

Book Reviews

Marc Stein, *Sexual Injustice: Supreme Court Decisions from Griswold to Roe*, Chapel Hill: University of North Carolina Press, 2010. Pp vi + 364. \$39.95 (ISBN 978-0-8078-3412-1).
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Many are familiar with Justice Robert Jackson's remark that the Supreme Court is not final because it is infallible, but rather is infallible only because it is final. Marc Stein's original and important book, *Sexual Injustice: Supreme Court Decisions from Griswold to Roe*, demonstrates that the Court may not have the final word on what its decisions mean. The study is a corrective to previous histories of the sexual revolution of the 1960s and 1970s. Stein argues that previous accounts have "not paid much attention to the Court" and have highlighted only the most libertarian and egalitarian aspects of the Court's decisions (14). Instead, as the book contends, the Court's sexual rights jurisprudence, was "counterrevolutionary," affirming "the supremacy of adult, heterosexual, marital, monogamous, private, and procreative forms of sexual expression" (3).

Stein's analysis begins with a reconsideration of the better-known sexual rights decisions of the mid-1960s and early 1970s. The book effectively highlights language in the Court's decisions praising and protecting marital, reproductive, and heterosexual sex while presuming the constitutionality of bans on most forms of sexual dissent. Why were the Court's decisions in the period so heteronormative? The answer, Stein suggests, lies in the arguments presented by the left-wing advocacy groups litigating the cases at issue. Stein offers a valuable analysis of the strategies and claims made by cause lawyers in the period.

Stein's most compelling evidence of the Supreme Court's sexual conservatism comes in his account of its little-known decision in *Boutilier v. Immigration and Naturalization Services*, a decision upholding a 1952 immigration law authorizing the deportation or exclusion of aliens "afflicted with a psychopathic personality," a phrase interpreted to include "homosexuals." Stein persuasively details strategic decisions made by the Court in describing Boutilier's sexuality and in upholding the law. As Stein makes evident, *Boutilier* offers strong evidence of the limits of any sexual revolution in the Court.

Perhaps the most novel claim offered in the book concerns the prevailing public understanding of the Court's sexual rights decisions. Stein asserts that journalists, scholars, and lower courts portrayed these opinions as being "more sexually libertarian or egalitarian than the texts of those decisions stated or implied" (208). Over time, as Stein carefully shows, these reinterpretations became predominant.

This book makes several important contributions to the history of the sexual revolution. Stein should also be praised for recovering part of the lost history of claims presenting abortion or contraception in the context of rights to sexual freedom. His analysis of *Boutilier* alone makes the book worth reading. Moreover, his account of the changing interpretations of the Court's opinions is intuitively satisfying, original, and well documented.

If there is a problem with Stein's book, it is with his contention that the Court was counterrevolutionary. Presumably, he criticizes the Court's decisions in the context of more radical sexual rights claims made by social movement attorneys and activists in the period. With some exceptions, however, Stein does not fully evaluate the history of these arguments and of their evolution. Without this context, Stein's claims are difficult to evaluate.

For the same reason, it is difficult to determine whether the Court was indeed counterrevolutionary, as Stein charges, or was instead revolutionary for its time. Certainly, in any of the cases studied, the Court could have gone further than it did in protecting sexual dissent. However, it is unclear whether the Court's decisions were liberationist given the political and social climate in which they emerged.

Stein's book would be further strengthened by more attention to scholarship on reproductive rights. In a book defined by original research and arguments, some of Stein's claims about the conservatism of *Roe v. Wade* or *Griswold v. Connecticut* are less novel, especially when read in the context of reproductive justice studies. Stein convincingly demonstrates that the Court privileged reproductive relationships. However, before and after *Roe*, feminists have argued that the issue of reproductive control is central to women's ability to participate equally in society. Read in this light, a focus on reproductive sexuality might appear as egalitarian as it does heteronormative.

Stein's account of the popular reinterpretation of the Court's decisions is original and persuasive, and he thoroughly analyzes the contributions of journalists, scholars, and lower courts. The book would benefit from an equally detailed analysis of the contributions made by the vocal and creative politicians or advocacy groups active in the period.

At the end, however, these are relatively minor criticisms of what is an important, readable, and persuasive book. Stein concludes by warning that, in light of the Court's past decisions, "we should be cautious about declaring victory and celebrating our liberation" (301). After reading this important new

study, readers will indeed think twice before celebrating a sexual revolution in the Court.

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Stephanie Carvin, *Prisoners of America's Wars from the Early Republic to Guantanamo*, New York: Columbia University Press, 2010. Pp. 256. \$32.50 (ISBN: 978-0-231-70156-3).

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Stephanie Carvin tells the story of the United States' engagement with the laws of war, with special attention to its treatment of prisoners of war (POWs). Her ultimate goal seems to be a descriptive one, that "[w]e can better understand Abu Ghraib if we understand what came a decade or even a century before." Rather than focusing on the existing laws, doctrines, and legal interpretations as a lawyer might, this book adds a significant historical and political perspective to current debates over prisoners of war. Carvin contends that cultural equality, the role of ideology, and the legalistic American culture are all important factors in appreciating why the United States behaves the way it does. Although this work fits safely within a long-standing perspective that politics writ large mostly determine how states deploy and enforce international law, her close study within the context of POWs is an important contribution to this literature.

Prisoners of American Wars divides American history into four major time periods: the early republic; modern warfare from the Civil War to Korea; Vietnam and its aftermath; and post September 11th conflicts. Carvin employs existing academic sources to provide a concise and illuminating narrative of American behavior in early conflicts such as the Seven Years' War, the American revolution, the War of 1812, and skirmishes with Native Americans (to whom she refers as First Nations people). She uses these conflicts to identify factors that drive various sides into substandard or inhumane treatment of POWs. These factors include fear about the continued survival of the state; concern for legitimizing the other side's government or irregular fighters; existence of different cultural norms regarding the conduct of fighting; and possibilities for leveraging the prisoners with various audiences. She also describes some factors that point in the opposite direction, such as the need for military discipline and the occurrence of quick and relatively costless battles. Carvin also notes the roles of key decision makers and how these individuals may push in either direction for POW treatment in any given conflict,