

ions as you choose.”

The statement is not as sarcastic as it might appear—on the present Court, three members, Byron White, William Rehnquist, and John Paul Stevens, all once held Supreme Court clerkships.

The Court’s clerks are recent law school graduates who graduated near the top of their class. They are chosen to be, for a year, “confidential assistants, ghost writers, extra sons and intimates.” More recently, there have been some extra daughters, too, as Justices have been willing to pick an occasional woman for the job. Often clerks are chosen by a clerk selection committee, although some Justices, like Lewis Powell, prefer to interview “the two dozen top applicants” themselves. Once hired, the clerks operate as an informal network that transmits information from chamber to chamber. They eat together in a clerks’ dining room, discuss and argue current cases, get information from each other about how willing their bosses might be to modify an opinion—even sometimes give each other helpful suggested wordings for opinions that are being drafted. All of this helps to expedite the business of the Court.

According to Woodward and Armstrong, the clerks are generally more liberal than the Justices whom they serve. During the Vietnam War, for instance, most of the clerks, but not the Justices, were sympathetic to the anti-war movement. Often Justices seek out liberal clerks. Justice Powell, for instance, chooses liberal clerks for their ability to challenge him, telling them “that the conservative side of the issues came to him naturally.” And Justice Rehnquist, who once wrote a critical article about the liberalism of Supreme Court clerks and was at first concerned that he would be too influenced by them, wrote

all his first drafts himself when he came to the Court. Halfway through his first full term, he realized that “the legal and moral interchanges that liberal clerks thrived on were good for the Justices and for the Court. Rehnquist grew to trust his clerks; they would not be so foolish as to try putting something over on him.” Like other Justices, he let them draft his opinions: “It saved him time, and helped focus his own thinking.”

Most of the reviews of *The Brethren* have registered some degree of surprise that Supreme Court Justices are human beings, complete with foibles, quirks, prejudices, enthusiasms, and limited knowledge.

It may, of course, be distressing to some that Justices in the highest court in the land swear at each other; refer to their Chief as “Dummy” to their clerks; receive and send notes relating to baseball scores and basketball shoes while supposedly listening to oral argument from the bench; and can at times be influenced by flattery, threats, or emotional appeals. But somehow, these imperfect and fallible people manage to come together and make far-reaching decisions—they succeed in functioning as one of the branches of our government.

The problem in understanding any sort of group decision has always been the problem of answering the question, how do groups operate? How do people who have differing interpretations of a set of principles which they nominally agree on (in the Court’s case, these principles are the language of the Constitution) agree to apply these principles to a specific instance?

One answer, which *The Brethren* illuminates in often fascinating ways, is embodied in the concept of the adversary system of law. The assumption of this sys-

tem is that the truth emerges most clearly when the best possible case is made both for and against a given proposition, and, further, when both these cases are presented to a group of people—a jury—who may differ in their evaluation of the arguments. The cases that come before ordinary juries concern questions of fact in civil and criminal cases: Did the accused do what the prosecution (or the defendant do what the plaintiff) said was done? And, if so, are there any extenuating circumstances? The cases that come before the Supreme Court—which is, in this sense, the highest “jury” in the land—concern the Constitution: Was this lower court decision justified by the Constitution, or not? The Justices are presented with arguments defending and attacking the proposition that the lower court decision was constitutional, and then they decide, often differing in their evaluation of the arguments. The fact that the Court publishes not only its conclusions but its reasoning is an additional safeguard against error—any mistakes are clearly on the record, to be seen and perhaps corrected by future generations.

*The Brethren* has no answers to offer us about how decision-making works, but it gives us a wealth of information about the Court’s deliberative process. Its lesson is that the all-too-human attributes of limited people can be, and are, subordinated to the honest attempt to apply highly abstract ideas in this process. Since politics involves collective decision making, this is information that we who are interested in maintaining that the phrase “the politics of principle” is not self-contradictory would do well to study.

Joan Kennedy Taylor is Senior Editor of *LR*.

## History as bunk

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JAMES J. MARTIN

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*America Revised*, by Frances FitzGerald, Little, Brown, 240 pp., \$9.95.

*AMERICA REVISED* IS A hard book to come to grips with, because its point is complicated. Several themes cross over one another in it, and the reader inevitably follows Frances FitzGerald’s succession of sallies into the chaotic jungle which is the American common school and textbook scene with varying degrees of comprehension. Part of this difficulty is due to her book’s not being a continuous integrated intellectual project. It was wired and stitched together from previous pieces of magazine journalism, almost all of it from the pages of the *New Yorker*. It is probably a fine book for general readers, but it has various shortcomings from the point of view of any hardened veteran of the academic trenches or anyone else who has delved deeply into historiography as a long-term interest. The absence of a table of contents will bother some; the absence of an index bothered me.

More important, FitzGerald’s numerous sweeping generalizations crowd one another for space page after page, the whole being only occasionally lit up by a source reference of more or less relevance. Despite its glowing jacket copy and its blurbs from the likes of John Kenneth Galbraith, the book is quite weak in not going back far enough and showing that the subject under study has a far more venerable ancestry than one might gather from exposure to just this book. FitzGerald might have profited from some heavy attention to some good American histo-



Frances FitzGerald, author of *America Revised*—"a succession of sallies into the chaotic jungle which is the American common school and textbook scene"—and the best-seller, *The Fire in the Lake*.

riography such as that of Michael Kraus, and she might have obtained some insights into the whole business of writing history from a woman with vast talents in that industry, Cicely Veronica Wedgwood, in her *Truth and Opinion*. There is nowhere nearly enough attention devoted to college-level history books and their trickle-down impact on the volumes intended for younger readers, or on the related cases in which school and college histories have the same authors. (These latter can provide enchanting historiographical adventures, especially for those interested in hypocrisy and patronization. The multiple-author development is a ploy to maximize adoptions, not to produce more precise and "objective" textbooks.)

FitzGerald has, in fact, hardly stumbled across the material available on the last two decades, the area of her primary interest and concentration; one might say she has only attempted to bring together the minutes of the last meeting. The material available on the continuous rewriting of history since antiquity is massive.

Such rewriting is expectable when new facts and sources are uncovered, resulting in expanded and richer accounts of the past. But the kind FitzGerald is most concerned with is revision incorporating new *interpretations* of earlier material. It has been understood for a very long time that every living generation feels a strong inclination to restructure the past for its own comfort, entertainment and sentiments of security. As the famed Carl Becker put it in a March, 1944 essay in the *Yale Review*, "each succeeding generation necessarily regards the past from the point of view of its own peculiar preoccupations and problems." Since these differ from those of the people who preceded them, the past is very likely to take on constantly different significances. But when the contemporary generation begins to tamper with or "fiddle" with the past, as A.J.P. Taylor would put it, dropping inconvenient facts and blurring over jagged and uncomfortable aspects, we arrive at one of the confrontational points of history-making-and-writing.

Though the jacket flaps tell us that FitzGerald has written this work "from no political point of view," its solidly establishment-liberal flavor is transparently obvious throughout. She includes sufficient disclaimers of the nuttier liberal extravagances to give her book at least an appearance of impartiality—not that some of the "right wing" hysteria is any more respectable—and she makes the point that both have done measurable harm to history and have lent much assistance to making the subject dull, boring and seemingly of no consequence to the young, a terrible result in the main. But one thing she fails to get across at all is that the fabrication of school textbooks in history for her entire period of major concern (and well before it, for that matter) has been a nearly 99 percent liberal monopoly, if not racket. It is the liberals' collective excesses, lunacies, idiocies and profound ignorance which dominate the content of these textbooks which FitzGerald criticizes.

*America Revised* thus could have been made stronger with at least a brief

discourse on the evolution of the modern national state, and the school history class and textbook as a means of inculcating nationalistic sentiments. After all, we are living in a period which roughly corresponds to the bicentennial of this national state. It was during the period between the American and French Revolutions when we see the origins of things like national flags, national anthems, conscription, "citizenship," and compulsory schooling and voting. The recent glut of nationalistic emotion in this country, spurred by the events in Iran, and its exploitation in the carefully orchestrated exacerbation of American indignation by television, suggest that though history via school textbooks is a caricature; still, unmistakably, primitive as it is, exposure to it can instill enough residual spinal cord reaction potential to produce these reactions which must be heartwarming to politicians responsible for contemporary policy. The system is still a resounding success, is it not? It is, in fact, little changed from what has