BOOK REVIEWS

OUR ELEVEN CHIEF JUSTICES: A HISTORY OF THE SUPREME COURT IN TERMS OF THEIR PERSONALITIES. By Kenneth Bernard Umbreit. New York and London: Harper and Brothers, 1938. Pp. xiv, 539.

"Curiously enough," writes the author in his prologue, "while there is a widespread belief that constitutional decisions can be interpreted in terms of judicial biography, there is almost no such thing as judicial biography." He finds that while the Chief Justices have fared better than the Associates, even as to the former there is a dearth of writing and some of that is not readily available. "This volume is an attempt to bring that material together, to analyze and sift it, and to reduce it to usable form." The result is a series of essays dealing with the environmental influences operating upon the men who successively became Chief Justice, their education for the bar, professional attainments and political pursuits, a few anecdotes, and something of their work on the Court. The compilation is based entirely upon published books and articles, and even here the author has not ranged far. Still the casual reader, whose familiarity with the names of the Chief Justices may not extend further than Marshall and Hughes, would derive some acquaintance with eleven different personalities.

Mr. Umbreit regards the Chief Justices as "the eleven men who on the whole have been most influential in the development" of the Court[1] and, by the sub-title, describes his work as "A History of the Supreme Court in Terms of Their Personalities." It may be said at the outset that the author has signally failed to achieve this purpose. Perhaps it could not have been attained in a single volume of essays. In reading the book—just as when one surveys the busts of the Chief Justices adorning the Supreme Court chamber—one feels that the list of the really great figures in the annals of the Court and the roster of its presiding officers have only a few names in common. "Jay wrote only one important opinion as Chief Justice * * * ."[2] Rutledge "never attended a single session" of the Supreme Court while Associate Justice[3] and wrote only one opinion during his momentary Chief Justiceship.[4] Ellsworth "wrote, all told, less than a dozen opinions for the Supreme Court and none of these was in an important case."[5] It is practicable to use Marshall and, to a lesser degree, Taney to carry the history of the Court from the Jefferson to the Lincoln administration. But thereafter the scheme becomes quite unsatisfactory. Giants such as Miller, Field, Bradley, and Harlan, Stone and Cardozo, are named incidentally as having been on the Court, but the reader is given no idea of what they were doing there. Doubtless they were lending a hand to the Chief Justice. Holmes and Brandeis are referred to several times, but without any serious attempt to explain their significance.

1. P. xiii.
2. P. 44.
3. P. 74.
4. P. 77.
5. P. 103.

There has been no effort to trace the major lines of constitutional adjudication. Thus in the discussion of *Gibbons v. Ogden*[6] we are introduced to the problem whether Congress had been given an exclusive or a concurrent power over interstate commerce. But the chapter on Taney contains no mention of the *Cooley* Case,[7] where the formula for its solution was announced. If anything has happened to the commerce clause since Marshall left it, the reader must eke out the information from such isolated statements as that White, C. J., agreed with the majority that Congress had no power to close the channels of interstate commerce to child-made goods. The result of the Slaughter-House Cases[8] is stated briefly but with no subsequent attempt to show what the Fourteenth Amendment came to mean in the American governmental system. *Lochner v. New York*[9] is dismissed in three lines as reflecting Fuller's static conception of constitutional law. The Granger Cases[10] are cited several times, with Waite's pronouncement that "For protection against abuses by legislatures the people must resort to the polls, not to the courts."[11] But *Chicago, M. & St. P. Ry. v. Minnesota*,[12] where the reasonableness of rates was made a judicial question, is never discussed.

Nor can it be said that even with the Chief Justices is their judicial philosophy set out in such a systematic manner as to afford any clear impression. Disparate matters are thrown together without rational unity. For example, in a single paragraph on Waite,[13] we are informed that the Chief Justice regarded government as an organism rather than a contractual status; that he held invalid some Republican legislation on reconstruction; that he dissented from Justice Miller's opinion in *United States v. Lee*,[14] which held that an action of ejectment would lie against an officer holding under claim of title in the United States; and that he also dissented where Miller spoke for the Court in *United States v. Rauscher*,[15] holding that, in the absence of convention to the contrary, a person could not be tried for an offense different from that for which he was extradited. Another paragraph[16] sets out to show how Mr. Chief Justice Hughes' liberality in regard to the delegation of power to administrative officers reached the breaking point in the *Schechter* Case[17] and *Panama Refining Co. v. Ryan*[18]—in the midst of which discussion it is recorded that he spoke for a unanimous Court in holding that the government has power to punish a citizen who refuses to return from abroad when summoned as a witness.[19]

6. (1824) 9 Wheat. 1.
7. Cooley v. Board of Wardens (1851) 12 How. 299.
8. (1873) 16 Wall. 36.
9. (1905) 198 U. S. 45.
10. (1877) 94 U. S. 113, 155, 165, 179, 180.
11. 94 U. S. at 134.
12. (1890) 134 U. S. 418.
13. Pp. 321-322.
14. (1882) 106 U. S. 196, 223.
15. (1886) 119 U. S. 407.
16. P. 492.
17. (1935) 295 U. S. 495.
18. (1935) 295 U. S. 388.
19. Blackmer v. United States (1932) 284 U. S. 421.

It is evident more than once that the author has given only an inattentive reading to a case on which he comments. But the most egregious blunder occurs in a passage[20] which announces that Mr. Chief Justice Hughes has shown an unexpected willingness to allow administrative officers to make judicial determinations. In support of this conclusion the opinion in *Crowell v. Benson*[21] is discussed. To quote, with necessary corrections in brackets:

> Shortly after he took his seat he was called upon to pass on the validity of the broad powers committed to administrative officials by the Longshoreman's and Harbor Worker's Compensation Act of 1927. That act was, in effect, a workmen's compensation act for laborers whose employment brought them within the admiralty jurisdiction of the central government. In the case which reached the Court the alleged employer claimed that the alleged employe was not employed by him. The deputy commissioner to whom the administration of the act was entrusted found that he was. The employer wished to re-try the question of employment in the district court. The opinion denied [affirmed] this right and upheld the constitutionality of the act [only after the section attempting to make administrative findings of fact conclusive had been emasculated in deference to the due process clause of the Fifth Amendment] * * * . Mr. Justice Brandeis, with whom Justices Stone and Roberts concurred, dissented on this very point of the finality of the commissioner's finding [because they did not agree that the employer was entitled to a trial *de novo*].[22]

The author does not mention the analogous case of *St. Joseph Stock Yards Co. v. United States*,[23] where the Chief Justice, speaking for five members of the Court, elaborately supported the proposition that due process requires an independent judicial review of the facts where rates fixed by an administrative authority are challenged as confiscatory.

In the chapter on Mr. Chief Justice Hughes the reader finds no intimation that the course of legislative and administrative action after 1933 resulted in any unusual demonstration of judicial power. Some New Deal cases are cited here and there, but with no suggestion that they were anything more than the ordinary run of the mill. The A. A. A. Case,[24] *Ashwander v. T. V. A.*,[25] *Carter v. Carter Coal Co.*,[26] *West Coast Hotel Co. v. Parrish*,[27] the *N. L. R. B.* cases,[28] and decisions upholding social security legislation[29] are completely ignored. Nor does the author so much as men-

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20. P. 491.
21. (1932) 285 U. S. 22.
22. Pp. 491-492.
23. (1936) 298 U. S. 38.
24. United States v. Butler (1936) 297 U. S. 1.
25. (1936) 297 U. S. 288.
26. (1936) 298 U. S. 238.
27. (1937) 300 U. S. 379.
28. National Labor Relations Board v. Jones & Laughlin Steel Corp. (1937) 301 U. S. 1; National Labor Relations Board v. Fruehauf Trailer Co. (1937) 301 U. S. 49; National Labor Relations Board v. Friedman-Harry Marks Clothing Co. (1937) 301 U. S. 58; Associated Press v. National Labor Relations Board (1937) 301 U. S. 103; Washington, V. & M. Coach Co. v. National Labor Relations Board (1937) 301 U. S. 142.
29. Steward Machine Co. v. Davis (1937) 301 U. S. 548; Helvering v.

tion the fight over the Court reorganization proposal, wherein Mr. Chief Justice Hughes' letter to Senator Wheeler played so important a part.

If a work on judicial biography is really to exhibit "a cross-section of American history cut at a new angle,"[30] it will have to be a much more powerful performance than is here exhibited.

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LAWYERS AND THE PROMOTION OF JUSTICE. By Esther Lucille Brown. New York: Russell Sage Foundation, 1938. Pp. 302.

As the fifth in its current series of studies of professional life in the United States, the Russell Sage Foundation trains its sociological microscope on the legal profession and reports the results of its impartial investigation of the data available. *Lawyers and the Promotion of Justice* deals with the relation of the legal profession to society in terms of the interest and activity of the organized bar in the promotion of justice. The picture, as those alert to the problems of organized bar activity will readily admit, is not entirely pleasant, nor is it altogether hopeless. The primary value of this study lies in the objective focus provided by the lay point of view; and yet this virtue contributes to the major weakness of the observations set forth by taking statistics at their face value and placing too great reliance on purely objective analysis of factual data that is not always complete, without going behind the results to inquire more deeply into the causes. This is not to say that the analysis of the data here presented is without worth or meaning, but simply to point out that a more penetrating study might have made possible a more faithful rendering of the subject at hand.

Take, for example, the observations of the author with regard to the treatment of grievance complaints by the organized bar. No one is more acutely aware of the shortcomings of bar grievance procedure than the conscientious bar association executive, and no one would be more willing to conduct vigorous prosecution of well-founded complaints than the average bar association committee on grievances. A principal reason for these apparent shortcomings is simply that bar organizations lack the funds necessary to carry on investigations and hearings of these complaints. Until those funds are made available, their work in these fields will continue to be restricted. In the major metropolitan centers these funds are frequently available, and it is in these areas that grievance prosecution reaches its greatest effectiveness.

The author, however, overlooks this obvious situation and blames the lack of adequate grievance machinery upon a supposed indifference of the bar to the social implications of continued unethical practices. Granted the hesitance of individual lawyers to prosecute their professional brethren, there is no such lack of social responsibility on the part of state grievance

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Davis (1937) 301 U. S. 619; Carmichael v. Southern Coal & Coke Co. (1937) 301 U. S. 492.

30. P. xiv.

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