

Law Among Forgotten Jurists

The Legacy of the Common-Law Tradition



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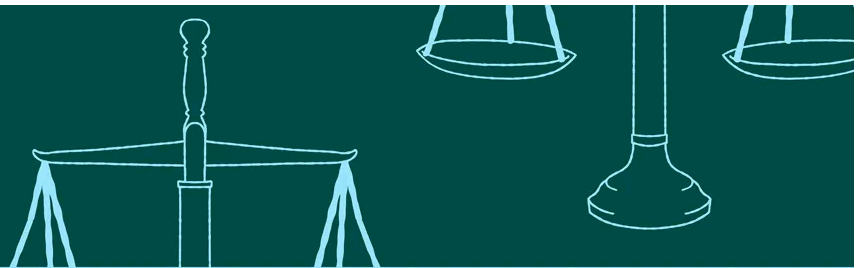


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Allen Mendenhall

A recent Saturday morning, languid and luminous, found me adrift in an endless scroll through X, formerly Twitter, that digital salon where the sublime and the ridiculous waltz together with perfect indifference.

A stranger's whim had prompted Grok to conjure a poster depicting all the United States Supreme Court Justices, and there they were, assembled in orderly rows like students in a Victorian classroom photograph: Marshall and Taney, Holmes and Brandeis, Warren and Burger, faces both stern and kindly, all dressed in the same somber robes that erase distinction as surely as time itself.

I studied those faces—some only vaguely familiar, others immediately recognizable and felt a peculiar melancholy settle over me.

How many of these jurists, titans in their own time, had become phantoms? Their names, once spoken in hushed reverence or spat in controversy, now evoke nothing more than a puzzled squint from contemporary commentators. They had shaped the Republic, wrestled with its most agonizing questions, and yet most had dissolved in that vast ocean of the forgotten, leaving behind only their words, their precedents, their small accretions to something larger than themselves.

Then I realized there was something rather wonderful in this obscurity, something positively consoling.

Each month when I'm in Washington, if time permits, I make a little pilgrimage. My office sits near the Supreme Court Building, that marble temple with its Corinthian columns and bronze doors, and I find myself drawn there the way others might seek out a garden or a gallery. As a member of the Supreme Court Bar, I'm granted access to the library, though often I wander the halls, letting the hushed atmosphere work its peculiar magic.

Back home in Alabama, I host a monthly luncheon in the Alabama Judicial Building, that handsome structure housing the state's appellate courts: the Court of Civil Appeals, the Court of Criminal Appeals, and the Alabama Supreme Court, where I spent nearly four years of my late twenties and early thirties, years that marked me in ways I'm still discovering.

What I'd failed to appreciate about these austere spaces, with their marble busts and oil portraits, their oak paneling and leather-bound volumes, is that my attraction had never been to any single figure gazing down from the walls.

No, what draws me is the aggregate, the collection itself: generation upon generation of jurists, each contributing their careful reasoning, their particular wisdom, their human fallibility to an edifice that transcends them all. These are not monuments to celebrity or personality, though certainly there were personalities aplenty. Rather, t

are monuments to something at once more modest and magnificent: the notion that law itself, not any individual wielder of it, holds dominion.

This is what F.A. Hayek understood when he wrote of spontaneous order, of evolved systems that no single mind could design or control. In *Law, Legislation, and Liberty*, distinguished between the constructed law of legislators and the discovered law of judges, that ancient common-law tradition flowing down to us through a legal inheritance like an underground river, shaped by countless hands yet belonging to none.

The common law grows organically, case by case, precedent by precedent, each judge adding a small stone to a vast cathedral they'll never see completed. In part because never complete! Precisely *because* no one person dominates the rule of law, genuine law becomes possible. The law stands above the lawgiver, above the judge, above even the Supreme Court itself.

In those quiet corridors, surrounded by the forgotten faces of yesterday's judicial giants, I feel the presence of something larger than fame, more enduring than reputation. These men and women are barely remembered, true, but their forgetting is triumph, not failure. It means they succeeded in subordinating themselves to something greater, in serving as vessels rather than masters. The law has survived them, outlasted them, and will continue long after our own generation joins them in obscurity.

There's a democracy in this disappearance, a humility built into the very architecture of the common-law tradition. No jurist, however brilliant, can impose his or her will permanently upon it. The law corrects itself, adapts, evolves through the collective wisdom of generations. It is, in the truest sense, nobody's law and everybody's law simultaneously: a spontaneous order emerging from the decisions of countless individuals operating within inherited constraints, each bound by what came before each contributing to what comes after.

Consider again that Grok-generated poster, those rows of half-forgotten faces staring out across the digital void. What had seemed sad now strikes me as sacred. These justices have achieved something finer than immortality: they have nearly vanished into the law itself, dissolved like salt in water, flavoring the whole without dominating it. Their individual egos, their particular ambitions, their human vanities have all been subsumed into precedent, into doctrine, into the living tradition of Anglo-American jurisprudence.

This is the glory of the common law, the quiet miracle of the rule of law: that it makes giants small and smallness great, that it transforms human judgment into something approaching justice, not because any one judge is wise but because the accumulated wisdom of the tradition itself constrains and guides each successive generation.

The law is supreme; the personalities fade. And in that fading, paradoxically, they achieve their greatest purpose: becoming not monuments to themselves, but stones in a temple we are all always still building, still discovering, still learning to inhabit with whatever grace we can muster.



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