MELVILLE WESTON FULLER. By Willard L. King. New York: Macmillan. 1950. Pp. 394. $5.00.

One of the most significant facts about the United States Supreme Court has been the longevity of the Justices. When Justice Minton was appointed in October, 1949, he became the eighty-seventh member of the Court. Chief Justice Vinson, who took his oath of office on June 24, 1946, is the thirteenth Chief Justice in our history. The average length of service for a member of the Supreme Court has been a little over fifteen years. Eight Justices have served thirty years or more. In view of the tremendous authority of the Supreme Court as a central agency in the American governmental system, these facts point up a remarkable concentration of power in a very small group of men. Appointed by the President with senatorial confirmation, and enjoying life tenure, these men shape our basic law and determine important segments of public policy without fear of political interference or of retribution at the polls. Yet despite the obvious importance of these men, comparatively little is known about their life histories.

The fact is that judicial biography is still in its infancy.[1] There are few full-length biographies of Supreme Court Justices, and still fewer adequate ones. Among biographies of the first rank one can mention Beveridge's monumental study of John Marshall,[2] Mason's masterful life of Brandeis,[3] Fairman's able book on Miller,[4] Swisher's learned treatises on Taney and Field,[5] and Pringle's long account of the long career of William Howard Taft.[6] There are now available more or less adequate biographies of Jay,[7]

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1. For an interesting appraisal of the problems and difficulties involved see: *The Writing of Judicial Biography—A Symposium*, 24 INDIANA L. R. 363 (1949). There are, of course, innumerable articles in the law reviews dealing with the Justices in a more or less biographical fashion, but reference is here made to book-length studies. Judicial biographies are listed separately in the INDEX TO LEGAL PERIODICALS, and it is gratifying to note that the list is growing longer each year. There are brief biographies of all the Justices of the Supreme Court, except for a few of the very latest appointees, in the DICTIONARY OF AMERICAN BIOGRAPHY. Many of them, however, are scarcely more than obituary notices. There are valuable accounts of many of the Justices in LEWIS, GREAT AMERICAN LAWYERS (8 vols., 1907-1909). For short sketches of the first eleven Chief Justices, see: UMBREIT, OUR ELEVEN CHIEF JUSTICES (1938). See also: FLANDERS, THE LIVES AND TIMES OF THE CHIEF JUSTICES OF THE SUPREME COURT OF THE UNITED STATES (1858).

2. BEVERIDGE, THE LIFE OF JOHN MARSHALL (1916-1919). See also: CORWIN, JOHN MARSHALL AND THE CONSTITUTION (1921); LOTH, CHIEF JUSTICE: JOHN MARSHALL AND THE GROWTH OF THE REPULIC (1949); MAGRUDER, JOHN MARSHALL (1895).

3. MASON, BRANDEIS: A FREE MAN'S LIFE (1946). See also, by the same author, BRANDEIS: LAWYER AND JUDGE IN THE MODERN STATE (1933), THE BRANDEIS WAY (1938); LIEF, BRANDEIS: THE PERSONAL HISTORY OF AN AMERICAN IDEAL (1937).

4. FAIRMAN, JUSTICE MILLER AND THE SUPREME COURT (1939). See also: GREGORY, SAMUEL FREEMAN MILLER (1907).

5. SWISHER, ROGER B. TANEY (1935), STEPHEN J. FIELD: CRAFTSMAN OF THE LAW (1930). See also: SMITH, ROGER B. TANEY: JACKSONIAN JURIST (1936).

6. PRINGLE, THE LIFE AND TIMES OF WILLIAM HOWARD TAFT (1939).

7. MONAGHAN, JOHN JAY: DEFENDER OF LIBERTY (1935).

Rutledge,[8] Story,[9] Lamar,[10], Wayne,[11] Chase,[12] Day,[13] Waite,[14] Campbell,[15] McLean,[16] McKenna,[17] and Cardozo.[18] In addition, studies have been published which deal with the constitutional doctrines of such diverse Justices as Harlan,[19] Stone,[20] and Black,[21] though they are not biographies strictly speaking. There are books on Holmes,[22] but he has not yet been written about on the scale he deserves. And there is no adequate book on such legal giants as Justice William Johnson, Jefferson's first appointee and the Court's first great dissenter,[23] or Justice Horace Gray, or Justice Joseph P. Bradley,[24] or Justice David J. Brewer,[25] or Chief Justices White, Hughes and Stone. There is no biography of William Cushing, who sat on the Court for 21 years, or for Noah Haynes Swayne, who served for 20 years, or for John Catron, who cast his vote in innumerable cases over a period of 28 years, or of Samuel Nelson, who was a Justice for 27 years. Every Justice should be the subject of a full-scale study. When such studies have been written, we shall have the materials for fresh insights into the Supreme Court which are not presently possible.

In telling the story of Chief Justice Melville Weston Fuller, Mr. Willard L. King, a prominent member of the Chicago bar, has filled a large gap in the area of judicial biography. Fuller presided over the Court from 1888 to 1910, and participated in the disposition of many memorable cases during his twenty-two years of service. Mr. King has succeeded in bringing him to

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8. BARRY, MR. RUTLEDGE OF SOUTH CAROLINA (1942).
9. W. W. STORY, LIFE AND LETTERS OF JOSEPH STORY (1851).
10. CATE, LUCIUS Q. C. LAMAR: SECESSION AND REUNION (1935).
11. LAWRENCE, JAMES MOORE WAYNE: SOUTHERN UNIONIST (1943).
12. HART, SALMON PORTLAND CHASE (1899).
13. MCLEAN, WILLIAM RUFUS DAY: SUPREME COURT JUSTICE FROM OHIO (1946).
14. TRIMBLE, CHIEF JUSTICE WAITE: DEFENDER OF THE PUBLIC INTEREST (1938).
15. CONNOR, JOHN ARCHIBALD CAMPBELL (1920).
16. WEISENBURGER, THE LIFE OF JOHN MCLEAN, A POLITICIAN OF THE U. S. SUPREME COURT (1937).
17. MCDEVITT, JOSEPH MCKENNA (1946).
18. POLLARD, MR. JUSTICE CARDOZO: A LIBERAL MIND IN ACTION (1935); HELLMAN, BENJAMIN N. CARDOZO: AMERICAN JUDGE (1940). See also: LEVY, CARDOZO AND FRONTIERS OF LEGAL THINKING (1938).
19. CLARK, THE CONSTITUTIONAL DOCTRINES OF JUSTICE HARLAN (1915).
20. KONEFSKY, CHIEF JUSTICE STONE AND THE SUPREME COURT (1945).
21. FRANK, MR. JUSTICE BLACK: THE MAN AND HIS OPINIONS (1949); WILLIAMS, HUGO L. BLACK: A STUDY IN THE JUDICIAL PROCESS (1950).
22. FRANKFURTER, MR. JUSTICE HOLMES AND THE SUPREME COURT (1938); LERNER, THE MIND AND FAITH OF JUSTIC HOLMES (1943); BENT, JUSTICE OLIVER WENDELL HOLMES (1932); BIDDLE, MR. JUSTICE HOLMES (1942); BOWEN, YANKEE FROM OLYMPUS (1945); RICHARDSON, CONSTITUTIONAL DOCTRINES OF JUSTICE OLIVER WENDELL HOLMES (1924).
23. The reviewer recently read the manuscript of a full-length biography of Justice Johnson. He expresses the hope that it will soon be published.
24. See Fairman, *What Makes a Great Justice? Mr. Justice Bradley and the Supreme Court*, 1870-1892, 30 B.U.L.R. 49-102 (1950).
25. See: Lardner, *The Constitutional Doctrines of David Josiah Brewer* (Unpublished doctoral dissertation, Princeton University, 1938). It is the reviewer's understanding that Professor Lardner is preparing for early publication a book on Justice Brewer.

life as a flesh-and-blood human being. He is no longer the sort of silvery-haired, benign, disembodied Grand High Lama he has appeared to be in the imaginations of those who knew him only as Fuller, C.J., in the austere pages of the Supreme Court Reports.

Apparently the author has devoted many years searching for his data in correspondence files, family papers, old newspapers, memoirs, law reports, law reviews, biographies, histories and other sources. As a trained lawyer his review of the cases in which Fuller had a part is accurate and succinct, though the book is very far from being a mere summary of cases. It would seem that Mr. King had access to whatever Fuller papers are still extant. This is a very scholarly book, when measured in terms of the original sources consulted and the solidity of the documentation. Unfortunately, the publisher followed the barbarous practice of printing the notes at the end of the book, instead of at the foot of the pages of the text, where footnotes belong. In addition, the notes are printed in one continuous paragraph which runs for some thirty-three pages of double-columned, closely-packed print, with the result that they are practically indigestible. As the notes stand, they merely give mute testimony to the author's scholarship and industry; they might have served the additional function of informing the reader.

The Fuller story, as Mr. King recounts it, is an interesting bit of authenic Americana. He was born in Augusta, Maine, in 1833, and lived there until he was twenty-three years old, when, following a romantic disappointment, he went West to seek his fortune and settled down in Chicago. He belonged to a distinguished Maine family which included a number of lawyers. His maternal grandfather, for example, was for many years Chief Justice of the Supreme Court of Maine. Fuller graduated from Bowdoin College with Phi Beta Kappa honors, and entered the Harvard Law School in the fall of 1854, where he attended lectures for six months. Shortly after his admission to the bar he moved to Chicago, in 1856, and here he grew up with a fast-growing, lusty city. He did not serve in the army during the Civil War, though he was then a young man in his twenties. Curiously the author makes no mention of this point, except to remark rather casually towards the end of the book that he took a dim view of the war. Fuller's first wife died when he was very young, leaving him with two small children, but he later remarried and had eight more children. Apparently his second marriage was an extremely successful one. Fuller seems to have had a difficult time getting started in his profession, but eventually he built up a large, diversified and remunerative law practice, and figured in some locally-famous cases. He represented such important clients as the Chicago, Burlington and Quincy and the Illinois Central railroads, the Union National Bank, the Merchants Loan and Trust Company and Marshall Field.

In addition, Fuller was a Democrat, both by birth and choice, and was active from the start of his legal career in the affairs on his party in Illinois. He served as a member of the Illinois constitutional convention of 1862, in which he took a leading part, and he had one term in the state legislature. He was a delegate to the Democratic national conventions of 1864, 1872, 1876, and 1880. Mr. King believes that Fuller's political philos-

ophy, as reflected by his career prior to his appointment to the Court, added up to "sound money, free trade, states' rights, no paternalism, governmental economy, and the preservation of the civil rights of the individual." (P. 85.) As one who shared in the extraordinary unearned increments of a property-owner in fast-growing Chicago, he had "an aversion toward governmental interference with individual enterprise." (P. 91.) This aversion never left him.

Appropriate attention is devoted to the appointment of Fuller by President Cleveland in 1888. The main conclusions are that Fuller did not go after the position, and that he and the President were intimate friends long before the appointment was made. He points out, for example, that previously Cleveland had offered him the Chairmanship of the Civil Service Commission and later the position of Solicitor General, both of which he turned down on the ground that he could not afford the financial sacrifice such appointments would entail. Among his other qualifications Fuller had geography in his favor, as well as a belief in sound money and hostility to protective tariffs. There was a flurry of debate in the Senate, but he was quickly confirmed by a vote of 41 to 20.

Chief Justice Fuller was a very industrious member of the Court. During his tenure of office he wrote 840 opinions, an average of about 40 a year. He wrote thirty dissenting opinions and dissented without opinion 112 times. When one takes into consideration the heavy administrative burdens of the Chief Justice it is clear that Fuller did his full share of work. Mr. King thinks that Fuller's principal contribution to the Court consisted in the skill with which he kept the peace among such prima donnas as Stephen J. Field, Samuel F. Miller, Horace Gray and John Marshall Harlan. Apparently he had a great deal of personal charm, and had a keen sense of responsibility for the dignity and reputation of the Court. Fuller was the Court's great specialist in procedural law, and with characteristic modesty he cheerfully assigned the writing of opinions in many of the great cases to his colleagues.

By standards of modern liberalism, Fuller was on the conservative side of many famous decisions, and there is reason to believe that the author makes the mistake of defending the Chief Justice when his positions were most indefensible. Above all, he discusses in detail Fuller's views in the great income tax case of 1895,[26] to which he devotes two full chapters. He asserts that "Fuller's opinion in this case was undoubtedly his greatest." (P. 204.) That depends upon the criteria of greatness one has in mind. He also holds that this opinion displays his daring, for, he writes, "a timid man would have followed the trend of the Court's prior decisions and the comments of the text writers." (P. 221.) The notion that greatness lies in not following the trend of the Court's prior decisions is at the very least debatable. He also believes that the *Pollock* decision does not justify any characterization of the Court as being partisan to the rich, and that on the contrary the income tax was a sectional controversy. The chapter following those devoted to the income tax case is headed, Senility on the Court, and

26. Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 158 U.S. 601 (1895).

while it deals with the embarrassing probem of inducing Justice Field to resign, perhaps the title to some extent explains the character of the preceding events.

Another example of unjustified hero-worship on the part of the author is found in his defense of Fuller's dissenting opinion in the case of Wong Kim Ark.[27] Mr. King seems to find merit in Fuller's construction of the first two words of the Fourteenth Amendment, "all persons," as meaning only "some persons," and as excluding from citizenship native-born Chinese with alien parents. He goes so far as to assert: "If Fuller's view had been adopted, we would not have been confronted with the very difficult constitutional problem of the relocation of the American-born Japanese in the recent war." (P. 237.) It would appear that the freedom to treat all native-born Americans of Japanese ancestry as enemy aliens is a pretty high price to pay for Fuller's views on this subject. Fuller was also on the majority side of the five-to-four decisions in the Insular Cases[28] and in the Lochner case.[29] It would have been more discreet for the author not to have undertaken to defend his hero in such situations as these. It is a rather lame excuse to defend Fuller's vote in the New York bakers case with the observation that after all few people had the vision of Justice Holmes. For it must be remembered that after all three Justices agreed with Holmes, to say nothing of all the later judges who accepted his position.

But on the whole the books tells the story of Fuller in a forthright and objective spirit. It is full of hitherto unpublished letters that passed between some of the Justices which will interest all students of the Court. And it has many interesting yarns about judges and lawyers that will delight the connoisseur of judicial folk-lore. There are invaluable short sketches of all the Justices who served on the Court during Fuller's tenure, and some receive a great deal of attention, notaby Gray, Field and Holmes. Students of the Supreme Court will read this book with profit and pleasure.

David Fellman.*

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27. United States v. Wong Kim Ark, 169 U.S. 649 (1898).
28. Downes v. Bidwell, 182 U.S. 244 (1901); DeLima v. Bidwell, 182 U.S. 1 (1901); Fourteen Diamond Rings, 183 U.S. 176 (1901); Dorr v. United States, 195 U.S. 138 (1904).
29. Lochner v. New York, 198 U.S. 45 (1905).

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