



Injustices: The Supreme Court's History of Comforting the Comfortable and Afflicting the Afflicted

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Few American institutions have inflicted greater suffering on ordinary people than the Supreme Court of the United States. Since its inception, the justices of the Supreme Court have shaped a nation where children toiled in coal mines, where Americans could be forced into camps because of their race, and where a woman could be sterilized against her will by state law. The Court was the midwife of Jim Crow, the right hand of union busters, and the dead hand of the Confederacy. Nor is the modern Court a vast improvement, with its incursions on voting rights and its willingness to place elections for sale.

In this powerful indictment of a venerated institution, Ian Millhiser tells the history of the Supreme Court through the eyes of the everyday people who have suffered the most from it. America ratified three constitutional amendments to provide equal rights to freed slaves, but the justices spent thirty years largely dismantling these amendments. Then they spent the next forty years rewriting them into a shield for the wealthy and the powerful. In the Warren era and the few years following it, progressive justices restored the Constitution's promises of equality, free speech, and fair justice for the accused. But, Millhiser contends, that was an historic accident. Indeed, if it weren't for several unpredictable events, *Brown v. Board of Education* could have gone the other way.

In *Injustices*, Millhiser argues that the Supreme Court has seized power for itself that rightfully belongs to the people's elected representatives, and has bent the arc of American history away from justice.

Injustices: The Supreme Court's History of Comforting the Comfortable and Afflicting the Afflicted Details

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From Reader Review Injustices: The Supreme Court's History of Comforting the Comfortable and Afflicting the Afflicted for online ebook

Jeff says

You know all that distrust and contempt you have for the partisan hacks in Congress? You might want to save some of that for the Supreme Court. Seriously, this branch of government that's purportedly comprised of objective jurists offering dispassionate rulings may be our most dangerous institution of all.

Bob H says

This book spells out, in maddening detail, the darker side of the Supreme Court. It focuses especially on three periods: post-Civil War, in which the Court essentially nullified the war and its constitutional results; the Lochner period, in which the Court handed the country over to Gilded Age big business; and the current period of Hobby Lobby and Citizens United. It's well worth reading the Lochner period, because the current court, some commenters tell us, is another Lochner period, although it has yet to invalidate child-labor or work-conditions law as it did a century ago. Yet. Still, we come to understand just how much harm their decisions can inflict on average Americans.

He also says, convincingly, that Brown v. Board of Education, and the Warren Court generally, were to some extent the result of freak events, and long gone. All this is in clear prose, understandable to non-legal readers. There's not much on the national-security cases of late, but still plenty here to understand how much harm this Court has done, and can do, in people's lives.

Highest recommendation.

victor harris says

A sweep of the Supreme Court history showing how many of the cases were ideologically rather than legally driven. Except for a brief window during parts of the New Deal, and Warren and Burger courts, the tendency, as the title indicates, is for the court to side with the wealthy at the expense of workers and the vulnerable. The modern court with its heavy right-wing tilt is an example of continuing in that tradition. To illustrate the author's case, special attention is given to landmark cases such as Dred Scott, Plessy, and Lochner; though it addresses a host of others. For those familiar with the court's background much of this will be familiar territory, for others seeking a good survey with solid analysis, it is highly recommended.

Leslie says

Very disorganized writing, with some odd segues (how did we get from anti-trust to the Kansas-Nebraska Act in just two paragraphs?) but if you take the time to read, then go back to find the thread tying the various

disjointed pieces together, you'll be able to stitch the information together. And it's disturbing, to say the least.

It is a struggle to get through the writing style; this book could have been so much more compelling had it been organized logically. It seems haphazard, but perhaps that just reflects the workings of the Supreme Court itself.

Elspeth says

This was a thought-provoking book! The gist of the author's argument is captured by the title: "Injustices: The Supreme Court's History of Comforting the Comfortable and Afflicting the Afflicted." Following in the footsteps of Howard Zinn's populist critique of U.S. history, Ian Millhiser argues that the Supreme Court is an elitist institution that generally sides with business interests and the most fortunate sectors of society at the expense of the rights of everyday people, turning a blind (judicial) eye to those who are most in need of Constitutional protection.

What about the Warren Court supporting civil rights? Although Millhiser acknowledges that there was a brief period of time when the Supreme Court played an important role in defending civil rights, he labels the Warren Court as merely an anomaly in American history. Millhiser emphasizes that the Supreme Court, as an historical institution, has given us a series of deplorable rulings that violate our contemporary moral compass: Among other things, the Justices upheld slavery and segregation, supported child labor, struck down workplace protections for employees and public health laws, rejected the minimum wage, condoned eugenic laws for forced sterilization, allowed the President to proceed with the Japanese internment during World War II, and continues to make claims of discrimination extremely difficult for either women or minorities to win. Moreover, in recent years this is the, "same Court that gave us Citizens United and Bush v. Gore. And the same Court that nearly stripped health care from millions of Americans" (273-4). We are left to conclude that the Court almost always favors business and corporate interests over the interests of everyday people, and that this trend is gaining momentum under the Roberts Court!

The strength of this book is also its weakness. Although I largely agree with Millhiser's relatively damning analysis of the Court "comforting the [already] comfortable" at the expense of the "afflicted," it is also important to note that the cases he focuses on ALL support his argument in a rather one-dimensional manner. Millhiser glides over examples of progress made the Supreme Court by labeling such rulings as anomalies in history (i.e. including the New Deal and Civil Rights blip), rather than looking in a more robust fashion at the Court's role in the broader American political system. Echoing Alexander Bickel's classic argument in "The Least Dangerous Branch," he labels the Court as anti-democratic in character and far more injurious to American democracy than any other branch in government. Here Millhiser conflates two different definitions of the term, 'democracy.' Does American democracy require support for constitutionalism or rather majority rule? From a political standpoint, these are different things. Perhaps a big part of the problem is that the U.S. Constitution is not entirely democratic, for it calls for an unelected judiciary, in addition to accommodating evils like slavery and favoring corporate interests? Moreover, given that Congress and the President also supported injustices like slavery, segregation, and Japanese internment, I would suggest that the Court is not ideologically exceptional from the other branches. A more precise definition of constitutionalism and democracy would have sharpened his argument, or at least allowed Millhiser to argue that the Court is merely a political institution like the other two branches of U.S. government.

The problem with SCOTUS, alluded to in Millhiser's critique, is that our expectations are far loftier when it

comes to the highest Court in the land. We expect impartial justice and fairness out of this institution, yet end up with rulings that are no less “political” than we get from Congress or the President. Nonetheless, despite the fact that I found Millhiser’s discussion of the role of the Court in American democracy hackneyed, overall this is an excellent book. Both engaging and enraging, the author’s argument about the Court supporting elites over the downtrodden is bolstered by a strong and convincing analysis of cases. He also includes a great discussion of recent rulings from the Roberts Court, which does indeed make me concerned about the future vitality of civil rights and social justice in America. Highly recommended!

Giuseppe says

Yes, Howard Zinn and Peter Irons would be proud of this book. Granted, it focuses on cases that represent the worst of the Court. What’s disappointing, yet unsurprising, is that we are left to conclude that decisions that favor business over people are not remnants of earlier times, but appear to remain a constant in judicial review. I still believe the Court has made progress in a number of areas, but it is disheartening to see that progressive change is highly dependent on what party is in power, and that the unpredictability of time and circumstance (which justices live, which justices die, who is president when a judicial opening arises, and what party controls congress) is the ultimate arbiter of how our judicial system advances (or regresses).

Dan says

Since I was a student in grade school and understood what our Constitution was, I always regarded the Supreme Court as the guardian of justice. I always felt that the nine people who sit on the court were able to leave aside their prejudices and allow themselves to be unbiased when it came to judging. Why else would the Constitution make the position of Supreme Court Justice a lifetime appointment with only impeachment as the means to remove the sitting judge so that they would not be influenced by the politics of the time. And yet, from the book it appears that the people who are appointed to the court cannot rid of their biases and find ways to reflect those biases in their decisions often impacting the more vulnerable in negative ways. The current supreme court is made up of a majority of such men. They rule in such ways as to make the rest of us miserable and they put their certificate of approval on policies which are unfair to the defenseless. This would include the Citizen's United which has been disastrous for our Democracy by allowing an ocean of money to affect the elections, the Obamacare decisions that allowed states to blackout of Medicaid, thereby ensuring that poor and middle class people to still not be able to afford healthcare, their Hobby Lobby decision which inserts religion in our secular society. It also highlights how the decisions in the 19th century delayed civil rights and allowed our apartheid system, allowed Corporations to exploit workers, and allowed the US government to intern people of Japanese descent. At this point, I have to say that the Supreme Court is not a benign institution but it is a reactionary institution that continually hands down decision which benefit the rich and powerful. It is very sad for our country to have such people responsible for the fate of millions of citizens.

JP says

I loved this book. I thought Millhiser was brilliant in how he laid out his argument, though a little heavy-handed in his open disdain for conservative ideology. I think he's entirely correct in all his analyses, but I worry that his style could turn off conservatives from what is a powerful, meaningful, and RIGHT argument.

The first third of Injustices, titled "The Constitution of Stephen Johnson Field", focuses on the problems between (roughly) the end of the Civil War and the New Deal. In this era, deliberate misreadings of the US Constitution led to the Supreme Court being used as an anti-democratic limitation on worker's rights; an anti-democratic limitation on people's decision to provide for their own health and safety when those qualities are directly threatened by the wealthy; a racist support system that condoned mass murder and terrorism aimed at Black Americans; limiting (and not protecting) Americans' First Amendment privileges and more.

In Part 2, "Getting Out of the Way", Millhiser describes a Supreme Court that largely steps aside and allows elected government to do its job, starting with FDR and going from there. Interestingly, though FDR's threat to expand the Supreme Court and stack it with liberal justices is heavily criticized by teachers and students of history everywhere, it apparently would not only not be illegal, but not even that weird. The total number of justices on the bench was adjusted periodically throughout the 19th century, and the Constitution is silent on the actual number that are supposed to sit at any given time. Go figure.

So in Part 2 we like the Supreme Court because, apparently, they stop screwing everything up haha.

Part 3, "The Brief Rise and Rapid Fall of Conservative Judicial Restraint" is a mini roller-coaster that starts by showing how the Supreme Court stood up for everyday Americans throughout the Warren Court's time in office, and then how today we've got a court that is devoted to big business in their effort to defraud and disenfranchise the general public.

The Warren Court rightly limited police and protected American citizens from overreach by ensuring that police must inform suspects of their Miranda Rights in *Miranda v. Arizona*. This could even go farther, but for now I'll just take the W. Then in *Mapp v. Ohio*, material found in unlawful searches and seizures was ruled inadmissible - a massive win for lovers of liberty! The Burgher Court had its own victories as well! They declared gender discrimination unconstitutional! Then they stood up for a woman's control of her own body by allowing abortion - a decision that has been continually derided by conservatives for decades. Though there are many criticisms of the precedent they used in *Roe v. Wade*, the law has been affirmed and stood the test of time so far, and probably won't change in the near future. This last one is up for criticism, though Millhiser only alludes to it, since it is a fairly open imposition of the Court's politics into their decision.

Then we start to see it fall apart. Unfair elections are the name of the game if you're a Republican who wants to be elected, and Part 3 highlights issues with gerrymandering, voter ID laws, the evisceration of the Voting Rights Act, Citizens United and the end of limits on corruption, and the *Bush v. Gore* decisions, all of which are overwhelmingly favorable to Republicans, some of which are obviously unconstitutional (Voter ID laws and the repeal of sections of the VRA), and all of which are highly questionable. Conservatives don't want "We The People" to vote; this is obvious by their decisions and their statements. Want Democracy to win the day? Vote Democrat, according to any rational analysis.

The last two chapters of the book have to do with tricky hidden riders that allow businesses to subvert the court system and use their own objectively biased tribunals to screw-over consumers. Guess which group the vast majority of Americans fall into (hint: it isn't businesses)... and then healthcare and the ACA. You don't have to like the law, but any idea that it's unconstitutional is absurd. By tracing arguments supporting its constitutionality, Millhiser shows that there are serious questions of the current Court's impartiality and ability to conduct themselves. Notably, this includes Justice Thomas, whose legal opinions harken back to the worst abuses of the Supreme Court's power, Justice Roberts, who is unquestionably and dangerously pro-business, and others.

More conservative strong-arming stopping the steady progression of liberal ideology. These liberal ideas - that people deserve democracy, that they deserve clean food and water, that they need collective action to protect themselves from rapacious employers, that no one should be stripped of their right to reproduce because they belong to a disenfranchised group, and that racism is an abhorrent mark on the face of civilized society that we should all be ashamed of - would not only all be vindicated in time, but which are responsible for every vestige of success and progress in our modern world. While a Supreme Court stacked with liberal justices may protect and advance these valorous ideas, Millhiser highlights that history is only just now showing the Supreme Court as a body worth its respected reputation.

I strongly recommend, but must point out that Millhiser does have some one-sided views that pour through in this 300 page diatribe against conservatism's judicial impositions on the nation.

Kay says

So, full disclosure: Ian and I work together, and he's an incredibly nice guy.

Luckily his book is a delightful and engaging read that actually looks at the real stories behind some key Supreme Court decisions. Rather than batting about the constitutional implications of decisions in dry legal terms, Ian Millhiser helpfully points out that what is at the heart of these decisions are people: people who stood to gain access to clean water in the wake of the Civil War, children who worked in intolerably terrible coal mining conditions, women who were raped, and workers who tried to organize for better rights.

This is what is often lost in debates about the Supreme Court. Justices pretend they are making high-minded constitutional decisions without bothering themselves with the human suffering they inflict. This is, Millhiser argues, part of the problem. Repeatedly justices have leaned in a political manner, generally favoring the wealthy and powerful. Yet we tend to view the Supreme Court as a stoic and balanced institution. Millhiser destroys that reasoning.

Though his solutions seem like an uphill battle -- he even, perhaps jokingly, takes a stab at the argument for a modern version FDR's court packing -- disrupting the narrative of the Supreme Court as a fair and just institution is helpful. Particularly as we look to the presidential election in 2016, after which the composition of the court could be changed dramatically.

Dave McNeely says

This brief and pointedly-focused overview of the Supreme Court from Reconstruction to today provides an interesting take on the ways in which SCOTUS has privileged vested power interests in the US over common citizens. However, Millhiser too often ignores moments of progressivism throughout SCOTUS' history and, at times, contradicts his own understanding of the function of the Supreme Court by alternately criticizing and applauding the highest court's natural conservatism. A mirror image history of SCOTUS would lead readers to very different conclusions, although that does not discount some of the important questions Millhiser asks.

Nick says

Disorganized and a bit too editorial for my taste.

Byron says

I stumbled on this book because I have been reading some books on the Supreme Court, and I found it enlightening. The author makes no mystery of his own opinions and perspectives, and as long as you read it understanding that he is making his points, that is okay. The points he make are real and troubling enough.

What I appreciated most from this book is the recognition that supreme court justices are often making decisions based on something other than the constitution, and unfortunately, when you have a justice who is insensitive to issues of little people economics or race or gender, we are stuck with their decisions.

Naomi says

This was not what I was hoping for. It's mostly just a series of anecdotes of some of the key cases where scotus has ruled in favor of the big and wealthy and against the disadvantaged. I wanted something more methodological, more academic, with more proof for the argument. This is written much more for an average lay reader.

Kenneth Barber says

This book details the decisions of the Supreme Court that have adversely effected working people, minorities, children and women. The author shows that the court has ruled against these groups more often than not. The court has defended the wealthy and business interests to the detriment of both the Constitution and the welfare of the people.

The author details how the present court is one of the worst for ruling their conservative agenda with no legal basis. He also relates how the situation could get worse. Four of the judges are reaching the age where they could retire at any time. If a conservative president is allowed to appoint that many judges the court could reverse many of the liberties we enjoy today. This book is excellent food for thought.

Todd Martin says

The Supreme Court has made some really bad decisions in its time. Take a recent example of the Citizens United case in which corporations were granted the right to spend nearly unlimited sums to sway elections and to keep those donations secret. Justice Kennedy thought this was fine and dandy since “independent expenditures do not lead to, or create the appearance of, quid pro quo corruption.”, a quote that will likely stand the test of time as a quintessential example of breathtaking cluelessness.

It turns out that the Court has made many decisions in which they sided with the rich and powerful against

the oppressed. Including:

- Narrowly interpreting the 14th amendment and failing to protect African Americans subject to oppressive state laws in the aftermath of the Civil War.
- Siding with business and failing to protect children in the workforce.
- Siding with business over workers who were injured, maimed or killed due to unsafe working conditions.
- Siding with business over worker's rights to unionize and strike.
- Giving the state the right to perform involuntary sterilizations.
- Prohibiting the free speech of anti-war protesters.
- Declaring that it was constitutional to place US citizens of Japanese descent in internment camps solely due to their race.

Does this mean that the Court is dedicated to, as Millhiser puts it, “comforting the comfortable and afflicting the afflicted”? I honestly don't know. One can easily come up with examples of decisions that paint the Court as a defender of liberty:

- Gideon v. Wainwright: Guaranteed the right to counsel for those accused of a crime.
- New York Times v. Sullivan: Expanded free speech rights of the press.
- Brown v. Board of Education of Topeka: Made segregated schools unconstitutional.
- Griswold v. Connecticut: Made contraception legal.
- Miranda v. Arizona: Ensured the accused were made aware of their rights.
- Roe v. Wade: Legalized abortion.
- Obergefell v. Hodges: Legalized same-sex marriage.

I could go on and on in this vein. Unfortunately Millhiser fails to place the sum of decisions on a scale to arrive at a convincing conclusion. Instead, he chooses specific examples that support his argument that the Court is an agent of repression. While it has proven to be so at times, I am not convinced that it is institutionally repressive.

Here's what I think can be said ... the Supreme Court is a human institution, and like every human institution they sometimes get things wrong (sometimes spectacularly so). Also, some individuals on the court have been (and are currently) motivated primarily by ideology. And like televangelists with the bible, or radical imams with the koran, these justices have proven to be adept at performing tremendous feats of mental gymnastics to twist the constitution to mean whatever they want it to mean. This is one reason why presidential elections are important, the effects of their judicial choices can persist for many generations. It also serves as a warning to congress should future amendments to the constitution occur. It would behoove them to choose their words precisely to preclude the court from interpretation.

Finally, in a democracy the people should have a right to enact laws and govern as they choose, as long as those laws are not in direct conflict with the constitution. We do this through a representational form of government where the citizens elect the individuals they believe best represent their views. The laws of the land should in no way be ceded to an unelected body of nine individuals. As Franklin Delano Roosevelt once said: “the Constitution of 1787 did not make our democracy impotent”.

This, of course, is where the current court has done the most damage of late. By upholding laws that require voter ID, by striking down key provisions of the Voter Rights Act, by ending the Florida vote recount in 2000, by claiming that corporations have the same right as citizens, exempting corporations from law based on the owners religion, and by allowing nearly unlimited cash from corporations and billionaires to influence elections they are stripping ordinary citizens of the right to liberty and the right to govern themselves. This is unconscionable and serves to illustrate how truly radical the Robert's court has become as well as the importance of appointing justices who place the needs of the country above their own personal ideology.

Millhiser does a decent job summarizing key decisions in the court's 226 year history. The book starts out rather slowly and plods through the courts decisions in the aftermath of the civil war and finally picks up steam in the 1960's and the civil rights era. I felt like I learned quite a bit regarding the constitutional basis upon which some of the court's key decisions were based, but considered the text to be somewhat of a grind at times.
