

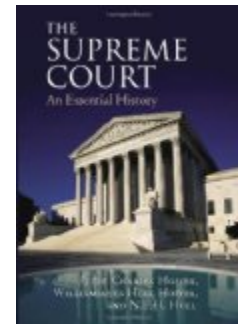
# H-Net Reviews

in the Humanities & Social Sciences

Peter Charles Hoffer, Williamjames Hoffer, N. E. H. Hull. *The Supreme Court: An Essential History*. Lawrence: University Press of Kansas, 2007. 494 pp. \$34.95 (cloth), ISBN 978-0-7006-1538-4.

Charles Zelden, ed. *The Judicial Branch of Federal Government: People, Process, and Politics*. Santa Barbara: ABC-CLIO, 2007. 441 pp. \$95.00 (cloth), ISBN 978-1-85109-702-9.

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## Two Volumes for Teaching the Judicial Branch

“Activist justice,” “strict constructionist,” “original intent,” “swing vote”: We live in a time when terms describing the United States Supreme Court and its activities have become part of the popular lexicon. Talk radio, twenty-four-hour news cycles, and the blogosphere keep the public spotlight trained on the Court to a perhaps unprecedented degree. The “litmus test” of a politician’s campaign rhetoric regarding *Roe v. Wade* can make or break a career, while syndicated columnist Ann Coulter can stop the presses with a sophomoric public remark about putting rat poison in a justice’s creme brulee. And academics, of course, have also rolled up their sleeves and waded into the fray with both regularity and enthusiasm. While all this denotes either the vigor of a thriving democracy or the twilight of reasoned discourse (and it isn’t my intention to debate which one here), the crucial question remains as to how, amidst all the static, we can inform and enlighten today’s students about the judicial branch of our federal government—not only its structures, functions, and history, but also about its very meaning in our nation and in the lives of its citizens. Two recent texts, *The Supreme Court: An Essential History* and *The Judicial Branch of Federal Government* have taken on this challenge.

Peter Charles Hoffer, Williamjames Hoffer, and N. E. H. Hull assert in their book’s introduction that “an account of the Court that dwells overly on issues and

ideas that are no longer relevant to our world would be antiquarianism, not history” (p. viii). Academics worried about the distorting effects of “presentism” on their students’ understanding of the past, however, have nothing to fear, for this book is actually a rather traditional institutional history. The authors’ goal is to present an account that is “clear but does not oversimplify” and is “neither overly critical nor overtly celebratory” (p. vii). To both these ends they have succeeded admirably. The book’s focus is on the Court *per se* rather than the larger historical picture of constitutional development that is presented in texts such as Michael Les Benedict’s *The Blessings of Liberty* and Melvin L. Urofsky and Paul Finkelman’s two-volume *The March of Liberty*. At the same time, it is both more comprehensive and more conventional than other Court histories, including Peter Irons’s *A People’s History of the U. S. Supreme Court* and Bernard Schwartz’s *A History of the Supreme Court*, works characterized as “breezy” and “anecdotal” respectively by the authors in their own bibliographical essay (p. 467).[2]

The narrative is just broad enough to encompass the immediate political contexts in which the Court evolved, but doesn’t venture very far. An account completely devoid of a sense of the intellectual and political messiness, or the human emotion, that infuse much of the Court’s history would itself misrepresent the past, and therefore

an occasional self-disciplined nod toward the subjective is by no means a detriment in a book such as this. In a rare editorial moment the authors assert that, following *Roe*, abortion opponents “wage[d] holy war against the desecration of religion, motherhood, and the family that the decision represented to them” (p. 387), a choice of phrasing that, for this reviewer, appropriately captures the fervor of the cultural war over abortion. In general, however, the tone is measured and even staid at times. In fact, for a volume that begins by noting we are living in “years of hotly contested Supreme Court nominations, marches, and demonstrations on the Supreme Court building’s steps” (p. 1) the overall presentation of the book is strikingly safe. The dust jacket features a handsome cover photograph of the Court’s exterior, shot at a low angle so that the building looms stately and impressive, and the illustration section consists entirely of formal black and white portraits and photographs of individual justices, groups of justices, and interior and exterior shots of the building completely devoid of human figures. Some depictions of people actually engaging in the events that shaped the Court’s history would have more powerfully conveyed the authors’ introductory question, “can there be any doubt that the U. S. Supreme Court’s decisions affect the lives of ordinary Americans” (p. 1). The volume is reasonably priced for course adoption, and students and scholars alike will find useful the book’s extensive bibliographical essay.

Charles L. Zelden is the editor of *The Judicial Branch of Federal Government* encyclopedia series.[1] (Zelden also served as the set’s editor.) Like most texts describing the American system of government, the book’s foreword duly reminds readers of the critical necessity of an informed citizenry to the success of a democratic republic. But then Zelden goes further, asserting that when “a president goes on television and claims a power not granted by the Constitution, we need to know that this claim is something new”; indeed, the editor warns that it may even represent a “radical expansion of [the president’s] powers based on nothing more than his say-so” (p. viii). In the introduction we learn that “everywhere we turn, from right and left alike, the federal judiciary seems to be under attack” (p. 1) and further, that, “at the heart of this bitter, polemical debate lies confusion and ignorance” (p. 3). From the start, then, we are made aware that the information to follow in this volume is both immediate and vital; as readers we are called to sit up and pay attention. Because this is an encyclopedia that manages to be timely, accurate, and engaging, high school and college libraries will want to con-

sider it as a lively addition to their reference resources. But, of course, a great deal of information on the structures and functions of the judicial branch is readily available electronically, and therefore a reference work such as this must also bring analytical coherence to the massive streams of information into which students regularly wade, often rather indiscriminately—a daunting task.

In this volume, the editor has chosen five thematic essays designed to contextualize the material. Each essay is thirty to forty pages long divided into brief topical sections, ending with a short list of suggested readings, cases, and websites. The first is Zelden’s own essay on the judicial branch’s “Roles, Functions, and Powers,” followed by Timothy Dixon discussing its “Structure and Process.” Roberta Sue Alexander’s essay traces “The People Who Serve” followed by Thomas Mackey on “The Politics of the Courts.” A contribution by Lester Lindley on “Interactions with the Other Branches and the States” completes the essays, and also the first half of the volume. Precisely because it is a reference work rather than a work of history, the information is meant to be digested in small doses at a time and so, alas, its choppy presentation ultimately makes the material less gripping than Zelden’s lively introduction suggests it will be. Similarly, the thematic rather than chronological structure of the essays diffuses the information so student readers will miss a sense of change over time and, to an extent, of cause and effect as well. The remainder of the volume is somewhat of an information hodgepodge, consisting of a glossary of names and terms, followed by a list of “Federal Judges and the Presidents Who Nominated Them,” a list of “Judges of the United States Federal Courts,” a brief, unexplained, section consisting of a few primary source documents and the majority opinions in *Marbury v. Madison*, *Swift v. Tyson*, and *Erie R. Co. v. Tompkins*, an annotated bibliography, and an index. Rather inexplicably, a timeline of the “Legislative History of the Federal Courts” appears at the book’s beginning rather than among the reference material in the volume’s second half. At \$95.00 this volume seems quite costly for adoption as a supplementary reference book for students’ use, at least in an undergraduate history course, but its irregular organization will also detract from its appropriateness as a main text.

#### Notes

[1]. This book is also available as an eBook (ISBN 1-85109-707-4).

[2]. Michael Les Benedict, *The Blessings of Liberty*, 2nd ed. (Boston and New York: Houghton Mifflin Com-

pany, 2006); Melvin L. Urofsky and Paul Finkelman, *The March of Liberty*, vols 1 and 2, 2nd ed. (New York and Oxford: Oxford University Press, 2002); Peter Irons, *A People's History of the Supreme Court* (New York: Penguin Books, 1999); and Bernard Schwartz, *A History of the Supreme Court* (New York and Oxford: Oxford University Press, 1993).

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