



A Supreme Court to Be Proud Of

BY LAWRENCE W. REED

In the closing months of the current U.S. Supreme Court session, pundits of every stripe will be assessing the impact of recent changes in the Court's composition. If the justices themselves are interested in how they measure up, there may be no better standard than the Court's record under Chief Justice Melville W. Fuller.

It's a sad commentary that in the mainstream media, courts are tagged with such confusing and superficial labels as "conservative" or "liberal"—terms loaded with political baggage and often manipulated by those with an ax to grind. I prefer more clarifying questions: Does a court interpret law or manufacture it? Does it apply the Constitution according to what its text says or is it willing to abandon it to accommodate current whims, trendy ideologies, or alleged "needs" of the moment? Were our liberties more or less secure after it did its work?

The Fuller Court, encompassing a parade of justices who came and went during Fuller's 22 years as chief, was not consistent on all counts. But unlike any subsequent Court, it stretched neither the law nor the Constitution beyond what the words say. When it found law to be in conflict with the Constitution, it usually sided with the latter because liberty under the rule of law was its highest priority. It upheld the importance of a limited federal role, strengthened the role of the states in our federal system, and defended contract and property rights against a rising tide of egalitarian agitation.

Melville Weston Fuller was born in Augusta, Maine, in 1833. Both sides of his family were staunch Jacksonian Democrats—hard money and a small federal government being foremost among the principles they embraced. After graduation from Bowdoin College in 1853, Fuller was admitted to the bar in 1855. A year later

he started a successful law practice in Illinois, where he would reside until his elevation to the Supreme Court by President Grover Cleveland in 1888.

As a one-term Democratic legislator in Illinois's lower house in 1862, Fuller condemned the Lincoln administration's arbitrary arrests, suspension of habeas corpus, and other wartime indiscretions as assaults on liberties guaranteed by the Constitution. He opposed both secession and slavery, but didn't believe in quashing dissent and due process to vanquish them. As a Democratic activist and adviser to candidates for national office, he opposed protectionism as special-interest legislation that hurt consumers. He decried irredeemable paper money as a form of theft and fraud, even voting to forbid the Illinois treasury from receiving greenbacks as payment for state taxes. He scrutinized public spending for waste and favoritism, once earning the wrath of his colleagues by publicly opposing (unsuccessfully) a bill to give gold pens to each member of the Illinois House.



Melville Fuller (1833–1910)

In what biographer Willard L. King terms "the greatest public speech of his career," Fuller seconded the 1876 nomination of Indiana's Thomas Hendricks for president in unmistakably Jeffersonian terms: "[T]he country demands a return to the principles and practices of the fathers of the Republic in this the hundredth year of its existence, and the restoration of a wise and frugal government, that shall leave to every man the freest pursuit of his avocation or his pleasures, consistent with the rights of his neighbors, and shall not take from the mouth of labor the bread it has earned."

Lawrence Reed (reed@mackinac.org) is president of the Mackinac Center for Public Policy (www.mackinac.org), a research and educational institute in Midland, Michigan.

The 1876 Democratic Convention nominated Samuel Tilden instead of Hendricks, but many Democrats around the country remembered Melville Fuller. One of them was Grover Cleveland. The last Jacksonian Democrat to hold the highest office, Cleveland wanted a chief justice with an unblemished record of integrity who not only shared his limited-government philosophy but was also a good business manager who could fix the three-year backlog of cases at the high court.

Fuller, 55, who had argued many cases before the Supreme Court over a 16-year period, was precisely what Cleveland was looking for. The President admired the fact that in his visits and meetings with Fuller, the Illinois lawyer had never asked him for anything, even turning down three high posts within the administration. And he had taken considerable public heat in defending the President's hard-money stance and his numerous vetoes of spending bills. To thwart a possible decline by Fuller, Cleveland announced his nomination before Fuller even gave his consent. He was literally dragged into an office for which he didn't lust but in which he quickly distinguished himself as one of its most able and important holders.

Fuller charmed his colleagues on the Court with his good humor, thoughtful scholarship, and remarkable capacity for friendly persuasion and mediation. He began a custom still in use today of requiring each justice at the start of a working day to shake the hand of every other justice. He resolved the Court's crowded docket.

The Fuller Court should be most admired, however, for its jurisprudence. Certainly Americans who share the Founders' vision can find much about it to applaud. Fuller himself was at the center of it, often arguing for the majority.

When freedom of commerce was at issue, the Fuller Court did not carelessly allow governmental interference. For example: Prohibitionists in Iowa secured passage of a law forbidding the sale of an interstate shipment of liquor, but the Court, with Fuller himself writing the majority opinion, declared it an unconstitutional violation of the Commerce Clause.

Restricted Sherman Act

In other commerce-related rulings, the Fuller Court restricted the application of the almost incoherently broad language of the Sherman Anti-Trust Act. Regulating the terms of interstate commerce and transportation, as the Constitution provided for, was one thing, but federal meddling in manufacturing and production was quite anathema to Fuller and most of his colleagues. It was left to later Courts to distort the Commerce Clause and justify federal regulation of virtually every corner of the economy.

The Fuller Court staunchly defended the sanctity of contract by treating it, in the words of James W. Ely, Jr., a Vanderbilt University law professor and biographer of the Court, "as the controlling constitutional norm." It resisted

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attempts at congressional price- and rate-fixing. It once unanimously threw out a Louisiana law that prohibited a person from obtaining insurance from a company that was not qualified to do business in that state. Its feelings in this regard were summed up in another ruling in which the majority declared that "The legislature may not, under the guise of protecting the public interest, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations." Likewise, the Court was far

friendlier to property rights in eminent-domain cases than the recent Supreme Courts.

One of the finest moments of the Fuller Court was its rejection in 1895 of a federal income tax passed the previous year. Pleas that Congress needed the money, class warfare, and egalitarian claims against other people's wealth carried little weight with this Court. The Constitution forbade direct taxation of that kind, and that was enough to ditch it.

Melville Weston Fuller never succumbed to the temptations of power and ego or discovered vast new constitutional duties for the Washington establishment to inflict on the people. He and most of his colleagues actually took seriously their oath to defend the supreme law of the land, a notion that seems sadly quaint in an age where sweeping judicial activism is a mainstream law-school principle.

