BOOK REVIEWS


Few men, of the thirteen who have occupied the exalted office of Chief Justice of the Supreme Court of the United States to date, have served for longer terms than did Melville Weston Fuller but, until the publication of this biography, far more was known about other Chief Justices, from Marshall on down, than had come to light about the one whose period of service extended from Waite and Munn v. Illinois,\(^1\) on the one hand, to White and Standard Oil Company v. United States,\(^2\) on the other. Now that this biography has been written, a gap of no small magnitude in the history of the Supreme Court has been closed. In the process, not only has a life story been sympathetically told in a fashion that should appeal to all, whether connected with the law or not, but, in addition, a most revealing sidelight has been thrown on the traditions of the court and on its inner workings.

Fuller’s life story may be sketched briefly into three main divisions. His birth, growth and education in Maine\(^3\) may be said to be typical of that of any other well-born American who turned toward law as a profession during the first half of the nineteenth century. That part of the story is not lacking in interest, but is briefly told except insofar as it discloses signs of an ability beyond average. The second, dealing with his life as a lawyer at the Chicago bar, tells of many a colorful incident, many a case that, marking the growth of a great metropolitan center, showed him to be a dexterous as well as a persistent advocate, albeit one who suffered a cruel starvation period, a staggering financial loss in the Chicago fire, and much calumny for his participation in Democratic politics during the Civil War period. None interested in the history of Chicago or in the growth of the legal profession in Illinois should fail to read these chapters. Names appear,\(^4\) details are supplied, to round out the bare records of cases

\(^1\) 94 U. S. 113, 24 L. Ed. 77 (1877).
\(^2\) 221 U. S. 1, 31 S. Ct. 502, 55 L. Ed. 619 (1911).
\(^3\) Notice is taken, by the author, of Fuller’s initiation into the social fraternity of Chi Psi while at Bowdoin College, and of his election to Phi Beta Kappa. No mention is made of his initiation into Phi Delta Phi International Legal Fraternity, at a later period in his life. It should not pass without notice that, following the installation of a branch of that fraternity at Chicago-Kent College of Law in 1896, he was initiated as a member thereof and gave to that branch the name it is still honored to bear, to-wit: Fuller Inn of Phi Delta Phi.
\(^4\) One such name is that of Henry C. Morris, son of one of Fuller’s closest friends and office associates, John Morris of the Chicago bar. The younger Morris was
reported in official reports. But, for all of his thirty-two years of practice, Fuller was virtually an unknown, at least outside of Illinois, when, at President Cleveland’s unexpected and unsolicited request, he moved into the national arena and the third phase of his life.

The greater part of the biography, most fittingly, deals with his masterful administration of a great court during a twenty-two year period packed with tremendous labor on the part of Fuller and, at varying intervals, on the part of such associates as Stephen J. Field, Joseph P. Bradley, John M. Harlan, Horace Gray, Lucius Q. C. Lamar, David J. Brewer, Oliver Wendell Holmes, Jr., and Edward Douglass White, who was to become his successor. The book was not designed to be a catalog of the 840 opinions which he wrote for the court, nor the thirty dissenting opinions he felt constrained to issue, but it does explain and illustrate his great ability to win the friendship and admiration of his fellow judges and to preserve equanimity on the court. Leading decisions attributable to Fuller, such as the holding in Pollock v. Farmers’ Loan & Trust Company5 which declared the Income Tax Act of 1894 unconstitutional, are, however, subjected to an extended treatment that is most revealing. Just as one should not attempt to understand the holdings in Marbury v. Madison6 or in the Dartmouth College case7 without first reading Senator Beveridge’s explanatory comments in his “Life of John Marshall,” so the study of Fuller’s constitutional decisions should, hereafter, be made against the background so ably sketched by Mr. King. But there is more to this part than a profile of a judge in action; there is a revealing account of events and happenings behind the scenes which discloses Fuller to have been, to the moment of his death, a warm-hearted man of far greater stature than one might be led to think from a view of his slender physical frame.

A word about the author of so excellent a book may serve as a fitting tribute to a hobby that has paid off handsomely, if not in money then in terms of untold pleasant hours for both author and reader. Willard L. King, well known in Chicago circles as a member of the Illinois bar, as an author of more technical legal works, and as an untiring officer of legal and historical societies, has spent years collecting the information for this

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6 5 U. S. (1 Cranch.) 137, 2 L. Ed. 60 (1803).
book. He amassed literally thousands of documents in connection with its preparation. There is evidence that the finished biography, drawn from these materials, is a labor of that love which can grow out of long association with a project, yet one which can be tempered in the recesses of the analytical mind of an eminent lawyer. It is, then, the product of a love that is not blind to fault while it faithfully records much that is worthy of praise. A happier combination of biographer and subject would be harder to discover than Willard L. King and Melville Weston Fuller.


It could well be thought strange that it should be necessary to review a book already once subjected to extensive reviewing, but as a round dozen of years have passed since this little work first appeared there is point to giving it further notice, if for no other reason than to call attention to the fact that it has been reprinted. Its author needs no introduction, and none will be given. Its content may be briefly summarized by saying that it presents, in printed form, four lectures delivered by the author at the Law School of Tulane University on the occasion of the centennial of the death of Edward Livingston but is not, except in passing reference, about that first proponent for codification of American law. Instead, these lectures, as indicated by their separate titles, elaborate upon the thought that natural law did much to set the stage on which American law evolved and to which it now appears to be returning; that legislative power had, but badly fumbled, the opportunity to shape its growth; that the course of judge-made law has been the prime means by which a degree of historical continuity has been given to the reception of a much modified form of English law into this country; and lastly, that no small part of the task of fashioning law has been performed by the great text-writers of the nineteenth century, i.e., by those who lived and wrote in the very formative era from which the book derives its title. To comment on the highly readable style of an author already so well-known to American lawyers would be superfluous. Little else, then, need be said except to utter a reminder that if the reader has not perused this book as yet, he now has the opportunity to profit from a sampling of the wisdom of an outstanding jurist. One thing is certain, the book has not suffered from the passage of time.


When the British Foreign Office, in 1938, announced its intention to publish the national constitutions of the world in the English language, scholars applauded the proposal as a forward-looking step to world understanding. The intervention of World War II prevented completion of more than a single volume containing the constitutional documents of the countries comprising the British Empire. What seemed like an unfortunate disaster has now, in fact, turned out to be a blessing in disguise for, thanks to American skill and energy, there has now been made available not only a complete compilation but one much more accurate in that it reflects the many constitutional changes which have intervened with the passing years.

The three volumes which make up the set contain a vast mine of constitutional materials which will interest, as well as serve, an ever-increasing body of officials, lawyers, educators and students concerned with international affairs. Preceding the official texts of the constitutional documents of some eighty-three states and nations, is a masterful general summary, prepared by the author, which serves as an excellent introduction to fundamental constitutional concepts. A fitting contrast is there provided for the diverse views which exist as to such matters as constitutional forms, sources of sovereign power, popular rights, and distributions of authority between departments of government. Comparisons are also provided concerning the size of the several countries considered and their relative populations, from which it is worthy of note that the analysis ranges from Vatican City, with an area of 0.16 square miles and a population of 1,625 persons, to the staggering 8,473,000 square miles of the Union of Soviet Socialist Republics, but that many countries possess an area smaller than that of Texas and a population fewer than that to be found in the state of New York. The set closes with other significant comparative tables and tentative texts of draft constitutions not yet completely in force.

Between these points, in alphabetical arrangement, appears a section devoted to each of the nations or states considered. Each section includes (1) a statement of its relationship, if any, to the United Nations; (2) pertinent historical and political data of importance; (3) a brief description of its form of government; (4) a reproduction of its distinctive emblem, seal, or coat of arms; (5) the text of its constitution or constitutional documents, with reference to official sources; and (6) a selected
bibliography. Not only are all the great powers listed but the list extends to such relatively unimportant jurisdictions as the Republic of Andorra, the Principality of Liechtenstein, and the elective monarchy of Yemen. A more complete or comprehensive work does not exist.

It is not possible, in any brief review, to give a more adequate description of the veritable treasure-house of information that has been gathered, compiled, digested and synthesized in these three volumes. They contain much that may be regarded as quaint or bizarre to modern minds. It is said, for example, that the rack and other forms of torture are absolutely prohibited in Afghanistan; that a civil servant of Saudi Arabia, who shows efficiency and application in his work, may not be transferred without his consent; or that a deaf and dumb citizen of Thailand, who is incapable of reading or writing, is to be denied the privilege of voting at national elections. These references have not been accentuated with any thought of ridiculing the contents of these three volumes but, more nearly, to display their comprehensive character. The reading public should long applaud the untiring effort that has been put forth by the author and his cohorts. Mr. Peaslee’s service as Secretary-General of the International Bar Association is well known. His authorship of such books as “A Permanent United Nations,” and of “United Nations Government,” received favorable notice. He may well be said to have earned a crown for this, his most recent, work.


In a ringing introduction to this rather sketchy book, Chancellor Hutchins of the University of Chicago poses the thought that, while many agree that the American way of life is in danger, few have any idea what that way of life really is. Many appear to consider it to be no more than a system for unanimous tribal self-adoration, one which would forbid criticism and put down protests, unpopular opinions, and independent thoughts. To him, the essence of the American way of life is its hospitable attitude toward the very things thereby condemned, things guaranteed by such constitutional rights as the right to free speech, free thought and free association. He believes the present danger comes from all movements and all things which would be apt to restrict the free exchange of ideas, the unpopular as well as those pleasing to the mass mind.

Dr. Davis, a former president of the American Federation of Teachers, and himself a sufferer from the practices against which he inveighs in his book, proceeds to develop the thought thus expressed by Chancellor
Hutchins by showing how it is possible, through manipulation of the mass mind, to suppress the unpopular thought and those who agitate for its acceptance by means of character assassination. He, too, in that process, would see grave danger to American freedom generally, but he is more concerned with the freedom of minority and under-privileged groups who clamor most loudly about discrimination. The book has been referred to as "sketchy." As it ranges over so wide a period of time as that which extends from the Salem witch trials to last week's loyalty hearing, it is not surprising that the fragmentary parts do not adhere to one another with any degree of cohesiveness. Much of the book is written in a white heat of indignation that hardly reflects the sober thought of the scholar. But it does convey a devastating picture of what may be, and has been, done to destroy the influence of unpopular protagonists of unpopular ideas; even to the point of blue-printing the several methods used or available for that purpose. It is not until the author reaches the close of the book that he recovers balance enough to chart what may be done to offset the insidious influences he has described. That part, however, is worthy of constant study for it points the way by which it would be possible to head off even greater waves of mass hysteria.


There can be little doubt that, when an attorney has occasion to practice before a tribunal the workings of which are new to him, he would do well to equip himself with at least a knowledge of the mechanics involved in that unfamiliar situation. Only too often the inexperienced attorney finds that the theoretical knowledge which he believes he has mastered leaves him somewhat short of the complete store of tools he needs for actual practice. Learning one's way around a court is as necessary an adjunct to one's knowledge as learning one's way through the reported cases. Certainly, then, these propositions apply with no less force when the problem is one of practice before the Supreme Court of the United States. Few lawyers have opportunity to practice before that august body, although they may possess the right to do so, and even fewer have had the chance afforded by extensive practice to become familiar with its procedural workings. It is for those who do find themselves so opportuned that the volume here reviewed was prepared as a basic minimum aid so that they might learn what they will need to know in order to handle a case before that tribunal. The effort here put forth in large degree succeeds in that purpose.
lisher, are both attorneys with much practical court experience at the national capitol. They have consulted officials of the court on all phases of the material presented so that advice from the clerk and from the marshal is to be found herein. This is of importance for it is well to learn quickly that proper dealings with these persons may have much to do with the success an attorney may attain while attending to his daily court tasks. The method of presentation employed is not strictly that of a treatise, being more akin to the style of a handbook. But there lies an advantage, for the authors anticipate that the attorney will often need quick reference to a certain point and would prefer not to wade through pages of descriptive material to find it. The information given is, however, sufficiently detailed, when taken together with the free citation to cases and other references, so as to give to the reader a broad view of the workings of all phases of Supreme Court practice.

Most of the detail offered relates to the two principal methods for bringing cases before the Supreme Court, that is to say by certiorari and by appeal. This, of course, is as it should be for it is upon these phases of the case that counsel will be inclined to put forth most of his intellectual effort. Unless success is achieved in gaining the ear of the court, other labor would be futile. The reader, therefore, is provided with a discussion of the fundamental jurisdictional questions so that he may learn the nature of the controversies which can be brought before the court. No small part of the volume, however, is devoted to a section of forms and to a compilation of rules and statutes. These parts alone give the book value for they bear on the recent modifications made in the Judicial Code and in court rules. On rare occasions, the authors have inserted value judgments as to certain portions of the procedure which they set out to describe. It is doubted that these expressions contribute much to a work which is avowedly descriptive in purpose but the net effect thereof does not distract from the utility of the publication. The authors would be less than human if they failed to voice some dissatisfaction with at least a part of what they have observed. Despite this, the volume represents an advantageous contribution to join other works on federal practice.