
BOOK REVIEWS

THE JUDICIAL OLIGARCHY

THE ULTIMATE POWER, by Morris L. Ernst, Doubleday, Doran & Co. \$3.00.

THE NINE OLD MEN, by Drew Pearson and Robert S. Allen, Doubleday, Doran & Co. \$2.50.

ONE of the focal points in the struggle between the forces of progress and reaction now going on in the United States is the judicial dictatorship of the Supreme Court. From the very beginning of the United States as a republic, the ruling class has used the judiciary to buttress the dominance of property rights over human rights. For this reason the judicial oligarchy was attacked by those who championed democracy and wider liberties for the common man. Jefferson, Jackson and Lincoln in their day defeated the attempts of the courts to set themselves up as the supreme arbiters of the political and economic life of the people.

Today the most reactionary sections of capitalism are using the courts with the objective of smashing the fight for greater democratic rights and for paving the way to fascism. Ever since the Civil War, the Supreme Court has been used by the ruling class to pile up a series of decisions which robbed the American people of elementary rights and which have extended the domination of Wall Street. The nine old men are the shock troops of the reactionary and fascist-minded forces, who want to destroy every vestige of democracy. Through setting up the Supreme Court as the ultimate power, they hope to nullify the people's mandate for progress registered at the polls last November.

The importance of the issue can be gauged from the ferocious offensive launched by the reactionaries against the mild and unsatis-

factory proposals of Roosevelt to "purge" the courts. It shows that the reactionaries realize that any step in the direction of curbing the powers of the court is a blow in favor of progress; hence, the mobilization of every medium capable of influencing public opinion to defeat the enlargement of the courts.

At this time, with a wave of reactionary ballyhoo flooding the country with false stories about the sanctity of the court, portraying the judges as a check against "dictatorship", and other such Liberty League-inspired arguments, it is necessary that the American people be shown very clearly the role of the court as a tool of the big corporations, and the personnel of the bench as paid servants of the ruling class.

One of the by-products of the fight over the Supreme Court has been a whole series of new books on the subject. There have been appeals to popular opinion, seeking to paint the court as nine arch-angels, interpreting the Constitution as a set of immutable principles laid down from above. On the other side, there has been a batch of books which have tried to debunk the court and show the nine old men for what they are. The two books under review are the latest which have come off the press. They have the virtue of being popularly written, and of containing a great deal of timely material.

Messrs. Pearson and Allen—the political Walter Winchells of Washington—have written a gossipy book whose value lies in the fact that it portrays the men on the Supreme Court as petty, hide-bound reactionaries, who served railroads and corporations before their appointments, and who have served them even better after their appointments. Some of the facts which they reveal can very well be used to explode the dogma most favored by the

reactionaries—that the Supreme Court judges are super-men above prejudice and class bias. They are shown as the worst types of reactionaries—hating every form of progress. Indeed, it is the unrelieved reaction of the so-called conservative wing which makes it seem that the liberal members of the court are “progressive”.

However, Messrs. Pearson and Allen never get beyond personal debunking. Mr. Ernst's attempt is far more ambitious. He tries to show the development of the court into an instrument of reaction which nullifies the efforts of the masses to better their social and economic conditions. There is little new in his argument and it does not have the impressive factual material collected by Boudin in his *Government by Judiciary*, which Mr. Ernst for some reason or other fails even to mention. The book again demonstrates what is known to every one who has read American history that the judiciary has usurped the rights belonging to Congress and the other elected representatives of the people, and set itself up as a dictatorial oligarchy serving the interests of Wall Street.

In view of the hot fight now raging around President Roosevelt's proposals, the heart of the book is Mr. Ernst's solution for the problem. And he has no effective solution whatsoever. He borrows James Madison's point that Congress should have the right to overrule the Supreme Court's decisions by a two-thirds vote. In the first place, a much simpler and more effective solution would be for Congress to reassert its power to pass labor and social legislation, and to deny the Supreme Court any right to declare acts of Congress unconstitutional. This is already in the Constitu-

tion and needs only a majority vote of Congress to reaffirm its powers. In the second place, if necessary, an amendment to the Constitution can be passed ending forever the ability of the judicial oligarchy to thwart the democratic rights of the American people.

It is in the light of these fundamental solutions that the Communist Party urges the support of Roosevelt's proposals. In the immediate situation the defeat of the reactionaries on this point would be a step towards realizing the broader objective of abolishing the tyranny of the judiciary. Those liberals who criticize the proposals from a so-called “Left” point of view are playing the game of the reactionaries. A victory for the reactionaries would place greater obstacles in the road of the people who are seeking to reassert their rights to enact legislation through representatives of their own choosing.

Suggestions like those contained by Mr. Ernst in his book—although he may have changed them since Roosevelt made his pronouncement—are neither fundamental solutions, nor aids towards the passage of the proposal to enlarge the court, which is the question of the day. The fundamental solution must be the complete abolition of the power of the judiciary to destroy progressive measures, and this in turn must be tied up with the immediate fight to defeat the reactionaries on the issue of enlarging the court. This is the road to take if the American people are to deprive the Supreme Court judges of their ultimate power and retire the old fogies on the bench back to the corporations who will pay them well for services received.

JOHN KURTZ

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