with the Czechoslovak Army Unit on the Eastern Front (the Red Army) from January 1, 1944 until the end of World War II in Europe. The work, consisting of a text and a companion volume of documents, is designed to fill the need for a general orientation concerning the organization and structure of the Soviet Armed Forces and the Soviet system of military law and its administration as a means of punishing crimes and maintaining efficiency, discipline and morale.

In a treatise of 166 pages the authors have made readily available to the English-speaking world a broad canvas which depicts, albeit in broad strokes, the entire system of Soviet military law and its administration. This is accomplished by a systematic treatment of Soviet military administration, Soviet military discipline, Soviet military crimes and punishments, Soviet military courts and procedure, and an appraisal of the Soviet military legal system and its administration. This treatise appeared with a companion volume of 164 pages of Russian laws governing the Soviet armed forces. The authors indicate in their preface to the *Documents on Soviet Military Law and Administration* that the collection of laws is "comprehensive," not because it includes all of the laws governing the Soviet armed forces, but rather, "in the sense that it covers not only the structure of Soviet military administration but also the regulation of military discipline, the system of military crimes and punishments and the procedure

1. White, The Growth of the Red Army (1944).

2. Fainsod, How Russia is Ruled (1953); Brzezinski, Political Controls in the Soviet Army (1954). See also Garthoff, Soviet Military Doctrine (1953).

3. Preface, Soviet Military Law and Administration vii.

4. Professor Berman's prior work on Soviet law in general entitled "Justice in Russia: An Interpretation of Soviet Law" has been widely reviewed.

of military courts."[5] In addition to laws, the *Documents* consist of official reports of eight cases tried in Soviet military courts, one unofficial report, and several instructions of the Supreme Court of the U.S.S.R. relating to military crimes. These *Documents* are conveniently arranged to follow the plan of the companion treatise, *Soviet Military Law and Administration.*

It is apparent that persons of different professional backgrounds and disciplines will read this important treatise carefully and with great interest. Although the greatest benefit from a study of the book will be derived by those charged with the administration of military justice, it can be read with great profit by military commanders and persons interested in law, government and political science. It ought to be read by all students and teachers of criminal and comparative law.

All readers of this book will undoubtedly be interested in the information concerning who rules the Soviet armed forces, the place of the Communist Party in the Soviet military administration, the place of security police and M.V.D. troops in Soviet military administration and the structure of the Ministry of Defense and the High Command. Many will study the organizational charts which indicate the constitutional links of the Soviet military system, its relation to the Communist Party, the Soviet High Command and the "procuracy" of the Soviet armed forces.[6]

Military commanders will read with especial interest the materials on Soviet military discipline which demonstrate in a startling way how the attitude concerning the distinction of rank changed from the general spirit of comradery, which was supposed to have existed after the abdication of the Czar in March 1917, to the present system which demands instinctive and unconditional obedience to orders and strict discipline. Although the Disciplinary Code of 1919 placed heavy stress on a spirit of equality, all subsequent Codes have increasingly stressed differentiation as to rank and insistence upon its respect.

A study of the military law of Soviet Russia differs from the study of the system of military justice of many other countries because the Soviet military law is a part of the general criminal law of Soviet Russia. This fusion or integration of the military and the general criminal law makes the Soviet system unique when compared with the system of military justice in the rest of Europe and America. Since the study is therefore a study of the criminal law of Soviet Russia, the book acquires added meaning for the reader interested in the administration of the criminal law. Although the authors confess that a thorough analysis is not offered in this area, it can be stated that many valuable points are made. Surely matters relating to the objective or subjective standards of guilt, disclosure of intent to commit crime and the like, are matters with which students of criminal law are vitally concerned.[7] Another point of interest deals with the large class of civilians that under the Soviet system may be tried by military courts. For example, military courts have jurisdiction over all "political" crimes, whether committed by military personnel or civilians, civil defense personnel, civilians participating in military crimes, evasion of call-up during mobilization or breach of military registration in time of war, and a host of other offenses and situations.

Although the book introduces the reader to many doctrines or principles of Soviet law, only two will be mentioned. The first deals with what the authors term the "notorious" doctrine of analogy pursuant to which a person may be punished for a socially dangerous act not directly prohibited by law, but which is analogous to a prohibited act.[8] It is stated that this doctrine was designed to give the "greatest pos-

5. Preface, Documents on Soviet Military Law and Administration v.

6. Charts I-IV at pp. 30-33.

7. Soviet Military Law and Administration 66-71.

8. Id. at 69.

sible leeway to prosecutors and judges to apply the spirit of the Code as distinguished from its letter."[9] Under this "doctrine" the U.S.S.R. Supreme Court ruled in 1945 that soldiers performing functions usually assigned to officers may be punished for abuse of authority, excess of authority, neglect of authority or negligent attitude toward duties under a particular section of the law, even though that section expressly applies only to officers.[10] In the discussion the authors state that this doctrine of analogy was "hailed by Soviet jurists as the opposite of the 'bourgeois' doctrine of 'no crime, no punishment without a law.'" [11]

Another principle of Soviet criminal law which also would warrant more discussion and evaluation than can be afforded in a short treatise is the "principle" of law which completely disregards intent in the punishment of close relatives of an offender even though they were guilty of no complicity. Hence, Soviet law provides that close relatives of one who flees across the frontier are subject to absolute criminal liability. Innocent persons are thus guilty and punished notwithstanding the fact that they had no connection whatever with the flight. The authors offer this possible explanation: "The extremes of ruthlessness and leniency characteristic of Soviet military criminal law are to be explained not as manifestations of humanitarian or inhumanitarian motives, but as manifestations of an explicit and conscious effort to use the law to accomplish specific social policies."[12]

The book opens with certain "hypotheses" to guide the reader and concludes with an appraisal of the Soviet system. The forthright admission and caveat contained in the opening section of the "appraisal" chapter must be constantly borne in mind by the reader. The authors have admitted their complete awareness of the fact that any appraisal of the Soviet system of military law must suffer from the "relative lack of available information" of what is actually done under color of law. To a certain extent the book contains statements of émigrés concerning the actual operation of the Soviet system.[13] Since it is apparent that the authors' evidence of this kind is fragmentary, they confess their discouragement in having to report that "this is what the Soviets say they do," without being able to follow up by showing what they actually do! The authors point out, however, that what the Soviets *say* "is often quite revealing of what they think and what they want."[14] As a good example the authors offer the four Disciplinary Codes of 1918, 1926, 1940 and 1946, each reflecting a different philosophy of military life. Since the authors believe that much of the Soviet military law on the books "effectively symbolizes what is actually done in practice," they believe that the "only question is, *how much*."[15] The essential limitation, however, cannot be overemphasized. It is only when one knows what is actually done under the written law that a true evaluation and comparison can be made.

Since these inherent limitations and weaknesses of a work such as "Soviet Military Law and Administration" are also apparent to its authors, it cannot be said that any false value has been placed upon the undertaking. Belief is not stated as dogma, and conclusions and generalizations that cannot be proved are stated with diffidence and reservation.[16] When thus presented no reader can claim to have been misled. The

9. Ibid.
10. Id. at 71.
11. Id. at 70.
12. Id. at 151.
13. For example, see statement of émigré concerning pretrial procedure, id. at 117.
14. Id. at 128.
15. Ibid.
16. For example, see conclusions regarding the people governed by Soviet law, id. at 165.

book, therefore, stands as a splendid contribution to the increasing literature on Soviet society in general and Soviet military law in particular.

EDWARD D. RE†

THE MORAL FOUNDATION OF DEMOCRACY. By John H. Hallowell. Chicago: The University of Chicago Press, 1954. Pp. 132

In my opinion, this is one of the best short treatments (132 pages) of this subject available in English. It fittingly continues the high standards set by others in the series, also published by the University of Chicago Press: *Philosophy of Democratic Government* by Ives Simon; *The New Science of Politics* by Eric Voegelin; *Man and the State* by Jacques Maritain; *Natural Right and History* by Leo Strauss.

Hallowell writes with the assurance of one who is master of his subject; and almost invariably he has a very quotable style. His book includes a nice balance of reference to, and quotes from, other works for and against his thesis.

He does a politely devastating job on those he singles out for attack. For instance, he does not approve of Thurman Arnold's insistence that only the *character of the men* who control our organizations should concern us; and *not programs and principles:* ". . . how are we to know whether they are good men if we cannot examine and rationally evaluate the principles that motivate them and the programs which they advocate? Arnold provides us with no standard of good character—indeed, denies that goodness has any objective meaning, yet insists that it is good men, and good men alone, who are going to solve our problems." (p. 14)

The author was even more effective in demolishing that strange melange of political theories advocated by T. V. Smith, who regards democracy simply as "the art of compromise": "A minority will agree to temporary rule by the majority, not simply because the minority cherishes the hope of someday becoming the majority, but because certain common interests transcend partisan interests. *The breakdown of democracy comes when this community of values and interests disintegrates, when common agreement on fundamental principles and purposes no longer exists, when partisans no longer endeavor to work through the state but to become the state.* Thus when Smith declares that 'democracy does not require, or permit, agreement on fundamentals,' he is proclaiming, in effect, the demise of democracy." (p. 36)

Democracy in Smith's sense tolerates anything, even contradiction and sedition; it refuses to be bound by constitutions; and, if it is true to its bizarre principles, it would give equal standing to the Communist conspiracy (under the guise of a "political party") and the Democratic or Republican Parties.

Compromise, like everything else, can be carried too far. There are some compromises which any right consciences would rule out. Smith has not evaded the difficult problem of ancient and modern ethics by defining democracy as the "art of compromise." He must still distinguish between the *good* and the *bad*—the good compromise and the bad compromise. Yet he cannot do so because in the last analysis he subscribes to no inviolable or absolute truths or principles. He has no ultimate ends. He has only methods. He settles nothing by writing: *"Democracy is whatever can be arrived at democratically,* and not another thing."[1]

† Professor of Law, St. John's University School of Law.

1. Smith, The Democratic Tradition in America 15 (1941).

Commenting on this excerpt from Smith's work, Hallowell writes:

"Any procedural restraint, divorced from all other considerations, cannot logically, however, impose substantive restraints and is no guaranty even of the continuation of the procedure itself. Suppose that a democratic legislature decided by democratic procedure to do away with civil liberties, suppose that it went further and decided by democratic procedure to do away with itself as a deliberative body—we would have no choice, if we accepted Smith's definition of democracy, but to accept this action as democratic. And this is something more than a moot point, for something very much like this has already happened in countries that were once democratic." (p. 46)

It has long been quite the style in certain judicial and law school circles to pooh-pooh the Natural Law. More often than not, this is the result of failing to understand it. Oliver Wendell Holmes in his famous essay on the subject demonstrated hostility not to the Natural Law as such but to a strange caricature which he imagined to be the genuine philosophy of the Natural Law. Hallowell is not thus handicapped. He believes that sound constitutional government is, in effect, a practical manifestation of Natural Law philosophy—a determination of the *means* for those Natural Law *ends* which serve as the cardinal principles of decency and morality.

We get out of our government institutions what we put into them. Let them be pregnant with a sound philosophy, and in the long run, our mistakes, our gaucheries, and even our sins of omission or commission will not be irretrievable disasters. There is always some hope for the civlization that has the right vision. For all its tactics of zigzagging, it will recognize the need of a master strategy to accomplish that vision. It is only when a people becomes querulous about its vision; when they have no genuine ideals; when they dream up the mental bilge that one ideal is as good as another, or that no man can ever be sure of his ideals; that civilization (and with it jurisprudence) is in trouble.

As Hallowell puts it: "Our democratic institutions require a philosophy of life to sustain them. There are means to freedom, but they are not identical with it. . . . The means for victory over tyranny are abundant; only the ends are obscure." (p. 67) They are obscure, not in themselves, but because a moral and intellectual skepticism, dressed in the new garb of "non-commitalism" has descended like a smog on too many of our intellectuals. In effect they say: "You must never be downright in your condemnation of any philosophy, any view, anything—because *you* may be wrong and *they* may be right. No one can ever be sure he is right. There is no rule of reason; and due process of law is nothing but a positivist formula which means that you comply with the laws as they are written; but you can never fruitfully bring civil laws to the bar of reason." Such an outlook is poles removed from that of the author of this book: "God's image in man is reflected in the capacity of human beings to reason, and the disparagement of that capacity can lead only to the denial of man's uniqueness. And if men persist long enough in proclaiming that they are not essentially different from animals, they cannot very well complain when they are treated like animals." (p. 81)

I have given enough samples to serve as persuasive invitations to read this book. For myself, I found it more provocative than dozens of speeches, articles and books in the so-called liberal tradition, where you would expect, but where, generally, you do not find, competent treatment of such subjects as *freedom* and *democracy*.

GODFREY P. SCHMIDT†

† Assistant Professor of Law, Fordham University School of Law.

AMERICAN CONSTITUTIONAL LAW, INTRODUCTORY ESSAYS AND SELECTED CASES. By Alpheos Thomas Mason and William M. Beavey. New York: Prentice Hall, Inc., 1954.

This book is one of the best, if at times and to some extent, one of the most biased textbooks available for the study of Constitutional Law that has come to the attention of the writer. It was apparently designed and is excellently suited for a single semester course. Many other casebooks do a more thorough job in the sense that they reproduce more cases and carry more detailed references. By the same token, these other, larger volumes are more unwieldy and sometimes by their very massed learning and research actually get in the way of the students learning. Without counting the reprint of the Constitution in this book's appendix, the volume under review comprises only 642 pages.

The selection of cases was, on the whole, made with rare judgment and discrimination. From the point of view of reader interest, it is, I think, a better selection than can be found in most casebooks, large or small. What makes it possible for the authors to present a relatively large dose of Constitutional Law in shorter scope than in most other casebooks is a judicious interpolation of generally fine essays and appraisals between systems of significant cases whose relationships and progressive settings are engrossingly detailed.

The first essay entitled "The Constitution, the Supreme Court and Judicial Review" is a worthy dissertation, in compendious form, on the basic ideas of our Constitution, on the doctrine of judicial review, and on the jurisdiction and organization of the federal courts. A brief but enlightening treatment of the organization and procedure of the Supreme Court concludes this introductory essay.

Another good feature of the book is that almost every case is introduced by a generally accurate and succinct statement of its facts and background. One of the special virtues of this collection of material is that the sequence of the cases selected, and the introductory essays make the student realize and recognize the unity of development and the close relationship between the various principles of Constitutional Law developed by the case presentation in each chapter.

The second introductory essay precedes cases devoted to Congress, the Supreme Court, and the President. Here, in a brief but competent manner, the authors explain the Constitutional doctrine of separation of powers and the limits of lawful delegation of legislative authority to the executive; as well as the powers of the President.

The third group of cases is introduced by a discussion of federalism and of the nature of national authority. In each case, the authors know where they are going and reach their goal with a surprising and attractive consistency and unity of explication.

The next group of cases follows a treatment of the commerce power in relation to state power. Here we find a development of Marshall's doctrine, Taney's doctrine, and an analysis of the development of commerce power and state action in two periods; namely, 1865-1890 and 1890-1953.

It was in Chapter V (the essay concerning Congressional power under the commerce clause) that I found the bias to which I referred earlier. Certainly, I do not demand of authors a complete and impossible impartiality which would really mean that they never make up their minds one way or another on debated questions. To retail to the student both sides of each important and relevant controversy but never to take sides is not necessarily a desideratum. But the essay on Congressional power under the commerce clause, under such subtitles as "The Need for National Action" and "Judicial Choices in Constitutional Interpretation" and "The New Deal in Court," manifests such a manifest and gross New Deal slant and prejudice as to suggest that those who differ from the then pending New Deal legislation must either be classed as fools or rogues. For example, in criticizing the majority decision in *Panama Refining Co. v.*

Ryan,[1] the authors say: "For the first time the principle, *delegata potestas non potest delegari*, a principle not found in the Constitution, formed the basis of a judicial decision overturning an Act of Congress." (p. 252). This, I submit, is an unfair and prejudiced summary of the court's rationale and ruling. The majority used the Constitution as the basis for decision and not simply a literally translated Latin aphorism. Nor is it true that the meaning of the Latin maxim is not found, at least by inference or implication, in the Constitution. That it seems to me, is the broad meaning of the doctrine of the separation of powers. Otherwise, it would be thoroughly constitutional for one branch of government to hand over its powers to another.

On the same page, the authors unfairly, I think, criticize *Railroad Retirement Board v. Alton Ry. Co.*[2] Indeed, throughout this essay when they approve of a majority or minority opinion and disapprove of the contrary opinion, they oversimplify by making one side seem white and the other black. Almost uniformly it is the New Deal legislation, and the New Deal interpretation to defend such legislation, which is white and the other view is black. At times they almost give the impression that in their opinion a great need or emergency constitutes authorization to neglect the language or fair intentment of the Constitution. Thus, they scoff at the "sanctity of a preconceived theory of our Constitutional system." (p. 256). Is not the Constitution itself a preconceived theory—in the sense of a plan which necessarily antedated operation under it? Where they get the notion that the American people in 1932, 1934, and 1936 "overwhelmingly approved" what they call the "entire legislative program" of the incumbent administration, they do not specify. I don't think that the American people (or indeed any people) understood the entire legislative program of that particular year sufficiently to approve or disapprove it intelligently. Nor do I think it fair to suggest, as they and Mr. Justice Brandeis suggested, that the court was exercising "the powers of a superlegislature in striking down certain New Deal legislation." (p. 257) The case for such legislation cannot be so easily rationalized. It would have been fairer, I think, to leave the impression that there was an honest difference of opinion as to the interpretation of the Constitution. I know of no evidence that supports the theory that because someone on the Supreme Court differed from Mr. Justice Brandeis, the result was a clear usurpation of the powers of a "superlegislature."

Nor do I think the basic issue was ever as simple as the authors put it on page 257. "The Constitution is a straitjacket or vehicle of the nation's life." Every constitution must in some sense serve as a "straitjacket." The same is true of every law. And in an equally valid sense, every constitution and law, no matter what its degree of perfection or excellence, must serve as a vehicle of the nation's life. It adds nothing to our knowledge to propose such an oversimplified and jejune disjunctive. "Popular pressure, rising to the point of exasperation" may as a matter of history have an effect upon the Supreme Court's rulings. But as a matter of theory and fidelity to the oath of judicial office, it should not be decisive. Constitutional interpretation is not a matter for popular determination. The vote of the electorate is not a kind of super-Supreme Court, regulating the decisions of the Justices of that court.

Such unrelieved statements as the following add very little to opportunities for learning Constitutional Law: "Though many congressmen urged that something be done, they were uncertain what to do, not quite sure whether the trouble was the fault of the Constitution or of judges 'callously insensible to the needs and demands of our people.'" (p. 258) I should think that the needs and demands of our Constitution, until it is changed in the orderly fashion therein prescribed, would have a prior claim upon Justices of the Supreme Court than the fluctuating "needs and demands of our

1. 293 U.S. 388 (1935).
2. 295 U.S. 330 (1935).

people" who, generally speaking, give too little study to these problems and are too prone to sway with the winds of propaganda and emotion.

Likewise, I fail to see anything except an intransigent political partisanship in ideas like the following, lodged in a treatment of the "Court Packing Threat": "Roosevelt, quick to sense that his initial approach had been a major blunder, moved closer to the real issue on March 4, when he likened the judiciary to an unruly horde on the government plow, unwilling to pull with its teammates, the executive and Congress. As he saw it now, the crucial question was not whether the Court had kept up with its calendar, but whether it had kept up with the country." (p. 259)

The Supreme Court does all that it needs to do when it fairly and reasonably keeps up with the Constitution. If the Constitution does not keep up with the country, it is time to change it by the orderly procedures of amendment. But the Supreme Court's members should not bypass the amendment procedure merely in an effort "to keep up with the country."

It is a little amusing to find that the authors propound this question with respect to the awaited decision of the Supreme Court in *National Labor Relations Board v. Jones and Loughlin Steel Corp.*[3] "Would the Justices turn their backs on the *Schechter*[4] and *Guffy Coal*[5] rulings and permit the national government to substitute law for naked force in labor relations?" (p. 262) There was more naked force in labor relations *after* the Wagner act than before. The federal and state Anti-Injunction acts had literally paved the way for the use of naked force, by banning, for all practical purposes, injunctions in labor disputes. In many respects the whole area of labor relations was thus abandoned to economic power. The courts were told, in effect, that they could not consider the *merits* of the "labor dispute." A ruling pursuant to those merits, once they found that a "labor dispute" was involved, was forbidden. So a technique of nominalism opened the way for the virtual substitution of naked force, in labor relations, for law and order. In any case, the question quoted from page 262, raises no constitutional issue.

I need not labor the point. I think one of the chapters in the book is needlessly and marringly prejudiced. But do not let my treatment of this part of the book prejudice you. On the whole I like it immensely and I recommend it highly for the reasons already stated.

GODFREY P. SCHMIDT†

NINE MEN: A POLITICAL HISTORY OF THE SUPREME COURT FROM 1790 TO 1955. By Fred Rodell. New York: Random House, 1955. Pp. 338.

For members of the legal profession and laymen alike, Professor Rodell's book, *Nine Men,* will make instructive and profitable reading. This work undertakes in the space of 338 pages to tell the story of the Supreme Court from the beginning until the present day. The author, Professor of Law at Yale University, and prolific contributor to general magazines, ranging, as the dust jacket tells us, from *Life* and *Look* to *Harper's* and *The New Republic,* has very understandably been forced by the limits he set himself, to discard much of the customary apparatus of scholarship so that documentation is entirely lacking for many of his statements. In reading the work one should not be misled by the absence of references and the trappings of the heavily researched book. Students of constitutional law and members of the legal profession

3. 301 U.S. 1 (1937).

4. Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935).

5. Carter v. Carter Coal Co., 298 U.S. 238 (1936).

† Assistant Professor of Law, Fordham University School of Law.

will recognize the general pattern of the work and enjoy particularly the many interesting pieces of incidental information on the inner workings of the Supreme Court and the background and personalities of the Justices who have "graced" the Court since it first met in the basement of the Capitol in Washington.

The author's skill is demonstrated in his easy handling of many of the familiar cases which have been regarded as constitutional landmarks along with the forces that shaped particular decisions. He is at great pains to divest the Supreme Court of many of the legends that have grown up around it and to manifest the Justices, great, near-great, mediocre and downright poor, not as remote lawgivers towering above the political battle, but as *men* whose motives and decisions are often enough the direct result of their own political beliefs and personal backgrounds. This purpose leads Mr. Rodell to paint his picture in bold strokes of black and white ignoring the subtle gray areas. The reader, however, should not conclude that this is evidence of lack of insight. It is a vexing problem of methodology quite understandable when one remembers his purpose. Thus there appears in the book a series of "good" Justices and of "poor" Justices, of heroes and villians, so to speak. Nowhere is this more evident than in the case of Mr. Justice Holmes, for whom Professor Rodell has almost unlimited veneration and unrestrained admiration. In this book Holmes is always wise, always abreast of the times if not ahead of them, always right, although in fairness it should be noted that Mr. Rodell does gently question one or two minor points where he feels that Mr. Holmes showed himself less than usually "liberal."

Particularly welcome at the present time is the author's treatment of John Marshall and his Court. The treatment is sympathetic but more critical than that given to Holmes. Likewise, Roger Brooke Taney comes in for a few kind words and we are reminded that but for the infamous Dred Scott decision Taney might well have a better reputation in the history of the Supreme Court than has been his lot. Lesser figures are discussed throughout the book and it is here that the reader will reap an abundant harvest of factual information and benefit from Professor Rodell's insights into the lives and times of figures such as James Wilson, William Johnson, the first Harlan, Stone, Hughes, Brandeis, Cardozo, Vinson and a host of others. The New Deal Court is discussed at length and in non-technical fashion and it seems that Mr. Rodell has taken a temperate and fairly balanced position, considering his undisguised sympathy for much of the New Deal program. The Fair Deal or Truman Court is likewise subjected to a keen scrutiny and a fair, if sometimes unkind analysis.

The author raises the question towards the close of the book of cases affecting the civil rights of Communists in the context of 1955. He is disturbed by restraints placed on freedom of speech and other guarantees in the Bill of Rights in the cases of individuals suspected of disloyalty. That this is a serious problem for the United States in mid-twentieth century, no one will deny. Mr. Rodell suggests no answer, wisely, and contents himself with the liberal's expression of concern at a situation which he feels is a threat to individual liberties. The thread of liberalism runs throughout the book. One could wish for a sharper definition of the issues as between Mr. Rodell and his non-liberal adversaries but perhaps that would be asking too much.

Here is a book to read. That Mr. Rodell has chosen to write in a popular fashion and to forego the comforting reassurance of the well-placed footnote without allowing himself to become unscholarly at the same time, promises the student of the Supreme Court a pleasant and rewarding excursion into the mysteries of that quasi-sacred, uniquely American institution, the Supreme Court of the United States.

ROBERT J. NELSON, S. J.†

† Professor of History, Bellarmine College, Plattsburg, N. Y.