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HUGO L. BLACK, A STUDY IN THE  
JUDICIAL PROCESS, by Charlotte Williams. The  
Johns Hopkins Press, Baltimore. 1950. \$3.50.

Fowler V. Harper

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This is no great shakes of a book by any accepted library or scholarly standards. And yet, in the light of its obvious purpose, it is an entirely creditable piece of work. The biographical part leaves almost everything to be desired. To be sure, the sub-title of the book indicates that it is "a study in the judicial process." Nevertheless, the author realizes that judges make the law and she must know that judges are made by a combination of factors, including their environment, training, experiences, and background, most of which, in the case of Mr. Justice Black, is ignored in this book. It is no more possible to write a "study of the judicial process" by considering the work of a single justice except against the background of the man, than to write a biography of the man without considering his behavior as a justice. The influences, experiences and other factors which have made Justice Black what he is are given scant attention in this book.

When the author comes to Black's achievements on the bench, she is at her best. Her best is pretty good, too, when she discusses the social, economic and political issues involved in the cases. To be sure, she is occasionally, but not often, technically inaccurate. For instance, she cites the *International Shoe Company* case<sup>1</sup> as a commerce clause issue. It is true, the case did involve a point under the commerce clause, but it was so trivial that it was disposed of by the Court in one sentence.<sup>2</sup> Again, it is pretty clear that she is a bit over her head when she gets into the full faith and credit clause cases,<sup>3</sup> disposing of them all by the simple explanation that Justice Black's attitude was determined by his concern for the "little man." Actually, if there is one general criticism of this part of Miss Williams' book, it is that she oversimplifies everything. Justice Black is a good man, fighting for all the little people who are not palpably wrong, subordinating legal technicalities and precedents, as though they had no proper function, to the ends of democracy as he sees them. He is against

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1. *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

2. An Act of Congress expressly covered the point (2b U.S.C. 1606) and the Court disposed of the issue: "It is no longer debatable that Congress, in the exercise of the commerce power, may authorize the states, in specified ways, to regulate interstate commerce or impose burdens on it." 326 U.S. 310 (1945).

3. For example she deals with *United Commercial Travellers v. Wolfe* (331 U.S. 586 [1947]) and *Williams v. North Carolina* (325 U.S. 226 [1945]) without comment on the fact that the one case dealt with full faith and credit to a statute of a sister state only incidentally and indirectly while the other dealt with a judgment of a sister state.

the big interests and for the little ones. He is for popular government when it pinches the rich but he is against it when it fails to give the underprivileged individual a fair break.

On the other hand, this author, in spite of her easy generalizations, discloses scrupulous intellectual honesty and critical discrimination in her treatment of the judicial data. She picks her subject's strong points and his weak ones. If she tends, pardonably, to stress the former, it cannot be said that she fails to reveal the latter. She adequately deals with Black's devotion to the Bill of Rights in cases involving the rights of labor but does not fail to comment on his dubious search and seizure opinions, his tragic position on the internment of the Japanese-Americans and his ambivalent record in church and state. Although her own sentiments and reactions to her subject are not concealed, her treatment of his decisions is decently objective.

The political issues involved in the career of Justice Black are also treated with the utmost candor. The Ku Klux Klan episode and the Jackson-Black quarrel are handled in a manner which conforms to the best reportorial traditions. She presents the facts, so far as they are known, without apology or defense. It is true, she discloses nothing that informed persons do not already know. But she presents them in the context of Justice Black's record and personality which contributes something of value to the objective of her book.

This book would have been a better one if Miss Williams had read the best thing yet published about Justice Black, written by my colleague and former law clerk for Black, John P. Frank.<sup>4</sup> The book would have been better had she talked to the justice and consulted sources other than the New York Times, the Herald Tribune, Time and Newsweek. It would have been better if she had not "written down" to her readers even though she obviously was writing a popular book. Nevertheless, I think that Miss Williams has done very well. Her work may bring to many people an awareness of the greatness of Justice Black in the role he has played in making our country what it is today.

As for the Supreme Court of the United States, that is another story. It and its decisions will go far to make our country what it will be tomorrow and it's anybody's guess what that will be. Jus-

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4. Mr. Justice Black: The Man and His Opinions. Curiously, the author cites Frank's article on martial law in Hawaii but apparently she had never heard of his book on Black or his series of articles in the University of Chicago Law Review on the Supreme Court.

tice Black began his Supreme Court career in dissent, and it looks as though he would end it the same way. But dissents are valuable. They have a habit of never dying even when majority opinions fade away. In any event, whatever truth there is in them does not die. And, although he is certainly not infallible, there is great truth in Justice Black's dissents of which, unfortunately, there are many.

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