



2021

“Destructive to Judicial Dignity”: The Poetry of Melville Weston Fuller

Todd C. Peppers

Washington and Lee University School of Law, pepperst@wlu.edu

Mary Crockett Hill

Roanoke College, mchill@roanoke.edu

Follow this and additional works at: <https://scholarlycommons.law.wlu.edu/wlufac>



Part of the [Law Commons](#)

Recommended Citation

Todd C. Peppers & Mary Crockett Hill, “Destructive to Judicial Dignity”: The Poetry of Melville Weston Fuller, 46 J. Sup. Ct. Hist. 148 (2021).

This Essay is brought to you for free and open access by the Faculty Scholarship at Washington and Lee University School of Law Scholarly Commons. It has been accepted for inclusion in Scholarly Articles by an authorized administrator of Washington and Lee University School of Law Scholarly Commons. For more information, please contact christensena@wlu.edu.

“Destructive to Judicial Dignity”: The Poetry of Melville Weston Fuller

Todd C. Peppers and Mary Crockett Hill

Introduction

In the spring of 1888, President Grover Cleveland nominated Melville Weston Fuller to be the next Chief Justice of the Supreme Court. Fuller’s nomination was met with a flurry of peculiar articles in the Democratic-leaning *New York Sun*. One set of articles focused on Fuller’s mustache, arguing that the Court was not ready for modern styles of facial hair;¹ the second group of articles asserted that Fuller was a mediocre amateur poet and, as such, was not fit to sit on the high Bench.

Although there have been many debates over the relevant qualifications for a Supreme Court nominee, Fuller’s nomination was the first—and last—time in history where the quality of a nominee’s verse was debated in national and regional newspapers. In this essay, we weigh the merits of two claims leveled against Fuller: (1) he was a mediocre poet, and (2) his penchant for verse colored and polluted his judicial opinions. As judge and jury, we conclude that neither charge

is supported by a preponderance of the evidence.

Fuller as Poet

Melville Weston Fuller was born on January 11, 1833, in Augusta, Maine. Fuller’s parents divorced when he was quite young, and he and his older brother Henry were raised by his mother, Catherine. Fuller biographer Willard L. King describes Catherine as a “tiny woman of intense verve” who “fought like a tigress to secure an education for her sons.”² Catherine doted on her youngest son, “Melly.”

At a young age, “books soon became Melville’s chief interest in life.”³ Fuller, his brother, and his mother lived with his maternal grandfather, himself once the Chief Justice of Maine’s Supreme Judicial Court, and Fuller both devoured his grandfather’s personal library and started his own. King describes Fuller as a “methodical little boy” who was also “fussy”: “One of his early

books [in his library] contains this inscription in his childish handwriting 'Whoever reads this book let him not think I bent the leaf as I did not. M.W. Fuller.'"⁴

Fuller's first documented foray into poetry took place when he was sixteen years old and the president and official poet of a local literary society called the "Dialectic Club." Quoting from the club's catalogue, King writes that the club was "'founded for mutual improvement' but was particularly devoted to 'exercises in discussion and composition.'"⁵ King does not include any poems written by Fuller during his membership in the club but notes that Fuller took part in the club's theatrical performances, including playing the parts of Macbeth and Brutus in different productions.

In the fall of 1849, sixteen-year-old Fuller enrolled at Bowdoin College. His interests in writing continued, and Fuller joined the Athenaeum Society, where he honed his debating skills, and wrote for the local newspaper. The Athenaeum Society boasted of an impressive library of over five thousand books, and King writes that Fuller checked out more of these books than did any other student.

As for Fuller's talents at poetry, King is circumspect:

Of his poetry in college the less said the better, although some of his later poems had more merit. Most of his college poems were odes written for class dinners at the end of the year...[h]e spent the rest of his life trying to live down the reputation as a poet that he thus gained among his classmates.⁶

Of the adult Fuller's skills as a debater, King is kinder. "His extemporaneous style [of debate] far surpassed his prepared speeches in effectiveness," King writes. "His written style had been spoiled as a medium of com-

munication by overindulgence in the classics and Carlyle."⁷

Shortly after his graduation from Bowdoin in the fall of 1853, Fuller suffered the loss of his beloved mother. Catharine's premature death meant that she did not get to see her son enroll in Harvard Law School in 1854. As Fuller struggled with his grief, he poured his feelings into a poem entitled "Remorse."

I may not flee it! in the crowded street,

Or in the solitude by all forgot,

'Tis ever there, a visitant unmeet,

Deep in my heart, the worm that dieth not.

There is no consolation in the thought

That from her lips no chiding words were spoken,

That her great soul on earth for nothing sought,

Toiling for me until its chords were broken.

Too late, the knowledge of that deep devotion!

Too late, belief of what I should have done!

Chained to my fate, to suffer the corrosion

Of my worn heart until life's sands are run.

Why should I weep? why raise the voice of wailing?

Why name the pangs that keep me on the rack?



The New Chief Justice as a Poet.

The class of 1853 at Bowdoin College contained a young poet destined to sustain intimate personal and political relations with a certain Man of Destiny, of whose existence he never dreamed until at least thirty years later. MELVILLIUS WESTON FULLER was writing odes to the silver moon that shone upon the campus, and sonnets to the red-headed girls of Topsham, at the time when STEPHEN G. CLEVELAND was braving the panther's howl at Fayetteville. It has been generally but erroneously stated that EDVARDUS JOHANNES PHELPS was likewise a Bowdoin poet, and a classmate of MELVILLIUS. That is not the fact. EDVARDUS first wooed the Muses in the classic shades of Middlebury, Vermont; and he was in politics before MELVILLIUS was out of PALEY. Nevertheless, Destiny has had her eye on the three youths, and at last she brought them together.

Melville Weston Fuller in 1853, the year he graduated from Bowdoin College. Bowdoin celebrated Fuller's collegiate poetry—mostly odes written for class dinners—when he was appointed chief justice in 1888.

Or prayers or tears alike were un-
availing,

She has gone hence! I cannot call
her back.

And I alone must wander here
forsaken—

In crowded street or in secluded
spot,

From that sad dream, oh never more
to waken

Or cease to feel the worm that dieth
not.

A year later, Fuller reached again for his pen in a time of personal turmoil. While a junior at Bowdoin College, Fuller became engaged to a seventeen-year-old local beauty named Susan Howard Robinson. King characterizes the relationship as “stormy,” adding that Robinson repeatedly broke up with Fuller because of family pressure. After Robinson permanently ended the engagement in 1854,⁸ an emotional Fuller channeled

his sentiments into verse. As one might imagine, Fuller's “Dost Thou Remember!” mixes the sweet adoration of young love with the bitterness of finding oneself jilted. A sense of moral righteousness thrums through the poem: “Dost though remember, when... vows were uttered... / (Vows I have kept, would it were so with thine!)”

Fuller's early poems adhere to the standards of his day. They are conventional in both form and content—rhythmically regular, predictably rhymed, and thematically normative. A quick scan is enough to reveal many of the stylistic hallmarks of popular 19th century verse: ardent exclamations (“Ah, blessed hour,” “oh nevermore”), metrical elisions (“o'er,” “mem'ry”), archaic pronouns (“Dost thou,” “thine eyes”), syntactic inversions (“her great soul on earth for nothing sought,” “at thy shrine a worshipper I bow”), random personifications (“sweet Past,” “Affection's potent spell”), clichéd phrases (“golden days of yore,” “life's sands are run”),⁹ and Biblical allusion (“the worm that dieth not”).¹⁰

Yet, while Fuller's poems might not be considered stylistically innovative or

philosophically profound, there is value in what may be an expression of genuine emotion, first at the loss of his mother and then at his betrothed's disavowal. To the contemporary ear, his poetry might be considered best when it is least conventional. His stark realization after his mother's death that "I cannot call her back" is touching in its simplicity. Likewise, his admission that he still admires the young woman who spurned him shows, if nothing else, an estimable vulnerability.

In the spring of 1856, Fuller—now a practicing Attorney—moved to Chicago. He would spend the next thirty years building his law practice while dabbling in Democratic politics—he was heavily involved in Stephen A. Douglas' 1858 senatorial campaign against Abraham Lincoln—as well as continuing his dalliances in the literary life. Within a few years of arriving in his adopted hometown, Fuller was publicly flexing his poetic muscles—and sharing them with the world.

In August 1859, the *Chicago Press and Tribune* published a poem that "Melville W. Fuller, Esq. of this city" gave at the Bowdoin College commencement, presumably earlier that spring. The brief poem took on the hypocrisy of a churchgoing character named "Flora McFlimsey": it opens, "To no religion are her feelings true; / She goes to church because her neighbors do"; and closes in much the same vein, "She smiles at hell—and thinks about her bonnet."¹¹

Arguably, it is an odd poem to read at a college commencement. But Bowdoin College must have liked the poem, for it would again turn to Fuller to share his literary talents with his fellow alums, this time asking him to read his original poetry at meetings of the college's Chicago alumni chapter,¹² but we do not know the topic of the poem at this return engagement.

Approximately a year later, the *Chicago Press and Tribune* reported that Fuller would be reading his poem "Borrowed Light" at an upcoming meeting of the Young Men's

Association. The *Press* and *Tribune* informed its reader that "[w]e are informed that Mr. Fuller's poem is humorous, and we know that that there is nothing so health-giving as a good laugh and exercise."¹³

At a function celebrating the anniversaries of the creation of University of Chicago's literary societies, Fuller was called upon to give a poetry reading. Although we do not know anything about the poem itself, the *Chicago Daily Tribune* rated it "a very credible performance." Reported the *Tribune*: "Mr. Fuller's appearance on the stage was pleasing—his voice without being loud was clear and distinct—his confidence unbounded. The poem though lengthy was well received, from the numerous happy hits it contained gleaned from the wide field over which it traversed."¹⁴

Over the next twenty years, Fuller's reputation as an Attorney grew and he found himself becoming a member of Chicago's social elite. In 1877, Fuller was invited to join the newly created Chicago Literary Club. Fuller became a regular attendee of its weekly meetings, and King writes that the club's members called Fuller "Mel" and "loved his shining face as much as they admired his brilliant speech."¹⁵ A few years later, Fuller started writing pieces for the literary review magazine *The Dial*. In fact, Fuller's reputation as a man of letters sparked invitations to speak at prominent events, including a speech before the Illinois State Bar Association in January 1879 which lasted a staggering three hours.¹⁶

There are several examples of Fuller also applying his talents to lyric writing as well as poetry. In the 1868 presidential campaign, Fuller anonymously penned several campaign songs in opposition to Grant's run for the White House. One of the songs went as follows:

Hurrah for that glorious hero, Grant!

The bondholder's choice is he;

He'd speak if he could, but luckily
he can't

And the masses won't know what a
regular plant

A "glorious hero" can be.¹⁷

While a long-life Democrat, Fuller was called the "non-partisan poet" by the *New York Tribune* because he helped draft a campaign "ode" for Zachariah Chandler, the Republican Senator from Michigan. The *Tribune* reported that "Mel" Fuller was recruited by a young men's Republican club to write a campaign poem to be read at an important political rally: "I am assured that Mr. Fuller appreciated the compliment. Though a democrat, he was not a bigoted one, and he admired the strong personality of Old Zach." The only condition was that the authorship of the poem remained secret.

He gratified his republican friends by handing them an ode of the most complimentary character. If any fault could be found, it was that the verses were perhaps too smooth to fit the rugged subject...[t]he poetry, in the language of one of the participants, was "shot off" at the proper time and was one of the best features of the reception.¹⁸

Fuller as Chief Justice

In the spring of 1888 President Grover Cleveland, a long-time friend of Fuller's, nominated him to be Chief Justice. The first sign that the *Sun* would be offering unusual commentary regarding the Fuller nomination was on May 3, 1888. In an article entitled "The New Chief Justice as a Poet," the *Sun* proposed that President Grover Cleveland should have rested the nomination on a comparison of the quality of Fuller's poetry versus the poetry of Fuller's alleged rival for the nomination, Edward John Phelps. A



"Mel" Fuller in 1867 as a Chicago Attorney and real estate speculator. A decade later he would be invited to join the newly created Chicago Literary Club.

Vermont native and a graduate of Middlebury College, Phelps was the current Minister to the United Kingdom, and his nomination was championed by Vermont Senator Edmunds. King suggests that Phelps' advanced age (66), combined with the fact that the Supreme Court already had a Justice from New England (Horace Gray), doomed his potential nomination.¹⁹

Phelps had also written light verse as a college student. Since the President had not taken their literary skills into account, the *Sun* announced that it would do so.²⁰

After praising itself for rescuing the men's poetry "from oblivion," the *Sun* noted that the amateur poets did not "cultivate the same field of the Muses." "The poetical taste of the new Chief Justice seem to incline the elegiac, the sonorous, the not too profoundly philosophical vein which renders some of LONGFELLOW'S poems so popular and commonplace," while the poetry of Phelps "is far more individual. He is a humorist,

a satirist, lashing the follies and chastising the nuisances of every-day life with sharp, snappy, and sometimes slightly profane lines that have the crack of a whip."²¹

The specific poems scrutinized by the *Sun* were a recent poem written by the Chief Justice for a memorial service in honor of former President Ulysses S. Grant and an undated poem by Phelps entitled "Waiting at Essex Junction," written about a weary traveler waiting at a station for a late train in the small village of Essex Junction, Vermont.

The *Sun* printed the opening lines of Fuller's poem about the fallen Grant:

Let drum to trumpet speak—
The trumpet to the cannoneer with-
out,
The cannon to the heavens from
each redoubt,
Each lowly valley and each lofty
peak,
As to his rest the great commander
goes
Into the pleasant land of earned
repose.²²

Intrigued by the article, a few days later the *New York Herald* sent a correspondent to see Fuller and obtain a copy of the full poem. Although Fuller gave the reporter a copy, the future Chief Justice seemed reluctant. "I really don't know that I want to be known as a poet," Fuller told the *Herald* reporter. "It's rather destructive to judicial dignity." The reporter observed that Fuller "smiled in rather a quizzical way" when uttering the words. Nevertheless, Fuller handed over the poem,²³ which goes on to portray Grant as "the grand soul of true heroic mould." The poem culminates with a rousing bid for his immortality: "Fame, faithful to the faithful, writes on high, / His name as one that was not born to die."

The *Sun* then considered the first stanza of Phelps' poem about Essex Junction:

With saddened face and battered hat
And eye that told of blank despair
On a wooden bench a traveler sat,
Cursing the fate that brought him
there.
Nine hours, he said, we've lingered
here,
Waiting for that delusive train
Which always coming, never comes.
'Till weary and worn, sad and for-
lorn,
And paralyzed in every function —
I hope to hell
Their souls may dwell
Who first invented Essex Junction.²⁴

Despite the fact that Phelps' poem was "shocking as is its profanity" (the poem contained the word "hell"), the *Sun* proclaimed that "Essex Junction" was "the product of genius" and could not have been matched by Fuller even if he "had spent half a lifetime in weary waiting upon the platform at Essex Junction."

Concluded the unnamed reporter:

[I]f the nomination had been destined for the better poet of the two, and if MR. CLEVELAND had been a competent judge of those qualities of verse which unerringly indicate, to such as can be read them al-right, the mental processes, habits of mind, and individual characteristics of the author, the great judicial prize of the republic would have gone to EDVARDUS, and not to MELVILLIUS.²⁵

The contrast between these two poems is hardly as extreme the *Sun* suggests. On one hand, we have a somewhat milque-toast eulogy for a politician that the eulogizer opposed during his lifetime, and on the other, a jaunty complaint about train delays. One might argue that neither is “genius.” True, the Phelps poem does create some interesting rhythms that overall have a pleasing effect, but it certainly does not merit the reporter’s comparison of Phelps to Matthew Arnold, a poet who had generated an outstanding and esteemed body of verse up to the point of his death the month before. By most standards, neither Fuller nor Phelps would be labeled a “significant poet”; instead, it might be said that they—like so many of their contemporaries—made significant space in their lives for poetry.

The *Sun*’s love affair with Phelps was short-lived. A year later, the *Sun* returned to the subject of E.J. Phelps. According to the *Sun*, Phelps had been an obscure figure whose intellectual capacities were assumed but not proven; in fact, to date the only interesting thing about Phelps had been his authorship of “Essex Junction.” That had all changed, reported the *Sun*, with the publication of an essay that Phelps wrote on modern society, a truly fatal mistake. “Mr. Phelps might have passed into history as an Olympian intelligence,” said the *Sun*, but his essay revealed “sloppy English,” “sleazy philosophy,” and “superficial criticism.” In short, Phelps was a fraud: “When he fancies that he is thundering he is only squalling. The intellect which he lets loose is hardly leonine—porcine is the more exactly term.”²⁶

It might be worth pausing for a moment and ask why the *New York Sun* was fixated on Fuller’s verse. The owner and editor of the *Sun* was Charles Anderson Dana. Both Dana and his newspapers were supporters of the Democratic Party, although bad blood existed between Dana and President Cleveland, blood that spilled over onto the editorial pages of the *Sun*.²⁷ There is no historical evidence,

however, that Dana had a similar vendetta against Fuller. Perhaps the Chief Justice was simply a tool that Dana could use to broaden his attacks against the Cleveland administration.

Fuller’s status as a poet caught the attention of other newspapers. The *New York Tribune* described Fuller as “a man of decided literary tastes” and a “bibliophile” who “in his leisure moments sometimes writes poetry.”²⁸ Of Fuller’s penchant for poetry, the *Tribune* predicted that Senators “will probably overlook when they come to judge of his fitness for Chief Justice.”

In an interview with the *Saint Paul Daily Globe*, Fuller supporter and congressman Frank Lawler praised Fuller for his literary talents:

I see by the papers that considerable attention is given to the poetical genius of the new Chief Justice. Well, it don’t surprise me in the least. Chief Justice Fuller is a mighty bright man, and no doubt would have made a name, if he has not already done so, in the field of poetry. He has written a good deal of poetry but I don’t think that fact ought to detract from his legal ability.²⁹

When the reporter humorously asked Lawler if President Cleveland took into account Fuller’s “close relation with the muses” in making the selection, Lawler responded that the President “appointed Judge Fuller because of his fitness for the position and his legal learning.” Lawler added, however, that “it would have been a most excellent selection even if his poetry had been taken in consideration...[h]is poem on ‘Grant’ is a magnificent thing, and is conclusive that he has the true poetic afflatus.”³⁰

Shortly after Fuller’s confirmation in July 1888, the *Sun* published a short warning. “The republic is opportunity, Chief Justice Fuller. But you had better give up poetry



Edward John Phelps (above), a Vermont native serving as Minister to the United Kingdom, was Fuller's rival for the Supreme Court vacancy. President Cleveland chose his friend Fuller for the seat, but the press declared Phelps' poetry to be superior.

now.”³¹ Another shot was fired at Fuller after the Chief Justice observed, likely in reference to his new position, that he would “have to tread the wine-press alone.” “Let Mr. Fuller cheer up,” fired back the *Sun*. “[H]e will not have to tread the wine-press alone. He will have the assistance of eight gentlemen, every one of whom weights, in pounds avoirdupois, from fifteen to one hundred percent more than Chief-Justice Fuller.”³² With this latter comment, the *Sun* was comparing Fuller's short nature and small frame to the brawny build of Justices like Horace Gray and John Marshall Harlan.

Fuller was not the only Supreme Court nominee whose poetry caught the attention of journalists. After David J. Brewer joined the Supreme Court in 1889, his weakness for verse was periodically discussed in the newspapers. “Both Justice Brewer and Chief Justice Fuller wrote poetry in their earlier years,” reported the *Emporia Republican*. “This shows what obstacles men can overcome when they are made of the right stuff.”³³ The *Evening Journal* stated that Brewer was “alleged” to have been a poet

in his young days, as if Brewer had been charged but not convicted of the crime of writing poems.³⁴ Fortunately for Brewer, the newspapers did not obtain and dissect copies of his poems.

In the years following Fuller's appointment to the Supreme Court, the *New York Sun* continued to be fixated on Fuller's poetry. Shortly after he took the center chair, the *Sun* reported on Fuller's poems “Remorse” (discussed above) and “Bacchanalian Song.” The fact that “Remorse” was written about the death of Fuller's beloved mother did not deter the *Sun* from sarcastically dissecting his talents. The newspaper reminded its readers that the two poems came from an early period in Fuller's life, before “the cares of an increasing law practice began to narrow and harden his imagination, and to dull the sense of melody that had responded so sensitively to the whispering pines.”³⁵

The *Sun* did not reproduce either poem, but two years later the full text of “Bacchanalian Song,” written in 1856 when Fuller was a struggling lawyer, appeared in several newspapers. The poem opens with a conventional enough comparison between “wine in our goblets” and the “the cup of life,” but it soon turns to imagery that riled Fuller's critics:

The flag at our mast-head is pleasure's own banner,

And to the breeze boldly its broad folds we fling;

Which each stout-hearted sailor will raise the hosanna

To ivy-crowned Bacchus, our jolly-souled king.³⁶

The *Sun* took offense at Fuller's use of religious terminology in a poem about alcoholic spirits, specifically that “in order to meet the exigencies of rhyme he should dare so far as to address ‘hosannas’ to the heathen deity Bacchus.”³⁷ Oddly, the same line drew the ire of the *Saint Paul Daily Globe* two years later, when it told its readers that the

poem “contains one line grossly offense to good taste.”

The Chief Justice urges his compassion in revelry to ‘raise the hosanna to ivy-crowned Bacchus, our jolly-souled king’—a sentiment not only impolitic, as introducing monarchical notions in a free republic, but outraging the sense of propriety by the use of a word restricted to scared themes. The circumstance that the Chief Justice needed hosanna to rhyme with banner is no valid excuse.³⁸

When Fuller’s friends put his name forward as a candidate for the 1892 presidential election, the *Sun’s* interest in his poetry was renewed. According to the *Saint Paul Daily Globe*, the *Sun* had located “a spirited bacchanalian, the existence of which had not been suspected. We hasten to lay this new Fuller poem before the country, with the assurance that we have irrefutable evidence of its authenticity.”³⁹

Oh, bright is the gleam of the silv’ry
stream,

As it leaps from its native mountain;

And sweet to the taste, in the desert
waste,

Is the draught from the pure, cool
fountain;

But sweeter than this, with its tran-
sient bliss,

To me in the desert roaming,

And brighter still, than the sparking
rill,

Is the wine in our goblets foaming.

Chorus: Then fill each glass as the
moments pass,

Let the red wine mantle high!
As pledge we here, to mem’ry
dear,
The pleasant years gone by.

Oh, hard is the strife of the battle of
life,

To the solider youth contending!

Full soon may fail e’ven the plated
mail,

He fancied himself defending,

Yet we’ll on to the fight with hearts
so light,

At the stirring trumpet’s tone.

And never will yield the battle field

‘Till victory is our own.

Chorus: Then drink to-night, with
hearts so light,

To the untried world before us,

And gayly laugh, as the wine we
quaff,

And join in the merry chorus.⁴⁰

“As no person with an ear for music need to be informed,” comments the *Globe*, “this bacchanalian by the Chief Justice is intended to be sung to the well-known air of ‘Sparkling and Bright.’”⁴¹

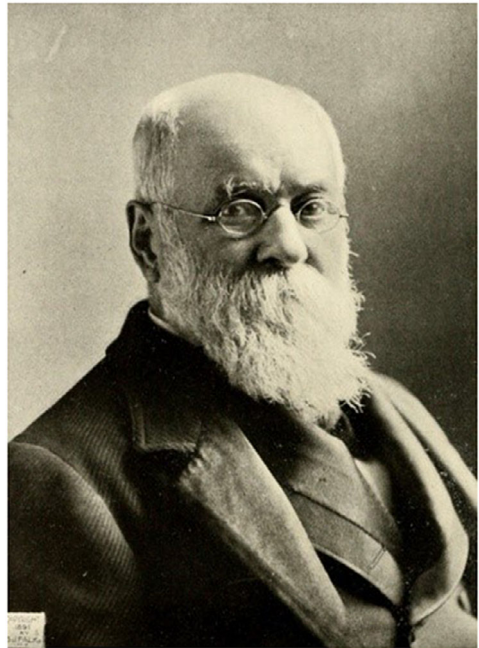
Cognizant of the efforts to advance Fuller’s candidacy, the *Globe* tartly observed that Fuller’s “promoters,” include Minnesota businessman John F. Meagher, “have exactly what was wanting, a song melodiously available for campaign purposes, and at the same time a declaration of the candidate’s personal opinions on the liquor question.” The poem also let the public know that Fuller “prefers a red wine charged with carbonic acid to the purest and coolest samples of Adam’s ale. Of course, this sentiment will have to be

modified for campaign circulation in Maine, Kansas and a few other benighted localities." The *Globe* made one promise to its readers: before Fuller became the Democratic nominee for President, the *Globe* intended "to have gathered the material for the 'Complete Fuller Songster' that will sing him in to the White house [sic], if anything can."⁴²

Fuller's song previously appeared in a section reserved for "Songs of Bowdoin" in the 1868 anthology *Carmina Collegensia: A Complete Collection of the Songs of the American Colleges*, where it shared a page with two other Bowdoin entries, "Old Time"—half fight song, half shanty, entirely rife with private jokes—and "Song of the Smoker," a paean in which a man lovingly addresses his cigar. The manuscript as a whole is littered with references to drink in its many forms: beer, wine, cups, quaff, draught, rum, gin, and the like. So, while the newspapers of the day may have scorned Fuller for penning something so crass as a drinking song, there would be few college graduates who had not sung one.

As for Fuller's lyrical mastery, his toast to "the untried world before us" has both imagery and sentiment more poetic than many contemporaneous offerings in that genre. One need look no further than Yale's "Bingo," with the omnipresent cheer, "Here's to good old Yale, drink it down, drink it down," or Harvard's "It's a Way We Have at Old Harvard: A Drinking Song," with its nursery-rhyme-ish repetition: "It's a way we have at old Harvard, It's a way we have at old Harvard, It's a way we have at old Harvard, To drive dull cares away, To drive dull cares away, To drive dull cares away". Yet, if the measure of a drinking song's success hinges on its ability to be sung with ease when drunk, Fuller may indeed have missed the mark. "Full soon may fail e'en the plated mail" does not roll off even the most sober of tongues.

The *Sun* continued to find opportunities to hound the Chief Justice. In praising a poem

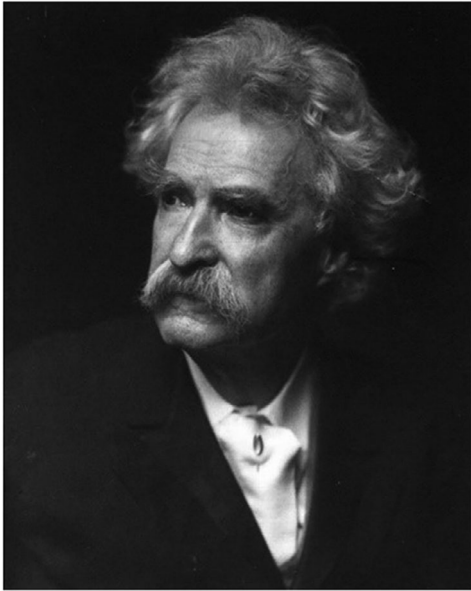


Charles Anderson Dana, owner and editor of the *New York Sun*, scrutinized Fuller's verse. Although Dana and his newspapers were supporters of the Democratic Party, he was a foe of President Cleveland.

by another judge, a little ditty on the topic of legal causation, the *Sun* remarked: "We recall our somewhat occasionally too frivolous and romantic but always beautiful friend, the Hon. Melville Weston Fuller, from his wanderings in the maze of melody." Pointing to a line in the aforementioned poem—"existence was without a cause—the *Sun* concluded: "Mr. Fuller will observe that Existence is like his poetry."⁴³

As we conclude our discussion of Fuller the poet, there is another wrinkle to the story: the Chief Justice's physical resemblance to Mark Twain. The *New York Times* reported that once an admirer of Fuller stopped Twain on the street and, confused, ask for the autograph of "the Chief Justice." Twain immediately complied, writing the following for the court enthusiast: "It is delicious to be full, But it is heavenly to be Fuller. I am cordially yours, Melville W. Fuller."⁴⁴

History does not record if Fuller knew about Twain's little deception, but the two



"It is delicious to be full, but it is heavenly to be Fuller. I am cordially yours, Melville W. Fuller," wrote Samuel Clemens (aka Mark Twain) when a fan of his doppelganger, Chief Justice Fuller, stopped him on the street to ask for an autograph.

men had the opportunity to discuss it in October 1901, when they both entered Yale's Hyperion theater to receive honorary degrees.⁴⁵ Might Fuller's reputation as an artist have been artificially enhanced by the public's confusion whether it was Samuel Clemens or Melville Weston Fuller who occupied the Court's center chair?

Although the bulk of attacks centered on the quality of Fuller's poetry, with the sneering subtext that writing verse was not manly, additional articles implied that Fuller's flirtation with verse bled into his judicial opinions. For example, let us return to the *Sun*'s attack in May 1889 on Fuller's "Bacchanalian Song." After snidely remarking that Fuller's law practice had "dull[ed] his sense of melody," the newspaper turned its attention to Fuller's opinion writing:

Judged by every literary standard, how superior these poems of Chief Justice Fuller's are to the opinions which he is now handing down from

the Bench of the Supreme Court! Many lawyers would rejoice if the Chief Justice would write his opinions in verse. It makes their heads ache to read his abominable prose, and when they have read it they do not know what it means.⁴⁶

The *Sun* launched a second barrage against his legal craftsmanship in the spring of 1892. Fearful that former President Grover Cleveland might fail in his bid to become the Democratic Party's presidential nominee, a call went out to draft Fuller.⁴⁷ And, right on schedule, the *Sun* again mocked Fuller as a poet and as a jurist.

Beautiful as are the love songs, the threnodies and the Bacchics which the world owes to the genius of the Hon. Melville W. Fuller, the fact remains that his prose style is disgraceful. English as she wrote by the Chief Justice in his judicial opinions and decisions is something fearfully and wonderfully made. It is muddy, inelegant and diffuse.⁴⁸

This time, however, the *Sun* offered evidence in support of its bill of indictment, to wit, the concluding paragraph of Fuller's majority opinion in *Hammond v. Hopkins*,⁴⁹ a case that turned on whether the beneficiaries of a trust had timely filed a bill of complaint against the trustee. Ironically, at Fuller's death, newspapers across the country pointed to that opinion as the best example of how Fuller's poetic bent crept into his opinion writing.

Fuller wrote:

In all cases where actual fraud is not made out but the imputation rests upon conjecture, where the seal of death has closed the lips of those whose character is involved, and lapse of time has impaired the recollection of transactions

and obscured their details, the welfare of society demands the rigid enforcement of the rule of diligence. The hourglass must supply the ravages of the scythe, and those who have slept upon their rights must be remitted to the repose from which they should not have been aroused.

“The trope is quite worthy of the author of ‘Fill each glass as the moments pass,’” roared the *Sun*. “Just how the hour-glass can ‘supply’ the ravages of the scythe is not quite clear, and it does not need to be clear.” Concluded the paper:

If the Chief Justice had suggested the remedial action of bone-dust, or phosphates, or top-depressing of any kind, he would have destroyed the imaginative beauty of the figure and eliminated the idea of Chrono-with his scythe in one hand and his hours glass in the other. These little flights of poetic fancy from the Bench of the Supreme Court or elsewhere are not proper subjects for too close analysis.⁵⁰

At least one newspaper was horrified to learn that poetry had snuck into the Supreme Court. After reporting that an Attorney had the temerity to quote from an unidentified poem during oral argument, the *Middleton Transcript* urged swift action. “The court of last resort in the country should give the final decision against this practice once and for all. The courts have troubles enough as it is without poetry being added to their burdens.”

The *New York Sun* was not the only newspaper to use Fuller’s poetic oratory as a means of attacking his political leanings and judicial philosophy. In response to an unidentified “frothy” speech that Fuller made in the fall of 1888 on the topic of friendship, the *Indianapolis Journal* sneeringly remarked that the Chief Justice “managed to get in two or three hackneyed Latin quotations, a French spelling book phrase, and jingling couplet

of anonymous poetry and a misquotation of the threadbare ‘star of empire’ passage.” Concluded the *Journal*: “We presume all this shows a great legal mind.”⁵¹

King does not address the *Sun*’s attack against Fuller’s judicial style of writing, but he does concede that Fuller’s opinions were not as memorable as those by some of his brethren. “Fuller’s judicial opinions are labored and cannot compare in sparkle with his rare after-dinner speeches,” writes King. “His opinions contain no lofty phrases, no grandiloquent passes, no person conceits to betray a hungry ego in their author.”⁵² Pointing out that the majority of Fuller’s opinions involved dry procedural issues, King concludes that “[m]ost of these were models of pithy brevity. But some of his opinions are not as tightly knit or as well organized as an ideal opinion of the Court should be.”⁵³

Indeed, some of Fuller’s opinions may even have, as the *Sun* suggested, induced headaches, such as this pretzel-esque declaration in *Cole v. Cunningham*⁵⁴:

This does not prevent an inquiry into the jurisdiction of the court, in which a judgment is rendered, to pronounce the judgment, nor into the right of the State to exercise authority over the parties or the subject matter, nor whether the judgment is founded in, and impeachable for, a manifest fraud.⁵⁵

Fuller’s affection for stringing together oblique clauses, however, may be superseded by his romance with the semicolon, which he sprinkled through his legal writings like confetti. In one relatively short majority opinion (*Leisy v. Hardin*⁵⁶), Fuller found occasion to use as many as 62 semicolons, at times employing a half dozen in a single grammatical construction.

As syntactically complicated as his opinions are at times, Fuller’s legal writings for the most part offer standard fare, with an occasional poetic flourish. He veers from

time to time into alliteration (“persons and property,” “lives, limbs,” “pestilence and pauperism”),⁵⁷ anaphora (“*Was it intended* by the statute of 1858 to make any other discrimination than that more accurately expressed in the statute of 1878? *Was it intended* to discriminate against the judgments and decrees of the Federal courts in Wisconsin as if they were foreign courts or courts of another State? *Was it intended* to disparage the jurisdiction and authority of the Federal courts?”),⁵⁸ or diacope (“The *right* to remain in the United States, in the enjoyment of all the *rights*, privileges, immunities, and exemptions accorded to the citizens and subjects of the most favored nation, is a valuable *right*, and certainly a *right* that cannot be taken away without taking away the liberty of its possessor”).⁵⁹

Similarly, Fuller’s opinions show intermittent indulgences in heightened phraseology or metaphor. When he writes in *Briggs v. Spaulding*⁶⁰ of invalids who must not be asked to “retire at once from the affairs of this world and confine themselves to preparation for their passage into another,” one cannot help but sense a slight poetic lift. Perhaps when his thoughts turned more expansive, his expression ventured more deeply into the metaphorical. In his dissenting opinion in *Downes v. Bidwell*, a case that held that the Constitution’s Revenue Clause did not extend to United States territories, Fuller writes of the “star of empire, whose course Berkeley had sung sixty years before,” and notes, “It will be time enough to seek a ford when, if ever, we are brought to the stream.”⁶¹

Having reviewed over thirty opinions drafted by the Chief Justice, we do not believe that Fuller’s “prose style is disgraceful”⁶² or “abominable”⁶³ or his opinions “muddy, inelegant and diffuse.”⁶⁴ Nor do we believe that the Chief Justice is guilty of “little flights of poetic fancy from the Bench of the Supreme Court.”⁶⁵ We concede that Fuller does not possess the writing skills of Oliver Wendell Holmes Jr.,

Robert H. Jackson, or Antonin Scalia. And it is hard to defend Fuller’s love affair with the semicolon. That being said, the attacks on his opinion writing, as well as his amateur poetry, are unfair and misguided.

Author’s Note: We would like to thank Katie Gallagher for her superb research assistance as well as Chad Oldfather, Charles Peppers, and Susan Stein for reading earlier versions of this article.

ENDNOTES

¹ See Todd C. Peppers. “Melville Weston Fuller and the Great Mustache Debate of 1888.” *Journal of Supreme Court History* Vol. 45, No. 2 (July 2020): 140–150.

² Willard L. King. **Melville Weston Fuller: Chief Justice of the United States, 1888-1910** (The MacMillan Company, 1950), 11.

³ *Ibid.* 12.

⁴ *Id.*

⁵ *Id.* 16.

⁶ *Id.* 24. All that biographer James W. Ely Jr. says is that Fuller “pursued his passion for writing poetry” while at Bowdoin. **The Chief Justiceship of Melville Weston Fuller, 1888-1910** (University of South Carolina Press, 1996), 5.

⁷ *Ibid.* 52.

⁸ In October 1857, Robinson married John Noble Goodwin. A native of Maine, Goodwin’s political career would include serving in Congress, as the Chief Justice of the Arizona Territorial Supreme Court, and as Governor of the Arizona Territory.

⁹ The phrase “sands of time” was memorably used in Henry Wadsworth Longfellow’s 1838 poem “A Psalm of Life”: Lives of great men all remind us We can make our lives sublime, And, departing, leave behind us Footprints on the sands of time; Like Fuller, Longfellow was a Bowdoin graduate, and he went on to teach at Bowdoin for a few years in his early twenties, several decades before Fuller’s entry to the college.

¹⁰ “The worm that dieth not” refers to hell. This idea appears both in the Old Testament (“And they shall go forth, and look/Upon the carcasses of the men that have transgressed against me: /For their worm shall not die,” Isaiah 66:24) and the New Testament (“Where their worm dieth not, and the fire is not quenched,” Mark 9:48).

¹¹ **History of Cook County, Illinois—, Being a General Survey of Cook County History, Including a Condensed History of Chicago and Special Account of Districts Outside the City Limits; from the Earliest Settlement to the Present Time** (Goodspeed Historical Association, 1909), 588.

- ¹² "The Chicago Bowdoin Club," *The Portland Daily Press* (Portland, Maine), April 8, 1880.
- ¹³ "Poetry and Gymnastics," *Chicago Press and Tribune*, February 21, 1860.
- ¹⁴ "Commencement of the University of Chicago: Anniversary Exercises of the Literary Societies." *Chicago Daily Tribune*, July 2, 1862.
- ¹⁵ King, **Melville Weston Fuller**, 90.
- ¹⁶ *Ibid.* 88.
- ¹⁷ *Id.* 78.
- ¹⁸ "A Non-Partisan Poet." *The Morning News* (Savannah), September 6, 1888 (reprinting an article from the *New York Tribune*).
- ¹⁹ *Ibid.* 105–106.
- ²⁰ "The New Chief Justice as a Poet." *New York Sun*, May 3, 1888.
- ²¹ *Ibid.*
- ²² There are some striking similarities to King Claudius' short speech in *Hamlet*, Act 5, scene 2: "And now let the drum and the trumpet play, and the trumpet signal the cannon outside to fire, and let the cannon tell the heavens and the heavens tell all the earth that the king is drinking now to Hamlet's health." Did Fuller mean to compare Grant's death to that of the villainous Claudius?
- ²³ "Melville Fuller: The Chief Justice Who Is to Be." *The Memphis Appeal*, May 6, 1888.
- ²⁴ The original station was built in the 1850s and at one time served five different railroad lines. An article in the October 11, 1894, *News and Citizen* (Morrisville) declared that Essex Junction had been "immortalized" by Phelps' poem.
- ²⁵ *Ibid.* After the Chief Justice's confirmation on July 20, 1888, the *Sun* briefly returned to the topic of his literary skills. "[Y]ou had better give up poetry now." *New York Sun*, July 23, 1888.
- ²⁶ "An Autograph Portrait." *New York Sun*, November 27, 1889.
- ²⁷ Janet E. Steele. **The Sun Shines for All: Journalism and Ideology in the Life of Charles A. Dana 131** (Syracuse University Press, 1993).
- ²⁸ "M. W. Fuller is Named." *The New York Tribune*, May 1, 1888.
- ²⁹ "Mr. Fuller's Muse." *Saint Paul Daily Globe*, May 20, 1888.
- ³⁰ *Ibid.*
- ³¹ *The New York Sun*, July 23, 1888.
- ³² *The Indianapolis Journal*, October 2, 1888 (quoting the *New York Sun*).
- ³³ *The Emporia Republican*, January 9, 1890.
- ³⁴ *The Evening Journal*, January 7, 1890.
- ³⁵ "The Chief Justice on Remorse and Revelry." *The New York Sun*, May 27, 1889.
- ³⁶ "Bacchanalian Song." *The Seattle Republic*, June 19, 1903.
- ³⁷ "New Poem by Fuller." *Saint Paul Daily Globe*, August 17, 1891
- ³⁸ *Ibid.*
- ³⁹ *Id.*
- ⁴⁰ *Id.*
- ⁴¹ *Id.*
- ⁴² *Id.*
- ⁴³ *New York Sun*, August 4, 1894.
- ⁴⁴ "Melville W. Fuller, Chief Justice, is Dead." *The New York Times*, July 5, 1910.
- ⁴⁵ "Roosevelt There: Yale Men in the Elm City Honoring Him Today." *Waterbury Democrat*, October 23, 1901.
- ⁴⁶ "The Chief Justice on Remorse and Revelry." *The New York Sun*, May 27, 1889.
- ⁴⁷ King, **Melville Weston Fuller**, 163–164.
- ⁴⁸ "Hour Glass and Scythe: Dana Drops Cleveland to Have Some Fun with the Chief Justice." *The Morning Call* (San Francisco), April 24, 1892 (reprinting a *New York Sun* article).
- ⁴⁹ 143 U.S. 224 (1892).
- ⁵⁰ "Hour Glass and Scythe." *The Middleton Transcript*, April 8, 1916.
- ⁵¹ *Ibid.*
- ⁵² King, **Melville Weston Fuller**, 332.
- ⁵³ *Ibid.*
- ⁵⁴ 133 U.S. 107 (1890).
- ⁵⁵ *Ibid.* 112.
- ⁵⁶ 135 U.S. 100 (1890).
- ⁵⁷ 135 U.S. 100 (1890).
- ⁵⁸ *Metcalf v. Watertown*, 153 U.S. 671 (1894) (emphasis added).
- ⁵⁹ *Fong Yue Ting v. United States*, 149 U.S. 698 (1893) (emphasis added).
- ⁶⁰ 141 U.S. 132, 155 (1891).
- ⁶¹ 182 U.S. 244, 374 (1901).
- ⁶² "Hour Glass and Scythe."
- ⁶³ "The Chief Justice on Remorse and Revelry." *The New York Sun*, May 27, 1889.
- ⁶⁴ "Hour Glass and Scythe."
- ⁶⁵ *Ibid.*

Todd C. Peppers holds the Fowler Chair in Public Affairs at Roanoke College and is also a Visiting Professor of Law at the Washington and Lee School of Law. Mary Crockett Hill is an Assistant Professor in the Department of English and Communication Studies at Roanoke College and is the author of several collections of poetry.