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## Book Review of The Justices of the United States Supreme Court

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## BOOK REVIEW

THE JUSTICES OF THE UNITED STATES SUPREME COURT.  
EDITED BY LEON FRIEDMAN AND FRED L. ISRAEL. New York: Chelsea House and R. R. Bowker Co., 1970. 4 vol.

A biographical dictionary of the members of the Supreme Court of the United States is so obviously a reference work that it is a distinct surprise to find that this excellent compilation is the first of its kind. The fact is that American legal biographers and historians have produced few collected biographies comparable to Edward Foss' *Biographia Juridica* or Sir John Campbell's *Lives of the Chief Justices* in nineteenth century England. Nothing on the American judiciary has ever been published before this work, even on the scale of the *Biographical Directory of the American Congress* for the legislative branch.

Fortunately, the publication of this readable and authoritative set of volumes is one event in what now promises to be a series of publications providing new insights into the constitutional and judicial development of the United States. The prospective appearance later this year of the first volume of the documentary history of the Supreme Court, underwritten by the Oliver Wendell Holmes Devise of the Library of Congress, and edited by a team of scholars who have been at work on the project for the past decade, will certainly dovetail with the biographical focus on the members of the Court provided by the current books. Hopefully, other volumes in the Holmes Devise series will be following with reasonable consistency, providing a history which until now has been filled by Charles Warren's valuable but outdated *Supreme Court in United States History*.

Following this project, and even more eagerly awaited by scholars, is the documentary history of the ratification of the Constitution, an editorial venture which also has been underway for the past decade. This collection, sponsored by the National Historical Publications Commission and seeking to collate all known debates, pamphlets and other documents on the subject from the original thirteen states, will supplant the patchwork coverage of the subject in Jonathon Elliott's *Debates on the Ratification of the Constitution*, published more than a century ago.

Placing the Friedman-Israel work in the context of this prospective bookshelf of constitutional reference works is the best means of assessing its own significance and rank in this scholarly literature. It is safe to say that it will hold its own in qualitative comparison with any of the companion volumes which are soon to appear, and that no serious student of the subject can afford to be without this work or the documentary series which is now approaching publication. When all are available, they will comprise a whole library of basic information upon which a continuing progression of specialized studies on the Court and the Constitution can be based.

The four volumes of *Justices of the United States Supreme Court* contain, in chronological order, both biographical sketches and one to three of the representative opinions of each of the ninety-seven men who have sat on the high bench. The sketches are written by a number of legal scholars, historians and political scientists—*e.g.*, Herbert A. Johnson, associate editor of the Papers of John Marshall, who wrote the articles on Marshall as well as on two members of the pre-Marshall Court, William Cushing and Thomas Johnson. Irving Dilliard of Princeton, editor of one of the best symposia on Justice Hugo Black, wrote three sketches of earlier Justices—John Jay, Gabriel Duvall, and Samuel Chase (the only member of the court to be tried on impeachment charges).

Alpheus Thomas Mason of Princeton, biographer of Justices Louis D. Brandeis, William Howard Taft, and Harlan F. Stone, contributed articles on these individuals for the present collection. John P. Frank, compiler of other studies on Justice Black, is the author of the current article on the same person. Frank also prepared the articles on William O. Douglas and Frank Murphy. Samuel Hendel, one of the knowledgeable students of the Court under Charles Evans Hughes, is the author of the sketch on the only man to serve two separate terms on the high bench.

Among numerous other contributors are Professors Paul Freund of Harvard (on Oliver Wendell Holmes) and Philip B. Kurland of Chicago (on Robert H. Jackson). Several sketches are from the pen of Professor Arnold M. Paul of Michigan State University, whose own *Conservative Crisis and the Rule of Law* is a reference of fundamental importance to students of the late nineteenth-century Court.

In short, the sketches are the product of well-regarded professional scholars, and thus may be relied on to give an accurate portrayal of the

men whose personalities and judicial philosophies contributed fundamentally to the shaping of constitutional law from 1789 to the present. For it is not simply the convenient compilation of the biographies of these men into one series—each of them, after all, has been competently and often more comprehensively treated in the *Dictionary of American Biography*—but the writing of their biographies with a view toward illustrating their contribution to jurisprudence at their own point in history which is the ultimate value of this work.

In this respect, the editorial plan might have been improved upon by a background essay introducing each historical period, or perhaps each Chief Justiceship, in order to give the reader a frame of reference as to the issues in contemporary political and social life.

The politics of judicial selection—the factors affecting the Presidential selections, and the Senate reactions to the selections—might also have been more fully developed. They are, of course, intensively discussed in certain famous cases, e.g., the long debate over the appointment of Louis D. Brandeis; but others are treated somewhat more cursorily than might be desired. In this connection, too, one might have wished that the rejected nominations to the Court had been included, for the politics of their failure to win confirmation is certainly part of the story of the Court as a whole and of the jurists who have aspired to or been elevated to the seats thereon.

This might also have saved face on what is a conspicuously wrong guess at the close of the fourth volume: In an obvious effort to “beat the gun” and thus be up to date the moment the edition came from the press, the editors rushed in a brief sketch of Judge Clement E. Haynsworth. One supposes that, had there been time to learn the outcome of the Haynsworth candidacy, the editors would then have proceeded to delete the sketch; this reviewer submits, however, that the failure of the Haynsworth nomination, as well as that of Judge G. Harrold Carswell and, in 1930, that of Judge John J. Parker, tells us something very fundamental about the political factors bearing upon the selections for the bench. The two score rejected candidates, therefore, might appropriately have been included.

The concluding volume, in fact, does have a very useful feature at its end—a series of statistical tables, recapitulating some of comparative data on tenure of respective Justices, statutes held unconstitutional, cases overruled, and the like. A feature which would have been equally valuable, and perhaps could have followed the representative opinions

which complement each biographical sketch, is a complete list of all of the major opinions of each of the Justices.

What we do have, in these volumes, is significant data on every man who has sat on (or is presently sitting on) the world's most influential judicial agency. And this is not a mere encyclopedia, where a reader may look up the subject of one or another biography and leave the remainder to consult as need arises. Rather, this is a four-volume continuous story which may entertainingly and profitably be read from John Jay through Warren E. Burger. For those who undertake such a task, the result will be a far deeper understanding of the human forces which have shaped our jurisprudence over 180 years.

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