



Written by [Steve Byas](#) on August 19, 2019

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Is the Justice System Being Hijacked?

Justice on Trial: The Kavanaugh Confirmation and the Future of the Supreme Court, by Mollie Hemingway and Carrie Severino, Washington, D.C.: Regnery, 2019, 315 pages, hardcover.

Alexander Hamilton predicted that the Supreme Court would be “the least dangerous branch,” but as authors Mollie Hemingway and Carrie Severino lament, “The judiciary has become the forum where philosopher kings impose the final decision in our most divisive political and social disputes.”



While, as the title implies, the book centers on the battle over the confirmation of Brett Kavanaugh to the Supreme Court, the authors place that titanic struggle in the context of how the federal judiciary has emerged as the way for the American Left to impose its philosophy on the country when they cannot win at the ballot box.

Hemingway is a senior editor at *The Federalist* and Carrie Severino is chief counsel and policy director of the Judicial Crisis Network, and they carefully demonstrate that the nomination contest was less about Kavanaugh and more about just how far the Left is prepared to go to maintain that stranglehold on the judicial branch.

Many conservatives were less than overwhelmed with the choice of Kavanaugh, noting, among other things, his close connection with President George W. Bush (he had served in Bush’s White House) and his seeking “a compromise that would allow [a teen caught entering the United States illegally] to obtain her abortion,” among other concerns. Senator Rand Paul worried about Kavanaugh’s commitment to the protections guaranteed in the Fourth Amendment.

More than a few conservatives had hoped for Circuit Court Judge Amy Comey Barrett, considered a dream pick for many on the Right. The authors argue that the loss of the Alabama Senate seat in the 2017 special election to replace Jeff Sessions dropped the Republican majority to only 51-49, leading President Trump to tap Kavanaugh as the safer pick.

This was because of concern that Republican Senators Susan Collins and Lisa Murkowski would find Barrett too “conservative.” If all the Republican senators could have been counted on to confirm Trump’s pick, then Barrett would have probably gotten the nod.

Supreme Court nominations have become increasingly contested because the court has become increasingly bold in substituting its own philosophy for that of the legislative branch and the state governments, and even of the Constitution itself. Senator Barry Goldwater raised the issue of the courts as early as his campaign in 1964. “It soon became evident that the Warren Court was willing to rewrite any law to achieve its transformative political desires, regardless of precedent or the Constitution’s clear language,” the authors contend.



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And it was not just the nominees of Democratic presidents. “The records of Eisenhower, Nixon, and Ford showed conservative voters that they could not trust Republican presidents to appoint justices who felt bound by the text of the Constitution as understood by those who ratified it,” the authors lament.

By the time Ronald Reagan won the White House in 1980, “the conservative electorate was actively concerned about judges,” they wrote. But Reagan’s record, although somewhat better than the three previous Republican presidents on judicial appointments, was still lacking. For example, Reagan squandered his first opportunity to put a constitutionalist on the bench by playing politics and selecting an obscure Arizona state appeals court judge because of her sex — Sandra Day O’Connor — who did little to change the direction of the court to having more respect for the text of the Constitution. Reagan’s elevation of William H. Rehnquist to chief justice was clearly better, and his choice of Antonin Scalia was one of the best ever.

Then, there was the Reagan nomination of Robert Bork in 1987, against which the Democrats launched an all-out assault on the nominee, catching the Republicans flat-footed. When Senator Edward Kennedy delivered an unprecedented attack upon the Bork nomination, many Republicans thought his remarks were so far beyond reality that none of his brutal attack would be taken seriously. “Robert Bork’s America is a land in which women would be forced into back-alley abortions, blacks would sit at segregated lunch counters, rogue police could break down doors in midnight raids.... [Reagan] should not be able to reach out from the muck of Irangate, reach into the muck of Watergate, and impose his reactionary vision of the Constitution on the Supreme Court,” Kennedy warned.

The assault was so vicious that it coined a new word for unfair and vicious assaults. From now on, such treatment would be known as “to Bork.” Reagan eventually named Anthony Kennedy, hardly a consistent constitutionalist, the man Kavanaugh was to replace.

Other cases are mentioned, including the infamous unsubstantiated attack upon Clarence Thomas in 1991 — with a law professor named Anita Hill charging Thomas with sexual harassment at the Equal Employment Opportunity Commission when Thomas led the agency a decade earlier. The Thomas case is instructive. When Thomas was confirmed despite Hill’s accusations, public opinion polls revealed that far more Americans believed his version of events, rather than Hill’s. But even after Thomas took his spot on the Supreme Court, the Left continued with their accusations. Conservatives largely ignored the attacks by the Left on Thomas — after all, they had won, not the liberals. As a result, as is the case with many historical events, the Left has been successful in distorting public opinion, and now many more Americans believe Hill rather than Thomas. Allowing this distortion of events to take root no doubt emboldened the Left to try it again to destroy Kavanaugh.

With the “Me Too” movement and its mantra that a woman should always be believed over a man if she makes an accusation of sexual improprieties, it should not have been surprising that the Left would use a similar charge again. In fact, in their preparations to get Kavanaugh confirmed the team selected by Trump was expecting that some woman would step forward and make some sexual charge against any male nominee.

The timing of such a charge was very similar to that of Hill’s accusations against Thomas almost three decades earlier — at the very end of the hearings, when it became apparent that the nominee was going to win confirmation.



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Before unleashing any such accusations against Kavanaugh, the opponents tried various other tactics, including interrupting the hearings, trying to block hallways in the Senate office buildings, and, perhaps most bizarre, an attempt to associate Kavanaugh with some “White Power” movement. While Kavanaugh was testifying, his former clerk Zina Bash was sitting behind him. As the authors explain, “Her arms were crossed, the thumb and forefinger of her right hand touching to form something like an ‘okay’ gesture.” Apparently, the authors noted, “an urban legend” insisted that was some “white power” gesture.

Of course, as was the case with the malicious attacks upon Thomas, the “sexual assault” accusations by a college professor from California, Christine Blasey Ford, will be what most Americans will remember about the hearings — and about now-Supreme Court Justice Kavanaugh. Dr. Ford, an anti-Trump activist, asserted that back in high school, Kavanaugh and a friend of his had forced her into a room during a summertime party and attempted to sexually assault her. Ford could cite no witnesses who even remember such a party, much less the assault. In fact, Ford could not remember the location of the party, or even the year.

Kavanaugh protested that he did not even remember knowing Ford. One person Ford said was at the party, her long-time friend, Leland Keyser, said that she not only did not remember the party, she did not remember knowing Kavanaugh at all, much less that he had tried to assault her friend.

Keyser is not some right-wing Republican covering up a crime in order to get another “conservative” onto the court. She is a Democratic Party activist herself, having once been married to prominent Democratic Party strategist Bob Beckel.

Turning centuries of tradition upon its head, the American Left and its mainstream media allies insisted that the mere accusation of sexual assault by Kavanaugh was enough to merit his removal from consideration for elevation to the Supreme Court. Despite glaring inconsistencies in her testimony, little to nothing was reported in that regard, except in conservative media. For example, she claimed she could not fly to Washington to testify because she had a fear of flying, but it was later shown that she flew quite often, even to destinations across the Pacific Ocean.

Among the many examples of oddities in her story, the authors zero in on Ford’s lack of memory as to who invited her to the party, or even how she got to the party and back to her house, “a distance that would have taken twenty minutes by car but would have required a nearly three-hour walk in the dark if she did not have a ride.”

“Ford’s account had never been corroborated by anyone,” the authors note.

Justice on Trial is a fast-paced, entertaining, yet disturbing book. The authors have done a masterful job in demonstrating the depths the Left is willing to go to accomplish its goals.

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