

Book Review



Reviewed by Richard A. Forsten, Esquire

Just Right: *The Supreme Court, An Essential History*

by Peter Charles Hoffer, William James Hull Hoffer, and N.E.H. Hull (Univ. Press of Kansas, 2007)

Generally, Supreme Court histories fall into two categories. There are the general overviews which hit all of the high notes (*Marbury*, *McCullough*, *Dred Scott*, *Plessy*, *Lochner*, the New Deal Court, *Brown*, the Warren Court, and post-Warren) in a relatively short treatment, and there are the court-specific or theme-specific histories, that focus in greater detail on a particular era or a particular theme (e.g., a history of the Warren Court). What has been lacking until now is a deeper, more detailed Supreme Court history that provides more background and information than a “standard” history, but not so much detail as to be too long or unreadable. In *The Supreme Court, An Essential History*, Professors Peter Charles Hoffer, William James Hull Hoffer, and N.E.H. Hull, provide a court history that is neither too short, nor too long, but, as Goldilocks might say, “just right.”

Professors Hoffer, Hoffer, and Hull approach the Court’s history on a “court by court” basis. That is, after a brief chapter discussing the origins of courts in colonial America, the authors then present fourteen separate chapters, beginning with the Jay and Ellsworth Courts (the first two chief justices are presented together because their courts had less cases than later courts) running through to a final chapter on the Rehnquist Court. Along the way, with each Chief Justice and his court, the authors present background information on the times and the justices, before discussing the major judicial decisions and issues faced by each court. This approach not only gives the reader a ready means to see the judicial trends and issues evolve over time as the issues facing the nation evolved,

but it also gives equal treatment to Justices and eras that are often overlooked in shorter, more sweeping standard histories of the Supreme Court. Finally, an expanded Supreme Court history also demonstrates more readily why some eras of the Court and some Justices are studied and written about more often than others.

After a very brief look at the court systems of the colonies, and the creation of the Supreme Court under the Constitution, the authors start with a chapter on the Jay and Ellsworth Courts. This chapter is the only one to consider two chief justices, but inasmuch as only 86 cases appeared on the High Court’s docket during this twelve-year period (and, indeed, for the first two years of the nation’s history, no cases reached the Court at all), it is little wonder. In the Court’s early years, it was very much a third wheel and, indeed, the least dangerous branch. Yet, this is not to say that nothing of consequence happened. The case of *Chisholm v. Georgia*, in which a South Carolina resident sued the State of Georgia in federal court, led directly to the Eleventh Amendment barring suits by a citizen of one state against another state.

The third Chief Justice, John Marshall, is often called the Great Chief Justice, and rightly so. His Court did much to shape the new nation and the decisions of that Court have lasting impact to this day. Books have been written and will continue to be written focused solely on this important era of the Court. Here, the authors devote no more time to the Marshall Court than others, but by reading a broader history of the entire Court, one better appreciates the achievements of that Court.

Roger Brooke Taney followed Marshall

and, but for one horrific decision, Taney might be much better remembered. That decision was, of course, the *Dred Scott* case, ironically, the first case to declare a federal statute (the Missouri Compromise) unconstitutional since *Marbury v. Madison*. Yet, the *Dred Scott* decision was not the only decision of the Taney Court, and the authors provide a broader view of the Court than most histories provide.

The Taney Court was followed by the Chase Court, from 1864-1873, which dealt with issues stemming mainly from the Civil War, the constitutional amendments following the Civil War, and Reconstruction. The *Slaughterhouse Cases* are the most studied of this era, but the Court also dealt with the issue of military tribunals and the trying of citizens in such tribunals—issues with which the three branches of government continue to grapple even to this day.

Salmon P. Chase was, in turn, followed by Morrison R. Waite, then Melville W. Fuller, Edward Douglass White, William Howard Taft, and then Charles Evans Hughes. Each of these Courts dealt with issues peculiar to their times, as well as, cases with more lasting impact. Each chapter on these Courts provides perspective and history.

By the authors’ reckoning, the modern era of the Court began with the Chief Justiceship of Harlan Fiske Stone. The famous (but somewhat inaccurate) “switch in time that saved nine” occurred during the last years of the Hughes Court, when the Court began upholding various New Deal programs. However, it wasn’t really until the Stone Court that the Court began to examine and uphold individual liber-

ties in earnest and begin to take on the character that we associate with the Court today. Stone was followed by Frederick M. Vinson, who died only six years after his appointment, and then Earl Warren, Warren Burger, and William Rehnquist. Most readers will probably be more familiar with the Court's more recent history, but even here the chapters provide insight and a ready means of assessing judicial trends over the last forty years.

The authors conclude their work with the beginning of the Roberts Court. Chief Justice Roberts was only fifty when appointed, the youngest Chief Justice since John Marshall, and his tenure figures to be long. It will be measured not only by the politics of today, but against the history of the Court so far.

From its earliest days, the Court has played an important part in the governing of our country. In *The Supreme Court, An Essential History*, Professors Hoffer, Hoffer, and Hull demonstrate that every Court and every Chief Justice has figured into that governing in one way or another.

Some wisely, some not so wisely. By writing about each Court, the authors provide a context which shorter histories often lack, although at only 450 pages, this history is not so long or so daunting as to be unreasonable. The future may yet be an unwritten page, but as demonstrated in this history, the Court has always had a role and no doubt always will. Ⓢ