

American history textbooks usually fall short in their treatment of the Supreme Court. The textbook that I use to teach Advanced Placement U.S. History refers to Felix Frankfurter exactly once and fails to mention that he ever served on the Supreme Court. Its sole reference to Hugo Black is as the author of the notorious *Korematsu* decision that upheld the internment of Japanese Americans during World War II. Meanwhile, Robert Jackson and William O. Douglas are completely ignored. Their names do not appear in the book's eleven hundred pages. Thus, four of the twentieth century's greatest Supreme Court justices, men who did as much as any others to shape our understanding of the U.S. Constitution, are practically forgotten in today's American history classrooms. Noah Feldman, a Harvard law professor, is trying to change that. A former Rhodes Scholar whose credentials include a clerkship for Supreme Court Justice David Souter and service on the Council on Foreign Relations, Feldman strives to rescue Frankfurter, Black, Jackson and Douglas from anonymity. With *Scorpions: The Battles and Triumphs of FDR's Great Supreme Court Justices* (New York: Twelve, 2010), he succeeds brilliantly.

With crisp prose and a real talent for storytelling, Feldman not only builds the case for the significance of these four justices, but he also makes us care about them. Originally allies who shared a common loyalty to Franklin Roosevelt, the man who placed all of them on the nation's highest court, these four men eventually moved in very different directions. They splintered, not just intellectually but also personally. The one-time friends became rivals and in some cases even bitter enemies. The story is a riveting one, filled with human drama, and Feldman tells it with genuine skill. The book is thoroughly researched and scholarly, with more than 900 endnotes to support its 433 pages of text, but it reads like a novel. Frankfurter, Black, Jackson and Douglas emerge like protagonists in a Greek tragedy. Each of them was brilliant and

accomplished, each of them rose from humble backgrounds to positions of enormous power, but each of them was also constrained by major flaws.

In providing a succinct overview of each man's rise to the highest station in American law, Feldman demonstrates a talent for biography. He brings his subjects to life much more effectively than any ordinary textbook could hope to do. Readers will marvel at how Frankfurter, an Austrian Jew who immigrated to the U.S. as a young boy, flourished in the meritocracy of Harvard's law school, and soon came to be regarded as "half brother, half son" by the great Louis Brandeis.¹ But they will also find irony in how Frankfurter's dogged adherence to judicial restraint (inspired by his early opposition to the conservative jurisprudence of the *Lochner* era, when the Supreme Court regularly overturned liberal reforms) transformed him from a liberal activist into one of the Court's most conservative jurists. Readers will likely admire the pluck of Jackson, a man who successfully prosecuted Andrew Mellon, built a greater record than any solicitor general in U.S. History, and led the prosecution of Nazi war criminals at Nuremberg, without ever having graduated from law school. But they may also grimace at how he became "unglued" and publicly humiliated himself by publishing his grievances against fellow justices when Harry Truman decided not to elevate him to chief justice.² Contemporary followers of American politics will wonder at how Hugo Black, a former Klansman from Alabama, was nominated to the Supreme Court in 1937 without even a cursory background check and was then confirmed by his Senate colleagues in less than one week. They will also be amazed by the evolution that led him to become a fierce champion of civil rights and legally mandated integration. Readers may also feel drawn to William O. Douglas, the "driven, self-made scrapper who overcame real poverty," earned Yale's highest salary as a young law

¹ Feldman, 28.

² Feldman, 292.

professor there, joyfully prosecuted tycoons as chair of the fledgling Securities and Exchange Commission during the New Deal, and narrowly missed the vice presidency in 1944.³ But they might also agree with Frankfurter, who despised Douglas and called him one of the “two completely evil men I ever met.”⁴ There were many sides to each of these men, and Feldman works hard to illuminate them all.

In addition to his talent for narrative description, Feldman shows keen powers of analysis. In terms that even a general reader can grasp, he shows how Frankfurter, Black, Jackson and Douglas altered the course of constitutional law. Jackson, the “country lawyer” from Upstate New York, would become known for both “commonsense pragmatism” and deference to executive authority.⁵ Meanwhile, Frankfurter, for whom “the Constitution had replaced Judaism as his religion,” believed that judicial restraint demanded deference to legislative judgment.⁶ Not so for Black, the “inventor of originalism,” whose abiding concern for the intentions of the framers arose from his firm belief in their liberalism.⁷ Putting “free speech at the center of his constitution vision,” Black would later exert an enormous influence on the Warren Court in the 1950s and 1960s. Similarly, Douglas believed that “the pursuit of individual freedom” should be the “unifying constitutional goal” of the Supreme Court.⁸ Taken together, Feldman writes, “These four men reinvented the Constitution.”⁹ His argument is convincing – and, best of all, you don’t need a law degree to understand it.

Although it focuses primarily on the Supreme Court, *Scorpions* offers a window into a wide range of other issues that are relevant to the teaching of American history. The book

³ Feldman, 67.

⁴ Feldman, 306.

⁵ Feldman, 46.

⁶ Feldman, 233.

⁷ Feldman, 145.

⁸ Feldman, 323.

⁹ Feldman, xii.

deepened my understanding of constitutional law and furnished new content knowledge that will infuse my teaching. For example, while teaching Reconstruction, I will note that some scholars and jurists (like Hugo Black) have regarded the authors of the Thirteenth, Fourteenth and Fifteenth Amendments as “a second set of Founding Fathers” who, among other things, incorporated the Bill of Rights against the states.¹⁰ When describing FDR’s efforts to recover from polio, I will suggest that he “was the first American president to have been treated extensively for his mental state.”¹¹ When discussing Roosevelt’s “court-packing” proposal, I will show that some scholars regard it as “no more transformative than other New Deal reforms” that had already been enacted.¹² When my students debate the internment of Japanese Americans during World War II, I will note that FDR actually described the facilities as “concentration camps” on at least two occasions.¹³ When teaching about the *Korematsu* decision, I will show that even Roosevelt’s fiercest loyalists acknowledge its place as “one of the two or three worst in American history.”¹⁴ Feldman, who makes no effort to hide his admiration for FDR and his Supreme Court nominees, calls the decision “a stain on the reputation of the Court” that remains more than a half century later.¹⁵ Finally, when describing the end of the Truman Administration, I will point out that Truman’s popular approval rating of 22 percent in 1952 remains the lowest ever recorded for an American president – lower even than Nixon’s rating during Watergate.¹⁶

Beyond these interesting tidbits, *Scorpions* is packed with anecdotes that would liven and enrich any U.S. History classroom. Many of them I had never heard before. For example, while I knew about the coordinated bombings set off by Galleanist anarchists on June 2, 1919, I did not

¹⁰ Feldman, 311.

¹¹ Feldman, 35.

¹² Feldman, 108.

¹³ Feldman, 245.

¹⁴ Feldman, 243.

¹⁵ Feldman, 249.

¹⁶ Feldman, 354.

realize that Franklin Roosevelt was almost victimized by the bomb that damaged the home of Attorney General A. Mitchell Palmer. Then the Assistant Secretary of the Navy, Roosevelt lived across the street from Palmer and was just returning from a night out when the bomb exploded. The next morning, Roosevelt's young son, James, found a piece of the bomber's collarbone on their front steps.¹⁷ Similarly, while I had read about the international movement to halt the execution of Sacco and Vanzetti in 1927, I did not know that its leader, Felix Frankfurter, set up a headquarters at his summer cottage in Duxbury, Massachusetts.¹⁸ While I remember hearing that some German soldiers infiltrated the U.S. during World War II, I didn't know anything about the separate submarine landings on Long Island and Ponte Vedra Beach, Florida, in June 1942. Neither did I know about the legal maneuverings that preceded the speedy execution of six of the eight would-be saboteurs.¹⁹ And while I remember hearing that Justice Douglas led an unconventional life, I didn't know that the last of his four marriages (when he was 68 years old) was to a college student 45 years younger than him. These are juicy nuggets. Each of these stories – and others like them, culled from the pages of *Scorpions* – will find a place in my teaching of American history. They promise to capture student interest and breathe life into the past. The hours spent reading *Scorpions* thus represent a worthwhile investment for any teacher.

¹⁷ Feldman, 14.

¹⁸ Feldman, 25.

¹⁹ Feldman, 215-225.