

Michigan Law Review

Volume 64 | Issue 1

1965

Harper: Justice Rutledge and the Bright Constellation

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Recommended Citation

Eugene Gressman, *Harper: Justice Rutledge and the Bright Constellation*, 64 MICH. L. REV. 166 (1965).

Available at: <https://repository.law.umich.edu/mlr/vol64/iss1/12>

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RECENT BOOKS

JUSTICE RUTLEDGE AND THE BRIGHT CONSTELLATION. By *Fowler V. Harper*. Indianapolis: Bobbs-Merrill. 1965. Pp. xxv, 406. \$6.95.

Fate decreed that Wiley B. Rutledge should serve but six and a half years as a Justice of the United States Supreme Court. Fate was most unkind; not only did it strike down a man in the midst of his most productive years, at the age of fifty-five, but it took from the Court a most promising flower not yet in full bloom.

It has been said by a member of the Court with more than a quarter of a century of service that no man, not even the best, can reach his full strength as a Justice in less than ten years. So unique is the Court, so overwhelming are its demands upon the qualities of creative judicial statesmanship, that no kind or amount of prior experience adequately prepares one for the tasks of a Justice. The agonizing duties require prolonged on-the-Court training. The capacity to give fairly and dispassionately of the totality of one's nature and experience to the process of adjudicating the most critical of our national legal problems is not easily or quickly acquired. Some never gain that facility in full measure. Only a few become complete masters of the Supreme Court trade; they are the ones we honor as great Supreme Court Justices.

Although time did not permit full judicial maturation, Wiley B. Rutledge gave every indication of being able to reach the apogee of greatness. He demonstrated the essential ingredients once listed by Attorney General Murphy, in a communication to President Roosevelt in 1939, as qualifying one for service on the Court: (1) a thorough knowledge of law and constitutional principles, and sound judgment in their application; (2) a liberal and open mind with respect to the problems of government in a modern democratic society, coupled with an intelligent understanding of that society's structure and essential relationships and a profound faith in democratic principles; (3) urbanity of spirit and a broad tolerance for the opinions of other persons; (4) capacity for clear, objective thinking and lucid expression; and (5) unquestioned moral and intellectual integrity.

To these characteristics, Rutledge added a warm, vibrant personality, a selfless devotion to hard work, and a burning passion for the verities of the Bill of Rights, that compendium of human freedoms that occupies so much of the Court's concern. Believing as he did that the law and the Constitution are legitimate means of rendering justice, he incurred the wrath of those unyielding critics who seem to view the law and the Constitution as disembodied sets of pre-ordained rules to be applied by the Court as an exercise in

cold judicial scholarship. Nevertheless, it was the implementation of his belief that law and freedom and justice are inescapably intertwined that has placed Rutledge, despite his short, fleeting span of service, in that small category of Justices who have contributed significantly to the meaning of the Constitution today. And he did so not only in terms of the Bill of Rights but also with reference to such other constitutional concerns as interstate commerce and the full-faith-and-credit requirement.

Rutledge's tenure on the Court came at a critical and strife-torn period. The Court was just escaping the unfortunate limitations imposed by the pre-New Deal Justices and the groundwork was being laid for the broader constitutional concepts ultimately brought to fruition by the Warren Court. Rutledge contributed much to the constitutional spirit that pervades the Court today. He was a quiet spokesman for the liberal viewpoint, one whose frequently over-long opinions were nonetheless influential and eloquent. His personality was such that he was apart from, yet helped to soothe, the sometimes over-emphasized conflicts within the Court. His death in 1949, coming but a few weeks after the death of Mr. Justice Murphy, left a gaping hole in the liberal alignment on the Court, a hole that was not to be filled until the Eisenhower appointees made their appearance.

Professor Harper's is an authorized biography drawn from the Rutledge papers, which have not otherwise been opened to the public. Unfortunately, the book fails in several respects to capture the true dimensions of Mr. Justice Rutledge. Written under the stress of the author's fatal illness, the book lacks the style and organization that mark any effective biography. Much of the content is a series of essays by the author on those portions of the Constitution that most concerned Mr. Justice Rutledge, particularly those sections of the Bill of Rights which the author calls the Bright Constellation. Included in these discussions are such matters as due process of law, freedom of speech and press, religious freedom and establishment, search and seizure, and the right to the assistance of counsel. Without any real analysis of Rutledge's contributions to the Bright Constellation, however, the text wanders far afield among recent Supreme Court decisions and other commentaries. A few interesting tales derived from the Rutledge papers reveal some of the inside-the-Court maneuverings of the era, and six unpublished opinions by Mr. Justice Rutledge are presented in an appendix. The book as a whole, however, lacks cohesion and direction.

Mr. Justice Rutledge deserves far better treatment than this book provides. There is still a need for a book that will truly and fully express what Mr. Chief Justice Vinson said of Wiley Rutledge at the Court's memorial proceedings in 1951:

Wiley Rutledge's life was devoted to an attempt to effect an accommodation between freedom and law, to conjoin freedom and justice with law. If aims alone were the measure of a man, he would be listed among the great of our Nation. But his implementation of those aims, his own career and influence, prove that his greatness extended beyond mere aims. His spirit and character will ever remain a noble point in the history of this Court.¹

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1. 341 U.S. at xxvii.