"One of the hardest things about constitutional law is that there aren't clear answers to questions," former Acting Solicitor General of the United States Neal Katyal declared about a year ago. "There's some room," Katyal added, "for discretion on the part of judges."

In "The Roberts Court: The Struggle for the Constitution," Marcia Coyle, the chief Washington correspondent for the National Law Journal and a regular on "PBS NewsHour," demonstrates how much discretion Supreme Court justices actually have. Informative, insightful, clear and fair, the book provides sketches of the justices, summaries of dozens of cases, and in-depth analysis of four signature decisions of the Roberts Court: involving race as a "tiebreaker" in assigning children to public schools; the Second Amendment right to bear arms; corporate spending in elections; and Obamacare. Coyle makes a compelling argument that the court now has a confident, albeit slim, conservative majority "with a muscular sense of power, a notable disdain for Congress, and a willingness to act aggressively and in distinctly un-conservative ways," including addressing issues not raised by plaintiffs or necessary to resolve the issue at hand, a refusal to defer to elected officials, and a willingness to overturn precedents.

Casting doubt on interpretations of the Second Amendment that declare that the Framers intended to confer a personal right to bear arms, apart from participation in a "well-regulated militia," Coyle implies that the court could have -- and should have -- declined to take on District of Columbia vs. Heller. And she disapproves of decisions that require a greater burden of proof for people bringing job-related age or gender discrimination cases.

Coyle is at her best, however, when she allows the litigants and the justices to speak for themselves. A clerk, she tells us, "let out an audible gasp and jerked in her chair" when John Roberts suggested that a racial tie-breaker, every bit as much as the defendants in Brown vs. Board of Education, violated the Equal Protection clause of the Fourteenth Amendment and Ruth Bader Ginsburg replied that criteria used to integrate "are worlds apart" from those that separate. And Coyle indicates that the exchange between Justice Samuel Alito and Deputy Solicitor General Malcolm Stewart about whether government could ban a corporate or union-sponsored book played a pivotal role in the 2010 Citizens United campaign finance case.

Coyle reminds us that Supreme Court decisions matter. A lot. As does the makeup of the court. After all, she points out, the switch of Alito for Sandra Day O'Connor was a "game changer." And so, she concludes, as "a modern-day
tsunami of special interests" tries to sway public policy, American citizens must be far more knowledgeable about what the court is up to -- and who sits on it.

-- Glenn C. Altschuler

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