

Foreword

AMONG SEVERAL OFTEN BAFFLING ASPECTS of the American legal system, one that evokes as much mystery—and misunderstanding—as any is the role of Supreme Court law clerks. Yet remarkably little is reliably known about this dimension of the judicial process. Those of us who have served as clerks to a justice of the High Court are sworn to secrecy, constrained both by the injunctions imposed during our service and by an abiding lifelong sense of self-restraint. With a very few notable exceptions, we do not disclose what occurred within a justice's chambers, or between chambers, even when nothing more is sought than confirmation (or refutation) on matters of public record.

Meanwhile, those in the news media and elsewhere who have no inside knowledge of the Court and its workings speculate endlessly about what may or may not have happened behind the marble pillars and walls that physically separate an institution that must remain isolated in intangible ways as well from the rest of society. Perceptions range all the way from attributing to law clerks not only the writing of virtually all opinions but also the decision of major cases as well, to regarding them as near-clerical functionaries who may be responsible for cite checking, spelling, and grammar but little more. (There is, as it turns out, some basis in fact for views approaching both extremes.)

At long last, the critical need for an inside view is being met through *Courtiers of the Marble Palace*, a remarkably thorough and thoughtful study of the Supreme Court clerkship. Todd Peppers brings to this task a rare blend of legal knowledge about and understanding of the Supreme Court's role and mission on the one hand, and on the other hand a political scientist's critical skills at placing this singular institution in the broader perspective essential to such a study. He has, quite simply, entered previously uncharted (indeed, in part presumptively forbidden) territory with a tenacity and insistence that yielded answers to questions that have been unrequited for nearly a century.

Thanks to this book, we now know a great deal about the Supreme Court clerkship in all its fascinating dimensions. Even those of us who have been there learn vast amounts from this study—indeed, in some respects, it may be we who stand to learn the most from Peppers’ insights.

Predictably, what the reader learns is not always what one would have expected or assumed. There are many surprises along the way—about individual justices, about individual clerks (including one who became chief justice later in life), about important decisions and how opinions may have been shaped, and most of all about the High Court as an institution. In most respects what we learn is reassuring, if only to the degree that the tribunal that emerges seems more human and approachable than conventional wisdom usually posits. Throughout the book, one is reminded of the wisdom behind Chief Justice Charles Evans Hughes’ explanation for the High Court’s eminence: “We are not final because we are infallible; rather we are infallible because we are final.”

Four dimensions of this book are especially valuable. For the first time, we not only have a clear sense of the antecedents (indeed the origins) of the current clerkship, but also can trace its evolution in ways that previous histories of the Supreme Court or biographies of individual justices only hinted at—and even then not always accurately. Striking is the recency of the clerkship model as we know it today, even though one cannot mark a catalytic event or precise date that explains such a metamorphosis. The changing personality of the justices over the years affords some insight, but falls far short of providing complete answers to questions that remain even after Peppers’ exhaustive chronology of an evolving institution.

Mention of judicial personalities underscores a second striking quality of *Courtiers of the Marble Palace*. As one might expect, the relationship between particular justices and their law clerks have varied vastly from one chamber to another—more so than prior fragmentary accounts have suggested and substantially more, in fact, than those of us who served in this role might recall. Most of us tend to assume that the dynamics of other chambers roughly resembled our own, even when faced with evidence of a greater diversity or dissonance. Perhaps we have been lulled into such a comfortable sense of symmetry because the justice next door tended to relate to clerks other than his or her own in a manner that seemed to befit the adjacent chamber, and not necessarily the way things happened back home.

This book illuminates another, very different, contrast between perception and reality. The public image of a given justice turns out to be remarkably unhelpful in defining the dynamics of judge-clerk relationships behind the marble pillars and heavy oak doors. In short, “Mr. or Ms. Nice Justice” (as seen by the media and even the Supreme Court bar) may sometimes turn out to be a very different, less benign person within the intense and

demanding relationship inside chambers. Conventional wisdom in this regard turns out to be even less helpful than the wary Court observer would have assumed until Todd Peppers probed actual day-to-day relationships to an unprecedented degree. Not surprisingly, some justices benefit from such scrutiny while others suffer—and a few, like Justice William J. Brennan, Jr., turn out to have been remarkably consistent as public figures and private mentors.

The final dimension that merits encomia for this book is the enhanced understanding it provides of the Supreme Court as an institution. Whether or not it is viewed as the “least dangerous branch,” the nation’s highest tribunal evokes a remarkable and varied range of images and perceptions. Until now, those images have been strikingly incomplete in one vital respect. Whatever view of the law clerk’s role one brings to this book, that perception will surely change as a result of intense immersion in the realities of the Supreme Court clerkship. Those who claim or believe that clerks write all the opinions and negotiate judgments as well are bound to be surprised and disappointed, as are those at the other extreme who view a clerkship as a ministerial extension of law school. Whatever we may have believed or assumed about the clerkship—even those of us who spent a year or more in that challenging role—we will take away from this book a new level of understanding and appreciation.

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After graduating from Harvard
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