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FOREWORD

TWO BOOKS, TEN DAYS

Alone last summer while my husband and son were camping, I lunched with a book every day. Returning after nearly thirty years to *Miracle at Philadelphia*,[1] I was surprised to find its tone so sedately reverent that it seems almost to have been written in the nineteenth century. But *Supreme Power*[2] reads like a blood-and-guts account of the last few years: the economy failing, the President proposing (and pressing Congress to pass) new programs, and the Court expected to limit his reach.

Yet Bowen's decorous history of gentlemen in knee breeches (albeit gentlemen in knee breeches whose discussions were about to change the world) dovetails with Shesol's story of the hard-nosed politicians who steered this country through the Depression. Whether or not the Framers intended the judiciary to remain the least dangerous branch, and whether or not it has since then careened dangerously out of control,[3] these two books—and certainly the *Furman* articles that I was editing through the summer—reminded me that the Supreme Court has occupied a central place in our centuries-long debate over the character and reach of the national government.

1. Catherine Drinker Bowen, *Miracle at Philadelphia: The Story of the Constitutional Convention, May–September 1787* (Back Bay Books 1986).

2. Jeff Shesol, *Supreme Power: Franklin Roosevelt vs. the Supreme Court* (W.W. Norton & Co. 2010).

3. *Compare* Alexander Hamilton, *The Federalist*, No. 78, at 428–29 (Barnes & Noble Classics 2006) (explaining famously that "the judiciary is beyond comparison the weakest of the three departments of power") *with, e.g.*, Robert H. Bork, *The Judge's Role in Law and Culture*, 1 Ave Maria L. Rev. 19, 19 (2003) (decrying "[a]ctivist courts . . . that announce principles and reach decisions not plausibly derived from the Constitution").

FURMAN

I noted in our last issue that we expected to include in this one a special section marking the fortieth anniversary of *Furman v. Georgia*,[4] and now that section is here. The directors of Cornell's Death Penalty Project have contributed a thoughtful preface that reflects on *Furman*'s importance and introduces the three pieces that follow: one by a lawyer who was part of the team that made the first *Lackey* claim,[5] writing here about systemic delay in death-penalty appeals; one by a former clerk to Justice Blackmun, who traces a pattern through the Justice's death-penalty opinions; and one by a member of our faculty who regularly represents death-sentenced inmates on appeal, and who writes here about racism in the imposition of the death penalty.

Even if you are the sort of appellate lawyer whose practice involves only civil cases, you may well find this *Furman* section absorbing. From three different perspectives, its authors mark the ways in which *Furman*'s legacy colors application of the death penalty today.

THE REST OF THE ISSUE

We also have in this issue a varied and interesting collection of additional works. Justice Stevens's lead essay is based on his speech last spring about life after *Citizens United*, and with campaign ads jamming the airwaves as I write, his thoughts about influence, money, electoral politics, and the influence of money on electoral politics could not be more timely. Professor Oliver contributes an essay critiquing life tenure for Supreme Court justices, and Professors Cleveland and Wisotsky add an article addressing the reduction in time for oral argument in the federal courts of appeals. As always, then, we offer in this issue a chance for every reader to learn something new.

NBM
Little Rock
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4. 408 U.S. 238 (1972) (per curiam).

5. *See e.g. Lackey v. Scott*, 514 U.S. 1093 (1995) (staying execution a second time so that federal district court could consider petitioner's habeas petition); *Lackey v. Tex.*, 514 U.S. 1001 (1995) (staying execution in order to consider petition for writ of certiorari).