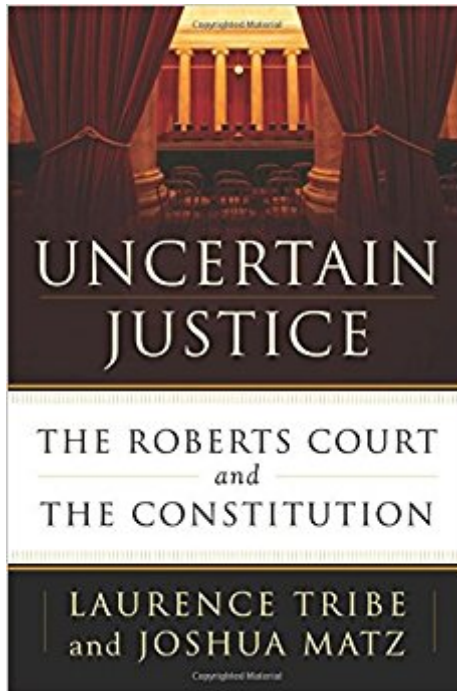




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Uncertain Justice: The Roberts Court And The Constitution



Synopsis

With the Supreme Court more influential than ever, this eye-opening book tells the story of how the Roberts Court is shaking the foundation of our nation's laws. From Citizens United to its momentous rulings regarding Obamacare and gay marriage, the Supreme Court under Chief Justice John Roberts has profoundly affected American life. Yet the court remains a mysterious institution, and the motivations of the nine men and women who serve for life are often obscure. Now, in *Uncertain Justice*, Laurence Tribe and Joshua Matz show the surprising extent to which the Roberts Court is revising the meaning of our Constitution. This essential book arrives at a make-or-break moment for the nation and the court. Political gridlock, cultural change, and technological progress mean that the court's decisions on key topics— including free speech, privacy, voting rights, and presidential power— could be uniquely durable. Acutely aware of their opportunity, the justices are rewriting critical aspects of constitutional law and redrawing the ground rules of American government. Tribe— one of the country's leading constitutional lawyers— and Matz dig deeply into the court's recent rulings, stepping beyond tired debates over judicial "activism" to draw out hidden meanings and silent battles. The undercurrents they reveal suggest a strikingly different vision for the future of our country, one that is sure to be hotly debated. Filled with original insights and compelling human stories, *Uncertain Justice* illuminates the most colorful story of all— how the Supreme Court and the Constitution frame the way we live.

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Customer Reviews

Much has already been written about the composition of the Supreme Court, the division between the liberals and the conservatives, and those justices who are for judicial restraint versus those who are activists. Legal scholar Tribe and legal writer Matz argue that all the justices are activists to a certain extent and in certain areas of constitutional law. Instead of the usual analysis of the Supreme Court, Tribe and Matz present a more nuanced look at how the court under Chief Justice Roberts has arrived at momentous decisions from *Citizens United* to support for Obamacare. They offer a brief sketch of each justice's background, journey to the court, temperament, and major opinions. They explore the differences in political principles, philosophical perspectives, and personalities, with various justices brought to the fore on particular decisions. They focus on specific issues of equality of race, gender, and sexual orientation as seen through decisions on affirmative action, voting rights, and marriage laws as well as health care, campaign finance, gun rights, presidential power, and privacy in this insightful perspective on the Supreme Court. --Vanessa Bush

“Tribe and Matz set out to portray the Roberts court in what they see as its messy complexity. It is no doubt difficult to write with clarity about uncertainty, but Tribe and Matz largely succeed. Surveying a shifting legal landscape, they offer crisp accounts of key cases.”

The New York Times Book Review “Well-written and highly readable.”

The strength of the book is its painstaking explanation of all sides of the critical cases, giving full voice and weight to conservative and liberal views alike.

The common-sense tone that prevails in most of the book is a tribute to the mastery of the Supreme Court by Tribe, a keen observer of the justices and of constitutional law for more than four decades.

The Washington Post “Full of bright and unconventional wisdom.”

Rejecting tiresome conventions of court reporting -- liberals vs. conservatives, restraint vs. activism -- the authors bring fresh insight to the court's work.

The Los Angeles Times “An engaging and accessible history of the Court's major decisions [Tribe is] among this nation's most sophisticated thinkers about constitutional law.”

New York Review of Books “Marvelous.”

Tribe and Matz's insights are illuminating.

[They] offer well-crafted overviews of key cases decided by the Roberts Court [and] chart the Supreme Court's conservative path, clarifying complex cases in accessible terms.

The Chicago Tribune “Tribe is a particularly effective messenger [and] is among the nation's most celebrated legal scholars.”

By giving the Justices their due, this book reminds us what it really means to respect the Constitution and its mission.

The Los Angeles Review of Books “At once accessible and erudite, the book provides an introduction

to the high court's key decisions for general readers, while at the same time offering thoughtful analysis that will interest lawyers and Court watchers. Addressing hot-button topics such as equal protection, campaign finance, and executive power, the authors push readers to move past bumper-sticker reactions and recognize the complexity of the legal issues involved.

California Lawyer "A well-researched, unsettling investigation of recent trends in the nation's highest court. A near-forensic dissection of the court's work under Roberts ... Many of their conclusions will be eye-openers."

Kirkus Reviews "[An] insightful perspective on the Supreme Court [and a] nuanced look at how the court under Chief Justice Roberts has arrived at momentous decisions from Citizens United to support for Obamacare."

Booklist "Laurence Tribe and Joshua Matz have produced a brilliantly layered account of the Roberts Court. Filled with memorable stories and striking references to literature, baseball and popular culture, this book is a joy to read from start to finish--an irresistible narrative that will delight the general public as well as journalists and scholars."

Doris Kearns Goodwin, author of Team of Rivals and The Bully Pulpit "Laurence Tribe, the foremost constitutional scholar and advocate of his generation, and Joshua Matz have written a brilliantly insightful and engaging account of the Roberts Court. Relentlessly fair-minded in its judgments about the justices and their work, Uncertain Justice is an indispensable guide to the Court's recent history and, more importantly, to its future."

Jeffrey Toobin, author of The Nine and Senior Legal Analyst, CNN "Uncertain Justice is a fascinating, penetrating, and highly readable analysis of the Supreme Court's jurisprudence. Anyone who aspires to understand how and in what ways the Court is influencing our lives and our laws will want to read this superb and evenhanded book."

Theodore B. Olson, U.S. Solicitor General for President George W. Bush "No one knows the Supreme Court like Laurence Tribe, and no one brings its decisions to life like Tribe and Joshua Matz. Uncertain Justice is spellbinding--whether you care about gay marriage, health care, NSA surveillance, or gun control, this magnificent book will widen and deepen your understanding of our constitutional landscape."

Kathleen M. Sullivan, Dean, Stanford Law School (1999-2004) "Uncertain Justice provides a uniquely valuable perspective on the often confusing swirl around the most divisive legal, social, and political issues of our time. Once I started reading it, I just could not stop."

Ron Klain, Chief of Staff, Vice Presidents Biden (2009-11) and Gore (1995-99) "Uncertain Justice is must reading for anyone interested in the current unannounced agenda of the Supreme Court. Lucidly written and impeccably reasoned, this essential book documents the ways in which the Roberts Court has engaged in a wholesale

revision of the Constitution. — Scott Turow, author of *One L*, *Presumed Innocent*, and *Identical* — “We need this book. It is a brilliant discussion of the murky, quirky, troubling, and uncertain Roberts Court. Written in simple, elegant prose for the general public, *Uncertain Justice* is the best explanation we have of how this Court reaches its most important decisions. — John Jay Osborn Jr., author of *The Paper Chase* — “*Uncertain Justice* offers a page-turning and accessible analysis of the Roberts Court and its individual justices. It illuminates the often sharp disagreements and occasionally surprising agreements that mark the Court’s performance. For those seeking a thoughtful, balanced, and fair-minded review of the Roberts Court, this is the book to read. — Geoffrey Stone, Dean, University of Chicago Law School (1987-94) — “Put simply, *Uncertain Justice* is a great book. Timely and important, it tells it like it is and captures the essence of the Court’s changing role in American life. It is an amazing piece of work. — Charles J. Ogletree, Jr., Jesse Climenko Professor of Law, Harvard Law School

This is an amazing analysis of the current Supreme Court, both thoughtful and critical. Tribe starts off by saying his analysis of the Justices is more than 4 liberals versus 5 conservatives with Justice Kennedy in the middle, indeed he refuses to classify the court and the Justices that way. At first I was a bit skeptical, but he explains why and well. He dispels the myth that these are politicians in robes and just rule in the judgements they want. They don’t. He discusses Roberts’s shocking vote in 2012 to uphold the ACA (Obamacare) that even long time court watches did not expect. Even most news media incorrectly reported the story initially because it was so shocking. But Tribe was Roberts’s law professor at Harvard (along with president Obama) and was the only major voice to correctly predict the outcome of the ruling before it happened, down to the very reasoning (upheld it under taxing power). If you look up interviews with Tribe just before the ruling, no one believed Tribe. This man knows and understands the Supreme Court more than probably anyone else. He discusses how Ailto and Scalia butt heads even when coming to the same conclusion. On contentious issues, such as freedom of speech or even gun rights, they go different ways. Ailto is not an originalist like Scalia, making things complicated. Kagan’s replacement of Steven’s also shook the court’s balance. Many see her as a liberal, but her background as a law professor and Dean gives her more of an idiosyncratic view than people give credit to. Kennedy is not the moderate many make him out to be, but is rather the most libertarian sitting justice who isn’t scared to make far reaching rulings. And he of course discusses the other justices and their roles. Overall, FANTASTIC read for anyone along the political scale. This book is apolitical and correctly analyzes

and discusses each Justice well and how the 9 Justices interact and create the current jurisprudence they do now. MUST BUY AND MUST READ! Past students of the author (Tribe) are: Chief Justice John Roberts, Barack Obama, Ted Cruz, and Elena Kagan, among many others.

As a dedicated student of the Supreme Court and Constitutional Law, I find this book to be beyond EXCELLENT !! This is a book from which professors and law students would equally benefit in university Constitutional Law courses. Everything is here: references to past, present, and future cases and courts; all the issues faced by the Roberts Court; insightful analysis of the Supreme Court justices; visions of the evolution of past, present, and current cases before the Court; and incisive discussion and analysis of the major cases decided by the Roberts Court, with references to all relevant judicial decisions and reasoning. The author's ideas, observations, insights, and analysis are well-articulated, detailed, substantive, clear, and concise. I have detected no bias, political, social, or otherwise. For avid Supreme Court enthusiasts, as well as those who are curious about justice and desire to be informed, this book is an absolutely-definitely-must-read!

Uncertain Justice: The Roberts Court and the Constitution by Laurence Tribe, Joshua Matz
“Uncertain Justice” is a well-researched and insightful look at the Roberts court. It will help you gain a better understanding of the nine lawyers, their philosophies, their rulings and the impact it has on our society. Legal scholar Tribe and legal writer Matz have provided the public with keen insights into some of the most important decisions of the Supreme Court. This interesting 416-page book includes the following nine chapters: 1. Equality: Are We There Yet?, 2. Health Care: Liberty on the Line, 3. Campaign Finance: Follow the Money, 4. Freedom of Speech: Sex, Lies, and Video Games, 5. Gun Rights: Armed and Dangerous, 6. Presidential Power: Hail to the Chief, 7. Privacy: What Have You Got to Hide?, 8. Rights for Sale: Discounting the Constitution, and 9. Making Rights Real: Access to Justice. Positives: 1. A well-researched, reasoned and even-handed book. 2. The fascinating topic of uncertainty at the Supreme Court in the hands of masters of the subject. It’s professionally treated. “In this book, we show how conventional wisdom on these matters is often misleading, and we draw out the latent meaning of many of this Court’s most important opinions to identify the uncertainties facing the nation and its justices.” 3. Goes beyond the stereotypical bent of liberals vs. conservatives and illustrates many cases where the justices surprisingly agree and disagree with one another. Great exploratory depth on how the justices disagree and do so by presenting their strongest arguments and rebuttals. 4. Does a

wonderful job of portraying each justice accurately based on their backgrounds, philosophies and rulings. *Justice Roberts* â “Widely considered the best Supreme Court advocate of his generation, Roberts was known before his ascension to the Court as a gifted writer, skilled strategist, and brilliant legal mind. *Justice Sotomayor* â “On the Court, Sotomayor has emerged as a voice for common sense. She has also displayed a keen sensitivity to the potential for injustice in law enforcement, calling attention to maltreatment in prisons, abuses of the death penalty system, dangers to privacy rights, and police and prosecutorial misconduct. *Justice Ginsburg* â 5. Goes over some of the most noteworthy cases of the Roberts court. Cases include Citizens United, Affordable Care Act, and many other controversial cases that impact American life. It does so by going over the arguments of each case in the words of the justices. *Justice Scalia* â “The Court receives roughly eight thousand petitions for review per year and usually grants around seventy-five, with each grant requiring the vote of four justices. *Justice Kennedy* â 7. How the Roberts court view equality. *Justice Roberts* â “In Parents Involved, Roberts championed a color-blind constitution, one that forbids government from using racial classificationsâeven when the goal is to benefit minorities. *Justice Ginsburg* â “Ginsburg on the other hand argued, *Justice Kennedy* â “We are not far distant from an overtly discriminatory past, and the effects of centuries of law-sanctioned inequality remain painfully evident in our communities and schools. *Justice Scalia* â 8. Fascinating tidbits that reflect how we have evolved as a society. *Justice Kennedy* â “State-sanctioned discrimination was widely accepted; when IBM hired Windsor, it unknowingly violated an executive order barring companies with federal contracts from employing homosexuals. *Justice Kennedy* â “In Windsor, Kennedyâjoined by Ginsburg, Breyer, Sotomayor, and Kaganâheld that DOMA cannot stand. But rather than rule broadly that the Constitution protects a right to same-sex marriage, he limited the direct holding of his opinion to the federal law under review. *Justice Kennedy* â 9. An interesting look back at the Affordable Care Act (Obamacare). *Justice Roberts* â “Because the Constitution permits such a tax,âthe Chief concluded,â“it is not our role to forbid it, or to pass upon its wisdom or fairness. *Justice Kennedy* â “Construed as a tax, theâmandateâsurvived. *Justice Kennedy* â 10. The application of the Constitution of course plays a prominent role throughout the book. *Justice Kennedy* â “The central insight regarding limits on federal power, credited to James Madison, is that the Constitution protects rights in more ways than one. Its most direct method of protection is to say something such as *Article I* â “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. *Justice Kennedy* â “By recognizing a right, the

Constitution creates a strong presumption in favor of that kind of liberty. It tells Americans that we value this right; it also tells politicians to respect it and courts to guard its boundaries.

11. *Citizens United Case*. The dissent may have been the most interesting aspect of that case. “Fast approaching the end of his long and storied career on the Court, Stevens composed a ninety-page dissent that besieged every factual premise, procedural device, and legal argument in *Citizens United*. The final lines of this epic opinion foreshadowed the coming conflict: “While American democracy is imperfect, few outside the majority of this Court would have thought its flaws included a dearth of corporate money in politics.”

12. Options considered reforming *Citizens United*. “To those concerned by *Citizens United*, disclosure is likely to remain the most promising and realistic reform option.”

13. Interesting cases involving free speech. Cases involving prisoners, whistleblowers, new technology, violent speech, obscenity, etc.

14. Kennedy reasoned, “the remedy for speech that is false is speech that is true.”

15. A look at gun rights exemplified by the *District of Columbia v. Heller* case. “Heller was hailed by Harvard Law Professor Cass Sunstein as the most explicitly and self-consciously originalist opinion in the history of the Supreme Court.”

16. The various interpretations of the Second Amendment. “In sum, though the Court refused to pronounce the Second Amendment extinct, it also declined to disable effective gun regulation.”

17. Fascinating look at presidential power. “In sum, it would be undesirable and, indeed, impossible to require maximum enforcement of every federal law but dangerous to allow presidents simply to ignore any law they dislike.”

18. A look at privacy. “Sotomayor, willing to reconsider foundational precedents and more open to an active judicial role, has emerged as an eloquent champion of privacy’s importance.”

19. “Sotomayor’s effort to forge a set of rights adapted to twenty-first-century realities, however, has met a more hostile audience among her colleagues. She wrote alone in a case about warrantless GPS tracking to argue that we may need to fundamentally rethink privacy rights.”

20. A look at our rights. “In sum, government enjoys broad power to offer deals in which we trade rights for other benefits, and in most cases we have no option but to make a choice.”

21. Access to justice. “The Court has reflected that sentiment by issuing a string of opinions—all decided five-to-four and all authored by Scalia—that have the obvious purpose of destroying

most consumer and employment class actions. In general, a majority of the Roberts Court seems to doubt the value and legitimacy of many civil rights suits and favors legal rules that keep most of them out of court. The result is a shrinking judicial role in enforcing the Constitution and protecting our liberties.

20. Links to notes.

Negatives:

1. Lack of visual material that could have strengthened the understanding of this excellent material. I would have suggested tables that summarized the rulings of each case that would have been invaluable to me.
2. Along the same lines as negative number one; charts, diagrams and even photos would have complemented the narrative.
3. Some of the cases follow one another in rapid-fire and may lose the reader.
4. Can be tedious reading at times.
5. No formal bibliography included.

In summary, missed opportunities aside this is an excellent book. Tribe and Matz in a fair and professional manner provide the public with some interesting insights into the Roberts court. They cover some of the most interesting cases and provide the justices perspectives.

We aim to make useful generalizations about why the justices see things the way they do, what competing visions press against their core beliefs, and where their assumptions and aspirations are likely to lead them.

This is a 4.5 star out of five, I highly recommend it!

Further recommendations:

- The Roberts Court by Marcia Coyle,
- The Nine and
- The Oath by Jeffrey Toobin,
- The Brethren by Bob Woodward,
- Six Amendments by John Paul Stevens,
- Five Chiefs by John Paul Stevens,
- Overruled by Damon Root,
- Scalia by Bruce Allen Murphy,
- Justice for All by Jim Newton,
- A People's History of the Supreme Court by Peter Irons,
- Making Our Democracy Work by Stephen Breyer,
- The Conservative Assault on the Constitution by Erwin Chemerinsky, and
- My Beloved World by Sonia Sotomayor.

Laurence Tribe is a brilliant constitutional scholar, but this book is targeted at the intelligent lay reader. It is *not* dumbed down, but it is not a law text-book; it is a brilliant and incisive analysis of the Roberts court, and it will, if nothing else, dispel much of what you think you know about the justices and provide context and deep understanding of the issues recently before the court. Very highly recommended

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