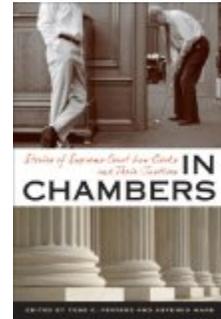


Todd C. Peppers, Artemus Ward, eds. *In Chambers: Stories of Supreme Court Law Clerks and Their Justices*. Constitutionalism and Democracy Series. Charlottesville: University of Virginia Press, 2012. xi + 445 pp. \$34.95 (cloth), ISBN 978-0-8139-3265-1; \$22.50 (paper), ISBN 978-0-8139-3401-3.

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## Views of the U.S. Supreme Court, Its Justices, and Their Clerks by Former Clerks

Todd C. Peppers and Artemus Ward have edited a collection of essays about U.S. Supreme Court clerks, with many of the contributions written by former clerks. Peppers and Ward have authored (or coauthored) their own scholarly histories of the Court's clerks. Their prior works were histories of the Supreme Court judicial clerkship as an institution and how that institution grew in importance over the twentieth century. For example, Peppers's *Courtiers of the Marble Palace: The Rise and Influence of the Supreme Court Law Clerk* (2006) traced the history of how the Court functioned prior to the institution of the clerk's appearance in the late nineteenth century, when the justices handled all of their own legal research and opinion drafting. After the clerkship became an established institution in the early twentieth century, justices increasingly relied on clerks to render substantive aid in the form of reviewing petitions for certiorari. After clerks began reviewing petitions for certiorari, their eventual role in the mid-twentieth century of conducting legal research and crafting initial drafts of opinions was not an unexpected change. Peppers demonstrated how clerks' political and ideological dispositions were often in accord with the justices for whom they clerked.

Ward coauthored his own study of clerks with David L. Weiden. *Sorcerers' Apprentices: 100 Years of Law Clerks at the United States Supreme Court* (2007) is concerned with much of the same history. Ward and Weiden's account collected empirical data to support the idea that

clerks are often aligned with their justices on ideological and political issues and that they are usually not determinative of their justices rulings or reasoning in cases, even though there is some anecdotal evidence that clerks have influenced judicial decisions.

The current edited work retraces much of the same ground from Peppers's and Ward's prior published works, except in a more diffuse manner. The book is divided into three sections: the origins of the clerkship (1882 to the 1930s); the "premodern" clerkship (1930s to the early 1960s); and the "modern" clerkship (1950s to the present). Each of these periods overlapped and had no clear chronological turning points. Rather the period divisions reflect the trends in usage of clerks among the justices, even though justices have used clerks somewhat idiosyncratically. For example, Horace Gray hired the first clerk in 1882, but unlike his colleagues, Gray actually asked for his clerks' opinions on pending legal issues. Most clerks in the early period were just secretaries, performing purely clerical duties like typing. Later, by the 1930s, clerks of Louis Brandeis were used as partners in the opinion drafting process. Similarly, Felix Frankfurter had clerks review petitions to the Court and write opinions. Yet Hugo Black, a contemporary of Frankfurter's, did not give much legal research to his clerks. Rather they discussed petitions and opinions in detail with the justice. By the 1940s, justices were starting to rely on clerks for drafting opinions in conjunction with the jus-

tice. Thus, the “modern” period is distinguished by most justices using their clerks as junior partners. Yet there were outliers, such as Justice Charles Evans Whitaker, who saw clerks as “quite immature and not very adequate as a sounding board” (p. 251).

The essays in the collection range from first-rate historical scholarly work, such as Peppers’s introductory essay on Justice Gray and the beginnings of the clerkship in the 1880s, to anecdotal remembrances, such as Alan Dershowitz’s essay on the justice for whom he clerked, Arthur Goldberg. Each essay is framed around a particular justice, including among others Gray, Oliver Wendell Holmes Jr., Brandeis, Benjamin Cardozo, Hugo Black, William O. Douglas, Earl Warren, William Brennan, Byron White, Thurgood Marshall, Harry Blackmun, and William H. Rehnquist, and among the current sitting justices, Ruth Bader Ginsburg. Those written by former clerks unfortunately have the air of an encomium. The unabashedly laudatory stance of many of the contributors suggests that Peppers is quite correct that the justices and their clerks usually share the same political and legal convictions.

Scholars of the Court will find some of these essays to be quite informative and thought provoking. For example, I. Scott Messenger’s essay on Holmes contains the intriguing argument that Holmes’s treatment of his clerks reflected his concern for his protégés and his own future reputation. Messenger argues that Holmes implemented an “exchange-based model of mentorship,” wherein he agreed to make the clerks “wise and virtuous” while the clerks were expected to do favors and perform services for him (p. 63n47). Messenger contends that this mentor

relationship exists among many judges and their clerks beyond the Supreme Court. He maintains that former clerks and their reverence for their former bosses aids the judiciary as an institution. Former clerks form “an in-house public relations firm” (p. 57).

Students and scholars alike will achieve a greater understanding of the Court as an institution from some essays. For example, Andrew Kaufman (a former clerk to Frankfurter) contributes a short essay on Cardozo and his clerks. Kaufman interviewed Cardozo’s clerks and a typist, who worked for him between 1957 and 1961. Kaufman uses those interviews and other primary source materials to describe how Justice Cardozo contributed to the transition of the clerkship from a scribal job to a kind of junior partner. Cardozo used his clerks to review petitions to the Court, as other justices did. But Cardozo also consulted his clerks’ views on the legal issues of cases in advance of oral argument. Cardozo wrote his own opinions—usually in longhand, which the clerk later typed—but he sometimes asked his clerks to research particular issues and encouraged them to make their objections or concerns known to him.

For those interested in a comprehensive account of the Supreme Court clerkship as an institution the earlier works of Peppers, Ward, and Weiden should be consulted. However, the essays in this collection are a mixture of historical reviews and personal reminiscences. For those curious about how former clerks see their former bosses or the often entertaining anecdotes generated by some justices, this collection will be both stimulating and informative.

If there is additional discussion of this review, you may access it through the network, at:

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