


The Five Worst Supreme Court Justices In American History, Ranked

by [Ian Millhiser](#)  Posted on March 24, 2015 at 1:10 pm Updated: March 25, 2015 at 8:49 am

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Today is the official release date for my book, *Injustices: The Supreme Court's History of Comforting the Comforted and Afflicting the Afflicted*. As you might guess from the title, it is not particularly complimentary of the Supreme Court as an institution. As the book's jacket explains, "the justices of the Supreme Court have shaped a nation where children toiled in coal mines, where Americans could be forced into camps because of their race, and where a woman could be sterilized against her will by state law. The Court was the midwife of Jim Crow, the right hand of union busters, and the dead hand of the Confederacy. Nor is the modern Court a vast improvement, with its incursions on voting rights and its willingness to place elections for sale."

Even amidst this dark history, certain justices stand out as particularly mean-spirited, ideological or unconcerned about their duty to follow the text of the Constitution. Based on my review of over 150 years of Supreme Court history in *Injustices*, here are the five jurists who stand out as the worst justices in American history:

1) Justice Stephen Johnson Field



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As a sitting justice in 1880, Justice Stephen Johnson Field launched a dark horse bid for the Democratic Party's presidential nomination. Claiming that "the chilling shadow of the empire" was descending upon the United States, Field fronted an anti-government campaign that would make all but the most strident modern day tea partiers blush. "The old Constitution," Field's campaign warned in a pamphlet that traced America's original sin at least as far back as the John Adams administration, "has been buried under the liberal interpretations of Federalist-Republican Congresses and administrations, grasping doubtful powers and making each step towards centralization the sure precedent of another." At a time when memories of Reconstruction still burned hot in the minds of

Southern white supremacists, Field's campaign argued that he was "the proper candidate of the party whose life-giving principle is that of local self-government."

Justice Field never became president, but he worked as a justice to implement the very same policies his campaign promised that he would support if elected to the White House. Field joined the Court's pro-segregation decision in [Plessy v. Ferguson](#), and he authored another opinion permitting former Confederate officials to practice law in federal court (his presidential campaign would later tout this opinion as proof that he would appeal to Southern whites if he received the Democratic nomination).

The cause of Field's life, however, was neutering the government's power to enact economic and business regulation. In the 1870s, for example, nearly all grain grown in the Midwest was shipped through Chicago, where nine firms owned the city's grain warehouses and they colluded among themselves to charge monopolists' rates to farmers. When Illinois enacted a law forbidding this price gouging, however, Field responded with an [angry dissenting opinion](#) labeling this law "a bold assertion of absolute power by the State to control at its discretion the property and business of the citizen." Years later, after Congress enacted a modest income tax on upper-income earners, Field complained that it was an "assault upon capital" which "will be but the stepping-stone to others, larger and more sweeping, till our political contests will become a war of the poor against the rich; a war constantly growing in intensity and bitterness."

Field's vision of the Court as the enemy of business regulation did not gain ascendance until shortly before his death in 1899, and Field would not live to see the early twentieth century decisions striking down [minimum wages](#), [protections for unions](#) and federal [child labor laws](#). Field did more than any other justice to lay the groundwork for these decisions, however, and many of them followed the same fabricated interpretations of the Constitution that once animated Field's dissents.

2) Chief Justice Roger Taney



CREDIT: National Archives

Any list of terrible Supreme Court justices that does not begin with Chief Justice Roger Taney will inherently be controversial. Taney authored what is widely viewed as the worst single decision in the Supreme Court's history, the pro-slavery decision in [Dred Scott v. Sandford](#). Though Taney was far more moderate on the issue of slavery as a young man — he once referred to slavery as a "blot on our national character" and he emancipated his own slaves — his views hardened in his old age. In 1857, the same year as *Dred Scott*, Taney [labeled the abolitionist movement "northern aggression."](#)

Taney ranks second on this list solely due to the egregiousness of Field's efforts to manipulate the Constitution. The pre-Civil War Constitution was, in the words of Justice Thurgood Marshall, "[defective from the start](#)." It is not hard to imagine how Taney could read a Constitution that contains explicit protections for [the slave trade](#) and the [owners of escaped slaves](#) and conclude that this document was intended to protect slavery. Field, by contrast, took an amendment that was drafted to end racial apartheid and grant freed slaves all the blessings of citizenship, and he essentially rewrote it into a tool the most fortunate Americans could use to exploit others.

Nevertheless, the fact remains that *Dred Scott* was an abominable decision, rooted in the notion that men and women of African descent "had for more than a century before been regarded as beings of an inferior order" who are "[so far inferior that they had no rights which the white man was bound to respect](#)." It swept far beyond the question presented in that case to offer a philosophic defense of white supremacy and chattel slavery. And it fully deserves its reputation as the Court's worst decision.

3) Justice James Clark McReynolds



CREDIT: Library of Congress

I describe Justice James Clark McReynolds's unique blend of self-centered bigotry in [Injustices](#):

McReynolds was, in *Time* magazine's words, "a savagely sarcastic, incredibly reactionary Puritan anti-Semite." McReynolds was lazy. He often would not even open the briefs lawyers filed to prepare him to hear a case until hours before the case was argued, and he frequently spent just a few hours crafting opinions that would govern all other courts in the country. McReynolds was nasty. He labeled President Franklin Roosevelt "that crippled son-of-a-bitch . . . in the White House," and shunned his own nephew after the boy woke him up by playing jazz music on the radio. McReynolds was a petty tyrant. He ordered his staff never to smoke tobacco even on their free time, and dictated where they were allowed to live. During his frequent duck hunting trips, Justice McReynolds would bring along his longtime servant Harry Parker, and he would order Parker to wade through ice-cold water to retrieve the fallen animals in lieu of a bird dog. Though the two men often saw eye to eye on the Constitution, [Chief Justice] Taft dismissed McReynolds as "inconsiderate of his colleagues and others, and contemptuous of everyone" after serving on the same bench with him.

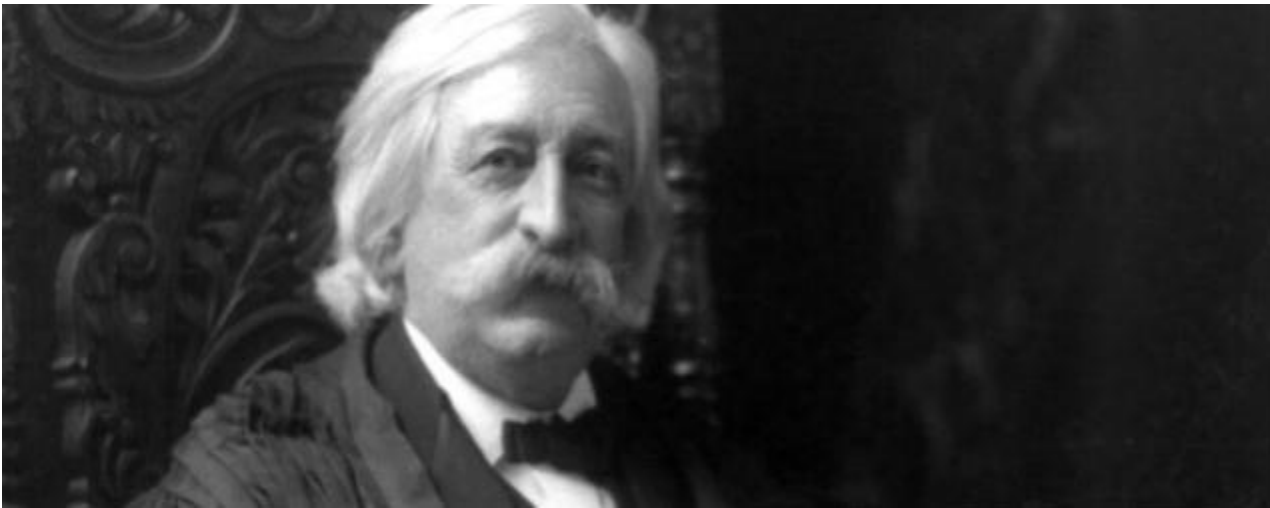
And, above all, Justice McReynolds was a bigot. He refused to speak to Justice Louis Brandeis for Brandeis's first three years on the Court because Brandeis was Jewish, and he forbade contact between his staff and the Jewish Justices Brandeis and Benjamin Cardozo. There is no official photograph of the justices for 1924 because the Court's seniority-based seating chart required McReynolds to sit next to Brandeis, and McReynolds simply refused

to be photographed next to his Jewish colleague. When Brandeis offered his views in conferences, McReynolds would simply stand up and leave.

On the rare occasions when a woman argued a case before McReynolds's Court, the justice would exclaim "I see the female is here" and walk out of the Courtroom. When Charles Hamilton Houston, the Harvard-educated black attorney who mentored future Justice Thurgood Marshall as Dean of the Howard Law School, argued before the Supreme Court in 1938, McReynolds turned his back on the Courtroom to signal his disapproval. McReynolds once warned one of his law clerks, who had grown close with Harry Parker, that the clerk "seem[ed] to forget that [Parker] is a negro." He advised the clerk to "think of my wishes in this matter in your future relations with the darkies."

McReynolds was, sadly, one of many justices who joined opinions [striking down child labor laws](#) or a [minimum wage](#), and he was only one of the "Four Horsemen" who resisted the New Deal during President Franklin Roosevelt's first two terms in office. But no justice carried more vitriol or self-absorbed hatred to the bench than Justice McReynolds.

4) Chief Justice Melville Fuller



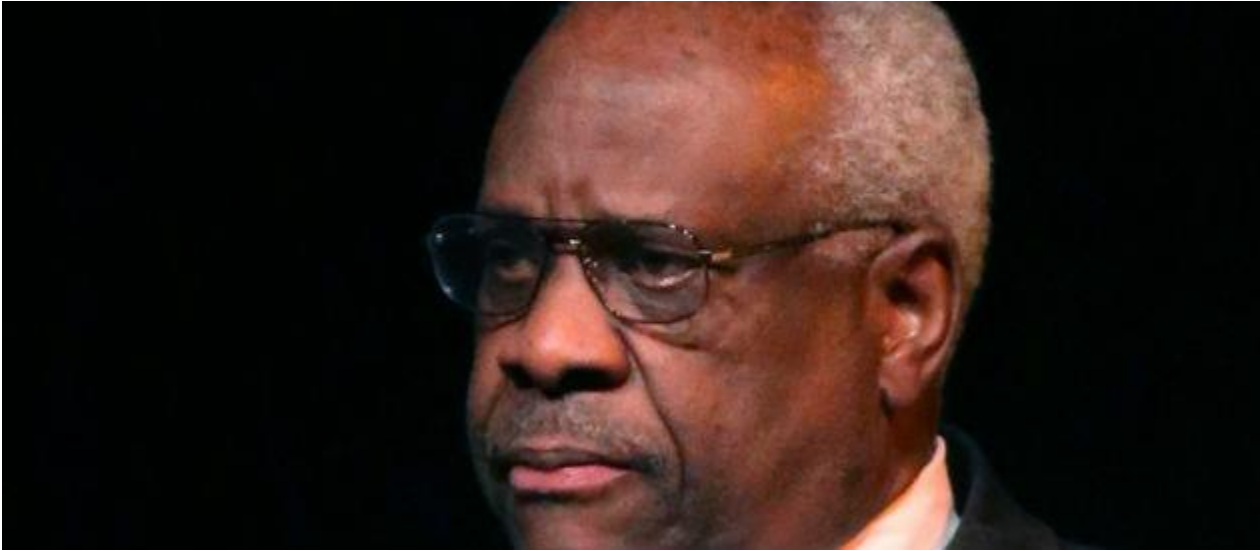
CREDIT: Library of Congress

If it were up to Melville Fuller, Abraham Lincoln would never have been president. Born into one of Maine's most prominent Democratic families, Fuller moved to Chicago and became a top campaign surrogate for Lincoln's two-time opponent Senator Stephen Douglas. Though nominally opposed to slavery, Fuller denounced the "fanatical and hot-headed course of the abolition madmen." As a delegate to Illinois's constitutional convention in 1862, he voted to prohibit black men and women from settling in the state or casting a ballot in its elections. As a member of the state legislature, he labeled the Emancipation Proclamation "unconstitutional, contrary to the rules of civilized warfare," and "calculated to bring shame, disgrace and eternal infamy" upon the nation. He also backed a constitutional amendment preventing congressional interference with slavery.

After the Civil War, Fuller became an outspoken proponent of anti-government views similar to Justice Field's, attacking Lincoln's Republican Party for allegedly believing that "government should exercise the functions belonging to Divine Providence, and should regulate the profits of labor and the value of property by direct legislation." In 1895, two years before the elderly Field left the Court, Fuller presided over a trio of major decisions, two of which he authored. The first [hobbled Congress's ability to tax the wealthy](#). The second gave a business trust which controlled over 98 percent of the nation's sugar production [constitutional immunity to federal antitrust laws](#). And the third gave every federal judge in the country [sweeping, extra-legal powers to bust unions](#).

After Field's death, Chief Justice Fuller presided over the Court's infamous decision in [Lochner v. New York](#), which struck down a New York law prohibiting bakeries from overworking their workers. Lawyers and legal historians widely view this decision as [symbolic of the entire era](#) in the early twentieth century when Field's values dominated the Supreme Court — indeed, this age is commonly referred to as the *Lochner* Era.

5) Justice Clarence Thomas



CREDIT: AP Photo/Dr. Scott M. Lieberman

Justice Clarence Thomas is the [only current member of the Supreme Court](#) who has explicitly embraced the reasoning of *Lochner* Era decisions striking down nationwide child labor laws and making similar attacks on federal power. Indeed, under the logic Thomas first laid out in a concurring opinion in [United States v. Lopez](#), the federal minimum wage, overtime rules, anti-discrimination protections for workers, and even the national ban on whites-only lunch counters are all unconstitutional.

Though Thomas's views are rare today, they have, sadly, not been the least bit uncommon during the Supreme Court's history. He makes this list because, frankly, he should know better than his predecessors. As I explain in [Injustices](#), many of the justices who resisted progressive legislation in the nineteenth and twentieth centuries were, like Field, motivated by ideology. Many others, however, were motivated by fear of the rapid changes state and federal lawmakers implemented in the wake of the even more rapid changes brought about by the Industrial Revolution. It was possible to believe, in a world where factories, railroads, and the laws required to regulate factories and railroads were all very new things, that these laws would, as Herbert Hoover once said about the New Deal, “destroy the very foundations of our American system” by extending “government into our economic and social life.”

But Thomas has the benefit of eighty years of American history that Hoover had not witnessed when he warned of an overreaching government. In that time, the Supreme Court largely abandoned the values embraced by Justice Field, and the United States became the mightiest nation in the history of politics and the wealthiest nation in the history of money.