

We have been taking a long look at the Supreme Court, how it has worked for the past half century, and how it is working today. Several excellent authors have provided books to guide us. One that is particularly useful is: Jeffrey Tobin: *The Nine: Inside the Secret World of the Supreme Court*, Anchor Books, 2007 This book gives us an intense look at the dynamic among the nine members of the court that decides the law of the land.

The Supreme Court (and all of our courts) are supposed to be free of political bias. True justice is supposed to be thoughtful, informed, and uncorrupt. From the first challenge to the Madison court in its inception, this institution was designed to be equal in power and authority to our other rulers, the Administration and the Congress.

Justices are the only American officials elected for a life term, which in our country's birth, was not as long as it is today. However, a life term does protect them from political winds and enables them to make changes slowly and with great deliberation.

Tobin's book is not a history of the court, but is a keen account of the court from the 1950s to just before the Trump presidency. He examines the tenures of Chief Justices Warren E. Burger and William H. Rehnquist, both appointed by Republican presidents. During those thirty years, the court stood evenly divided on the most pressing issues before it: race, sex, religion, and the power of the federal government. Because the court is made of nine members, the divisions were mediated by the swing vote: justices who were less doctrinaire and willing to sometimes vote with liberals and other times with conservatives.

The first swing voting justice was Lewis F. Powell, and after he retired, the first woman appointed to the court, Sandra Day O'Connor. Both, said Tobin, were both cautious and remarkably similar to the opinions of the American people.

The court is fundamentally antidemocratic. Justices are not elected; nor accountable to the public; their life tenure gave them no reason to cater to the will of the people, yet between 1992 to 2005, the court made decisions that reflected public opinion with great precision.

But something we need to know: year in and year out, about 40 percent of the Court's opinions are unanimous and many more draw just a mild dissent or two. It is the cases that are contentious that most interest us, and are most important.

Tobin warns that this reflection of American views was about to change, led by a powerful conservative rebellion against the court. The rebellion has been led by elite law schools, evangelical churches, and, most recently, the White House. Its agenda has remained largely the same over the decades: reverse *Roe v. Wade* and allow states to ban abortion; expand executive power; end racial preferences intended to assist African Americans; speed executions; welcome religion into the public sphere.

Because the Court has been so closely divided for so long, conservatives have made only halting progress on implementing this agenda. Now, with great suddenness, they are very close to total control: within one vote, to be precise.

This book is valuable reading because it gives us a closeup of how the Court worked at its best, exploring the character and differences of its Justices, and most important, learning how they interact and influence each other. The best Justices evolved and changed over time, as did O'Connor, Breyer, and Chief Justices who, out of reverence for the court, tried to rise above politics and the presidents who appointed them.

Another important book is by former Supreme Court Justice Stephen Breyer. His book: *The Court and the World: American Law and the New Global Realities*, Steven Breyer, Alfred A. Knopf, 2015, addresses shared areas we rarely consider: security, the environment, health, trade, family relations, all of which involve the individual beyond national boundaries.

This book focuses upon the "foreign" aspect of the Court's docket. Judicial awareness can no longer stop at the border. Breyer challenges our minds with this one.

681 words

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