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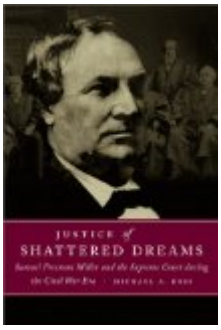
Michael A. Ross. *Justice of Shattered Dreams: Samuel Freeman Miller and the Supreme Court during the Civil War Era.* Baton Rouge: Louisiana State University Press, 2003. xxii + 323 pp. $69.95 (cloth), ISBN 978-0-8071-2868-8; $25.95 (paper), ISBN 978-0-8071-2924-1.



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Scholars of the Supreme Court often have referred to particular "seats." For example, Benjamin Cardozo, Felix Frankfurter, Arthur Goldberg, and Abe Fortas succeeded one another in the "Jewish seat." Frankfurter also held the "scholar's seat" previously occupied by Horace Gray, Oliver Wendell Holmes, and Cardozo. It may be time to add the "maverick" seat, which only three men have held in ninety years: Louis Brandeis, William O. Douglas, and John Paul Stevens, all of whom have been known to dissent strongly and to take often lonely, controversial stands. But before Brandeis, Douglas, and Stevens, that seat on the Supreme Court belonged for twenty-eight years to Samuel Freeman Miller. The name is familiar to scholars of the Supreme Court, possibly to Civil War historians interested in the court in that era, and to those who encountered Charles Fairman's 1939 biography, *Mr. Justice Miller and the Supreme Court.* Unfortunately, Miller's name has been largely lost to most Americans, except perhaps as the author of the 1873 *Slaughterhouse* decision, a ruling widely perceived as driving a large nail in the coffin of black civil rights.

Michael A. Ross, a corporate attorney turned associate professor of history at Loyola University of New Orleans, has mounted an expedition to rescue Miller from anonymity and opprobrium. Not only has the *Slaughterhouse* decision been wrongly construed, but Miller has also been too easily ignored. *Justice of Shattered Dreams: Samuel Freeman Miller and the Supreme Court during the Civil War*, based on Ross's dissertation, seeks to rectify that. The result is an engaging biography, well written and well argued, that may well have set a new standard in judicial biography–and certainly should do a great deal to help historians understand the all-too-neglected role the Supreme Court played during and after the Civil War.

To write Miller's biography is both an easy and a difficult task. He left behind nearly three decades of opinions and participated in exciting events and arguments. But his personal papers are limited and his life stretched from rural Kentucky to small-town Iowa as well as Washington, D.C. Clearly, Ross wanted to avoid the pitfalls that often befall those who write biographies of Supreme Court justices. They often emphasize court politics and gossip at the expense of ideology and precedents, or emphasize ideology and precedents at the expense of court politics and gossip. They provide so much detail about the life that the times tend to get lost, or so much detail about the times that the life tends to get lost. Somehow, Ross has pulled off a balancing act, always admirably and sometimes maddeningly: he has united the life and times as well as the inside information with the ideology that shaped Miller's jurisprudence. At times, he may pay too much or too little attention to one of these for the comfort of some readers. If so, they can turn to Fairman or to other sources on the post-Civil War Supreme Court, but they will find no better biography of Miller than this one. The picture that emerges is of a bright, usually optimistic maverick who knew how to work hard and how to have fun–and ultimately proved the wisdom of the choice of title for this book. He saw many of his dreams shattered.

"In 1816, the year Miller was born, the typical manufacturing concern had fewer than eight workers. By 1890, (when Miller died) giant corporations with famous names like McCormick, Armour, Singer, and Swift employed thousands.... When Americans like Miller, born at the start of the nineteenth century, peered out at their

world in 1890, they saw a transformed society that would have left their parents wide-eyed and dumbfounded" and left Miller, as Ross notes, "ambivalent" (xiii). In this way, Miller resembled Abraham Lincoln: a son of rural Kentucky who had no use for physical labor, joined a party that preached the gospel of free labor and then participated in and set in motion events that replaced the independent entrepreneur with the wage laborer. Both men moved west–Lincoln to Indiana and then Illinois, Miller to Iowa. While Lincoln went with his family, Miller's story was vastly different. A job in a drugstore led him toward a medical career. He studied at Transylvania University in Lexington and took a professor's advice to find a community in which to practice and stay there. He chose Barbourville, Kentucky, married a woman from a family of lawyers and wound up tied to slavery by accepting mortgages on slaves as payment for his medical services. Influenced by Henry Clay (another similarity to Lincoln), Miller decided that slavery impeded progress and freed those he owned.

The presence of slavery bothered Miller, but he moved west for additional reasons. He tired of medicine and began studying law, and he saw that Barbourville was economically stagnant. In 1850, he moved to Keokuk, an Iowa town that he considered full of possibilities. Miller ultimately proved far more successful than his community. Ross nicely traces Keokuk's rise and fall, due largely to the Panic of 1857. He also examines Miller's role in the community and the community itself–and how they were connected. "By blaming their state's economic woes on eastern banks and financiers," Ross notes, "Iowa Republicans began to shape their own western version of free labor ideology"(p. 49). Miller helped shape that view and became a popular figure in Iowa politics. That helped explain his elevation to the Supreme Court; not only was he perhaps the leading Republican attorney in the region, but he also was a threat to the political power of Iowa's two U. S. senators, James Harlan and James Grimes, and Governor Samuel Kirkwood. After ample maneuvering, Miller won the appointment in 1862.

Miller arrived on the court as Lincoln was trying to reshape it in the wake of the *Dred Scott* decision. Lincoln wound up choosing five justices–ultimately, a majority. But he chose very different men: corporate and railroad attorneys Noah Swayne and Stephen Field, close friend David Davis, the politically ambitious Salmon Chase, and Miller, who often crossed legal swords with each of them. Just as Franklin Roosevelt appointed a court majority that splintered, so did Lincoln, and for similar reasons: new issues, different backgrounds, and conflicting personalities. While Lincoln's appointees–just Sawyer, Davis and Miller at the time–stood together in the *Prize Cases* of 1863, which dealt with government powers during the war, they disagreed strongly on issues that resulted from or followed the war, including corporate power and civil rights. More than most of his colleagues, Miller leaned toward the Radical Republican view of Reconstruction during Andrew Johnson's administration, yet he feared that radicals were too cavalier about the separation of powers between the branches of government.

Miller's most famous pronouncement on Reconstruction came during the opinion for which he is most famous–and often most reviled. In the *Slaughterhouse Cases*, the court ruled on a matter that "arose from a seemingly benign attempt by Louisiana's biracial Reconstruction legislature to limit the filth, stench and sanitary shortcomings of New Orleans's slaughterhouses," Ross writes (p. 189). Local butchers challenged the law, to the delight of those Louisiana whites who hoped to stop interventionist government, on the grounds that it interfered with their liberty and thus violated the Fourteenth Amendment's privileges and immunities clause. Miller upheld the legislative act, narrowly interpreting that clause by arguing that the federal government protected rights associated with citizenship, but citizens still had to turn to the states to protect other rights. Ross takes apart the decision and puts it back together, noting that Miller's opinion "may be read as a progressive–though ultimately failed–attempt to affirm the authority of the biracial government of Louisiana, to grapple with the horrible sanitary conditions in New Orleans, and to thwart conservatives such as Justice Field, who hoped to defeat state regulation of private property" (p. 201). Indeed, Ross tries, with considerable success, to rescue Miller from the criticism that he and his colleagues had tired of Radical Reconstruction and simply wanted to leave the freedpeople to their own devices. The opinion was complex but so were the reasons for it.

Yet *Slaughterhouse* and the controversy it caused symbolized Miller's successes and failures. As Ross demonstrates, Miller was progressive but thought that many of the changes of the late nineteenth century could be more accurately described as regressive. His colleagues increasingly adopted Field's view of the Fourteenth Amendment as a guardian of private property, not civil rights. Miller hoped to become chief justice, and even entertained entreaties to run for president, but events conspired against him. Despite this litany, Ross shows that Miller was not embittered. He soldiered on,

fighting for his beliefs with a deep sense of commitment and an attitude that life should be contested rather than simply accepted.

When Miller died in 1890, he was rightly remembered as a major figure in American law. Today, he is less memorable but no less important. Ross does a fine job of explaining Miller and his times, the man, the judge and his world. While Ross could have devoted more attention to Miller's jurisprudence–he wrote 616 opinions in 28 years, which attests to the irony of Miller's admirable claims to laziness–he has crafted a portrait of a crucial person and era in the history of the United States, the Supreme Court, and race relations.

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