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Review of *Uncertain Justice: The Roberts Court and the Constitution*. Laurence Tribe and Joshua Matz. Reviewed by **Margaret Burnham**

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lands, are not considered qualified to help determine who may contact them. As an example, the internet is considered off limits, even though for the majority of Latino and African youth, Facebook is the only free communication option available to families. When youth protest such deprivations, privileges may be withheld. Yet these youth, neither criminals nor delinquents, are only seeking to be united or reunited as expeditiously as possible with parents or kin.

Lauren Heidbrink skillfully critiques the shortcomings of intersecting systems that frequently collide and too often sideswipe best interests of children and families. Successful advocacy by community immigrant networks and by national child welfare and immigrant advocate organizations for immigration policy changes and for greater transparency, not mentioned in the book, are slowly turning around some of these egregious effects.

Laurie Melrood, Immigrant Family Advocate, Tucson, AZ

Laurence Tribe and Joshua Matz, *Uncertain Justice: The Roberts Court and the Constitution*. Henry Holt & Co. (2014), 416 pages, \$32.00 hardcover.

Most best selling books on the Supreme Court have been of the “inside story” variety, like Woodward and Armstrong’s *The Brethren*, or biographical portraits like Linda Greenhouse’s *Becoming Justice Blackmon*. Combining fine-tuned analysis of arcane doctrines—such as rules about standing, with interesting vignettes about life in the chambers and sweeping predictions about the distant impact of today’s high court decisions—is not a job for sissies, and the authors of *The Roberts Court* have broken the mold by producing a delightfully readable and erudite volume that both places complicated legal concepts within the easy reach of non-lawyers and synthesizes a broad swath of case law for the legally trained.

The central insight the authors seek to convey is two-pronged: the Court that began with the 2005 appointment of Chief Justice Roberts defies and perhaps does not deserve the hard, crass political descriptions commentators and humorists alike have applied (Steven Colbert’s spoof on the campaign

finance case *Citizen's United* gets a good deal of ink in the book), and the decisions of the justices flow from fundamental beliefs about law, government, and American history rather than from antipathies towards particular kinds of litigants like consumers, marginalized minority groups, environmental advocates and criminal defendants. Roberts and his allied colleagues, on this reading, genuinely believe that, as a matter of constitutional design and original intent, the other two federal branches must be straightjacketed by the Court lest personal liberties disappear, that access to federal court should be restricted and closely monitored by the Supreme Court, and that the states are, in effect, the sovereign equals of the United States. In some places, the authors track centuries of jurisprudence to establish that these are arguments over core, if intellectually debatable, constitutional principles, seemingly to undermine the view of many court observers that these result-oriented jurists are, plain and simple, naked emperors.

While most students of the Constitution very much want to believe that a set of reasoned principles lie behind this Court's decisions, the authors' close examination of a wide range of issues suggests otherwise, and, hence, at the end of the day their premise, although generous and respectful, seems unsustainable. Thoroughly examining nine subject areas of the Court's work, the book surveys the constitutional history and enduring questions raised by each topic, probes the justices' thinking on well-known current cases, and dissects the ideological alignments that thread through these cases. Much of the material is journalistic in nature: Thomas's silence at oral argument, Scalia's penchant for scolding, Sotomayor's devotion to the Yankees. More valuable are simplifying and illuminating renderings of case law only lawyers need to know.

In that vein, a chapter on Access to Justice does a superb job of describing how procedural rulings about who can sue, when and for what claims have deeply diminished individual rights, fairness, and equal justice. The authors describe several cases decided by a five-to-four Court that have ravaged the class action lawsuit and endorsed the preference of businesses for private arbitration over public litigation. The criminal rulings on procedural issues are to the same effect: in one case, *Connick v. Thompson*, the Court allowed a New Orleans district

attorney whose line lawyers hid evidence from a defendant in order to win a capital conviction to escape civil litigation, thereby significantly diminishing the grounds for holding police departments accountable in federal court for civil rights violations.

The authors repeatedly claim that the complaints of critics that the court favors business over consumers and is hostile to civil rights and criminal defendants are only “partly right.” It is, they say, “not a neutrality v. activism story” but rather “competing beliefs about what law requires with fundamental disagreement about the role of courts and litigation in American life.” But time and again in the book, this plea for nuance and principle comes up short, which explains why normally hyper-professional jurists like Ruth Ginsburg—she is the real hero of this story—sometimes sound apoplectic. In the Court’s decision striking the individual mandate in the *Health Care Case*, Ginsburg labeled “specious,” illogical, and disingenuous Chief Justice Roberts’ claim that but for Court oversight Congress might require Americans to eat broccoli. The book makes clear that history will embrace Justice Ginsburg as one of the Court’s most effective voices, on a line with John Marshall, Robert Jackson, Earl Warren and William Brennan. Her prose is plain, her American history richly supported, and her legal argumentation always hits the mark.

For those who want both the play on the ground and the panoramic view, this book provides it. Taking us into corners of the Court’s work and thinking that only lawyers visit, it reflects the true costs of the rise of conservatism, and, despite the authors’ contention that the caselaw illuminates a complicated and diverse way of using constitutional principles, it suggests that Steven Colbert got it right. The Roberts Court mainly follows the money.

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