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Book Review

The Justices of the United States Supreme Court, 1789-1969: Their Lives and Major Opinions. Edited by Leon Friedman and Fred L. Israel. New York, Chelsea House Publishers, in association with R.R. Bowker Co., 1971. 4 Vols., pp. xiv, 3,373, \$110.

The volumes under review bring together for the first time under one set of covers biographical sketches of all the Justices of the Supreme Court, from the first 5 appointees of President Washington, who comprised the first Court, through Chief Justice Burger—a total of 97 persons. Judicial biography has become increasingly frequent and popular during the last 20 to 30 years, focusing, naturally enough, upon Supreme Court Justices. Greater awareness of the subjective policy-making aspect of constitutional interpretation has broadened inquiry beyond traditional doctrinal analysis to a study of the background, experience and philosophy of the Justices themselves. There are in print full-length biographical studies of many Justices—Marshall, Taney, Daniel, Field, Miller, Holmes, Brandeis, Hughes, Sutherland, Black, Robert H. Jackson¹ and Frankfurter, to mention some. A recent noteworthy addition is the splendid volume on Justice Story by Gerald Dunne of the St. Louis bar.²

One advantage of the present work is the completeness of the coverage. Since it is unlikely that most of the Justices will ever be the subject of a full biography, the present volumes rescue these individuals from obscurity. Another advantage is the relative brevity of the sketches, which average about 15 pages each. This approach will have appeal for many persons who lack the time or interest for full-length books.

In addition to the biographical sketches, however, the volumes include one or more (in a few cases four) "representative" opinions written by each Justice. In my opinion, this part of the work could have been omitted altogether. Many of the opinions deal with dead issues, and few will interest anyone except a researcher, to whom the official reports are readily available. Of more utility would have been a listing of all the opinions written by each Justice, with citation and a one-sentence summary of the holding in the case. By omitting the opinions, the four volumes could have been reduced to two with no real loss, allowing their prohibitive cost to be halved. Another improvement would have been to include pictures of the Justices, where available.

If my count is correct, there are 37 authors altogether. Most of these are historians, with some practicing lawyers and a few journalists. The work load is unevenly distributed—one historian wrote 11 of the sketches, all

1. Another Mr. Justice Jackson, Howell E. Jackson of Tennessee, is lesser known. He sat from 1893 to 1895.

2. G. DUNNE, JUSTICE JOSEPH STORY AND THE RISE OF THE SUPREME COURT (1970), reviewed, Gilmore, 39 U. CHI. L. REV. 244 (1971).

dealing with Justices who sat in the first half of the 19th century. Seven law professors are contributors—Albert P. Blaustein and Roy Mersky on Bushrod Washington, Paul Freund on Holmes, Albert Sacks on Frankfurter, Philip Kurland on Robert H. Jackson, Norman Dorsen on the second Harlan and Jerrold Israel on Stewart. As would be expected, the sketches are not uniform in quality—some are excellent and some merely adequate. Some are largely descriptive and narrative, some are analytical. No editorial effort was made to allot more coverage to the more important Justices—the nonentities are accorded equal place with the giants—and this results in some really gross disparities.

Of special interest to Missourians are the studies of the four men appointed by President Truman to the Court—Chief Justice Vinson, and Justices Burton, Clark and Minton. The sketches of these men were all ably done by Professor Richard S. Kirkendall of the Department of History, at the University of Missouri—Columbia, who is one of the nation's outstanding authorities on the Truman period. As Professor Kirkendall points out, the appointments of Vinson, Clark and Minton were critical. Replacing Stone, Murphy and Rutledge, the three Truman appointees were instrumental in reversing for the decade of the 1950's the tide of judicial libertarianism which began to flow in the 1940's and which later reached the high-water mark in the 1960's. It is interesting to note that by that time Justice Clark was ready to join many of the Warren Court decisions, authoring several himself, including the seminal decision in *Mapp v. Ohio*.³

Also of special interest to Missourians is the sketch of Justice Charles E. Whittaker of Kansas City, an Eisenhower appointee who is the only Missourian ever to sit on the Court, and who retired in 1962 after only five years' service. The sketch of Whittaker was done by Leon Friedman of the New York bar, and to say that the picture is not a flattering one is putting it mildly.

A very interesting portion of the work is the Appendix prepared by Messrs. Blaustein and Mersky. This includes several statistical and informational charts on the Justices which set forth data on such matters as age, length of service, political affiliation, geographical and occupational background, family data, legal education, etc. These charts are a mine of fascinating if not vitally significant lore. One learns, for example, that the 14 Chief Justices had a total of 82 children—Marshall had 8—and that not until 1957 was the Court composed entirely of law school graduates. Included in the Appendix are two useful reference tables which list the cases which invalidated acts of Congress and cases overruled by later decision.

It is perhaps trite to comment on the continuity of the Court as an institution. It has been pointed out that the Court careers of seven Justices span the entire period from 1789 to the death of Justice Black. Reading

3. 367 U.S. 643 (1961).

the 97 biographical sketches in chronological order will not only inform the reader of the individual careers but will also yield a good historical overview of the Court as an instrument of American government. It must be added that a good history of the Supreme Court would accomplish the latter objective as well, for candor compels recognition that many of the Justices made no personal contribution of great and enduring significance.

There is a timeliness in the publication of this work just as Chief Justice Burger assumed office. Subsequent appointments by President Nixon and the possibility of more appointments of "strict constructionists" clearly presage a new era in constitutional history. It is extremely doubtful that the new Court will strictly construe the economic powers of Congress, and certainly there is no expectation that it will strictly construe the powers of the President. What is intended to be strictly construed are those parts of the Constitution which protect individual liberty against abuses of governmental power—principally the Bill of Rights and the due process and equal protection clauses of the fourteenth amendment. And so we may expect in the future an entirely different decisional trend from that of the Warren Court as judicial power is assumed and exercised by men with a different vision of what kind of country America ought to be.

Early in our history wise old John Adams made the perceptive observation that "I have always called our Constitution a game at leap frog." That statement is still true today.

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