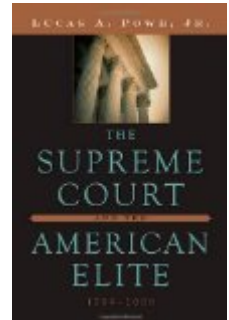


**L. A. Scot Powe.** *The Supreme Court and the American Elite, 1789-2008*. Cambridge: Harvard University Press, 2009. x + 421 pp. \$29.95, cloth, ISBN 978-0-674-03267-5.



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**Commissioned by** Christopher R. Waldrep (San Francisco State University)

In the American mind, the very mention of the Supreme Court conjures up mental images of a majestic temple of the law, of imperial justices, and important cases. But all too often, the Court and its work seem separate from the other branches of government and even the currents of national life as a result. Lucas Powe seeks to address and remedy this problem. An expert on the Warren Court and the First Amendment, Powe has trod some of this territory before, including from the inside (as a law clerk for Justice William O. Douglas). Powe firmly places the Court at the center of the American story, where it belongs.

The book is refreshing for the approach Powe takes in writing. Straightforward and steeped in politics, it provides a reminder of how effective that style can be for his audience. The book is well written and has a powerful narrative flow. Powe takes a chronological approach, covering the Court's history from the 1780s to the present, and is to be commended for the sheer scope of the book. In just a few hundred pages (really just 350 of text), he covers over 200 years of history. All

the important (and many of the lesser) cases are in those pages, all the justices are brought into play, and all the politicians (who both stimulated the rise of the justices as well as the issues that came before them) are included as well. It is both comprehensive and sweeping in its scope. While it offers little (in terms of new scholarly insights), the synthesis it provides more than offsets this (potential) limitation.

In some respects, by telling the general story so well, Powe gives his reader the basis to ask further question about the high court and its history. Indeed, Power mentions any number of areas that demand more work by scholars. Several justices during the Court's first two decades, for example, were active in promoting political agendas both from the bench and as special envoys on diplomatic missions. What does this tell us about how the Court was viewed, and indeed how those justices viewed its role (and their own) under the young Constitution? Surely as well, more work needs to be done on the circuit-riding system and how it affected the high court and the rest of the

federal judiciary for most of the nineteenth century.[1] Even when there has been recent scholarly activity (Franklin Roosevelt's court-packing plan is an example),[2] a work like Powe's reminds readers that the Court has a rich history that deserves more attention.

That is not to say there is not room to criticize the book. First, some readers might be put off by some of the opinions about people that Powe offers in the book. While frequently funny (and depending on the reader's opinion, correct), some of the comments are sure to annoy some readers for their barbed tone and "pull no punches" style. So, for example, Chief Justice Taney issued an "absurd holding" in the *Dred Scott* decision (p. 109), while President Franklin Roosevelt was fighting for "his" interpretation of the Constitution to prevail against the Supreme Court's Four Horsemen during the early New Deal (p. 209). The second issue is with the coverage Powe offers on the justices themselves. Not all are equally considered. That is not to say that all justices are equal (when it comes to scholarly attention) but many rate little more than their name appearing in the book. A bit more biographical information on the more obscure justices (along with the excellent accounts of the more "popular" ones) would have added to the book. These men (and in this case they are all men, the two female justices covered in Powe's book--Sandra Day O'Connor and Ruth Bader Ginsberg--receive their due) would have added immensely to our understanding of how the Court fits into the political world of the federal government historically.

This minor point leads to a more substantive critique, which is with the title of the book itself. The word Powe (or his editors) used to help contextualize the court was "elite." And yet, there is rarely anything elitist about what the reader encounters, nor is there a sense that the justices are somehow above the ebbs and flows of national life. Indeed, "elite" seems to be the exact opposite of the story Powe tells so well. The justices are

properly placed in the wider currents of American politics and culture. They are products of those forces as well as a body that influences the politics and culture of the nation. If this detracts from the mystery of the Court, it does nothing to take away from its majesty or importance. Rather, recognizing that the Court is part of the process only magnifies its significance.

Specialists may quibble that their area is not given enough coverage in the book; others might take issue with the effectiveness of a chronological presentation as opposed to a more topical approach. But both arguments miss the point that this is a book written by an expert for the general reader. It could as easily find a home in law, political science, or history classes. And it should be an essential resource on the Court, found on the bookshelves of anyone interested in the Court's history. In the end, Powe succeeds in his goal of offering the reader a look at a court whose historic duty has been "to harmonize the Constitution with the demands of majoritarian politics" (p. 350). That his work also reminds readers that there is more work to be done on the federal judiciary is a bonus.

#### Notes

[1]. The Jay and Ellsworth Courts deserve more attention in these regards, including comparisons to the better studied Marshall Court.

[2]. See, for example, Jeff Shesol's *Supreme Power: Franklin Roosevelt vs. the Supreme Court* (New York: W. W. Norton, 2010).

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