



Packing the Court: The Rise of Judicial Power and the Coming Crisis of the Supreme Court

James MacGregor Burns

Download now

Read Online ➔

Packing the Court: The Rise of Judicial Power and the Coming Crisis of the Supreme Court

James MacGregor Burns

Packing the Court: The Rise of Judicial Power and the Coming Crisis of the Supreme Court James MacGregor Burns

Packing the Court: The Rise of Judicial Power and the Coming Crisis of the Supreme Court

Packing the Court: The Rise of Judicial Power and the Coming Crisis of the Supreme Court Details

Date : Published June 25th 2009 by Penguin Press (first published 2009)

ISBN : 9781594202193

Author : James MacGregor Burns

Format : Hardcover 326 pages

Genre : Nonfiction, Law, Politics, History



[Download](#) Packing the Court: The Rise of Judicial Power and the C ...pdf



[Read Online](#) Packing the Court: The Rise of Judicial Power and the ...pdf

Download and Read Free Online Packing the Court: The Rise of Judicial Power and the Coming Crisis of the Supreme Court James MacGregor Burns

From Reader Review Packing the Court: The Rise of Judicial Power and the Coming Crisis of the Supreme Court for online ebook

Amber Dunten says

2016 vreading challenge: a non-fiction and fiction about the same topic (read together with QBVII).

As an attorney, I found Packing the Court a highly interesting read not just for attorneys, but for anyone interested in the history and politics of the Supreme Court. Historian/author Burns makes no bones of his progressive bias, but you should not let his relatively mild editorializing put you off. Burns' credentials as a historian, political scientist, presidential biographer, and author are impeccable, and the history of the court and discussion of the many personalities who have made appointments and/or taken the bench over the years is soundly researched and is definitely interesting in a non-partisan way. Frankly, his open admission of his personal political leanings is more honest than authors who pretend to be objective and fail miserably.

It started a little slow for me, but as we progressed into an era where the names of famous justices and cases became familiar to me from my old Constitutional Law class, my interest quickly perked up and the story of the court became a rollicking ride down memory lane. It certainly helps that I loved ConLaw – it was one of my favorite classes in law school. While I won't say the book is filled with legal jargon, a lot of the discussion may be easier to understand if you have some legal background. At this point, I'm sure we've all heard of so-called constitutional originalism, but if you've never heard of the phrase *stare decisis*, Burns isn't going to explain it to you. It's a whirlwind of names and cases, not spending too much time on any one, but then there's a lot to cover in 200 years of history.

Most of the book concentrates on the history of the SCOTUS as a political and politics-driven entity, which it undoubtedly is. Burns ably demonstrates that contrary to much of the current public mood, the politicization of the court is not a new phenomenon at all. He also posits, and puts on some reasonably convincing evidence to show, that the current popular conception of the court as a defender of the disenfranchised, the poor, and the unpopular minority, is essentially a fraud. This is more than just pop culture: in law school we're actively taught that one of the Supreme Court's most important roles is to serve as a bulwark against the "tyranny of the majority" and to prevent the political branches from enacting legislation that abuses or extinguishes the inalienable rights of the disenfranchised and the unpopular minority. And we're taught to revere that role and to consider it essential, even though studying the history of the court's rulings clearly reveals that it's just as political as the other branches and its rulings reflect the personal ideologies of the individual justices at any given time. But Burns shows that in the court's 200+ year history, it has exerted much more of its power protecting the vested interests at the expense of the marginalized or the will of the voters, and it is proven in many shameful precedents such as Dred Scott, Plessy v. Ferguson, Bush v. Gore, and Citizens United. Burns argues the court has not only failed to curb the tyranny of the majority, it has enacted its own tyranny of the minority - a minority of five imposing its unfettered will on millions.

Burn's underlying premise and ultimate proposal is one that will seem pretty radical to trained lawyers – Burns contends that the venerable 1803 case of *Marbury v. Madison* was wrong, had no legitimate constitutional basis, and should be... not "overturned," because that implies the court would agree it has no such power, but let's say ignored and disobeyed. Every law school graduate has heard of *Marbury v. Madison*, and modern lawyers are taught to revere it as the cornerstone of constitutional practice – it's the

opinion that originally established the power of U.S. courts to review the actions of the other two branches, determine if they comply with the U.S. Constitution, and declare them void if they do not. Many legal scholars consider *Marbury v. Madison* to have simply been the first open use of a power that already existed, but Burns contends there is no actual constitutional basis for the power asserted by the court in *Marbury*. Burns is of the view that *Marbury* was a usurpation of a power the founders never allotted to the court, and its continual and profligate use for two centuries without significant challenge has rendered the court no longer part of a balanced tripartite system of government (remember we all learned about checks and balances in high school government class), but a bloated, power-hungry, hubris-filled monstrosity that has repeatedly and unjustifiably forced the will of five men in robes on the people of the United States.

Of course, this is a view that anyone who has ever heard of a Supreme Court ruling they didn't like can find appealing on some level. After all, I'm sure that between *Bush v. Gore* in 2000 (the one where the next president was selected by five party-line votes), *Burwell v. Hobby Lobby* in 2014 (the one that allowed employers to control their employees' access to contraceptives through their health insurance) and *Obergefell v. Hodges* in 2015 (the gay marriage case), virtually every human being in the country has been convinced that the court has run amok and needs to be stopped somehow. Burns as an acknowledged progressive seems to be more than a little bitter about the court's long history of being controlled by politically conservative interests and failing to stand up for the downtrodden on too many occasions. The delightfully ironic thing about Burns' argument is that it's the ultimate originalist construction – he posits that the power of judicial review is seen nowhere on the face of the Constitution; therefore, it doesn't exist and the SCOTUS has been acting illegally for the last 200 years. For a progressive to suggest such an argument as a tool for reining in a too-conservative and too-powerful court really tickles my funny bone. Talk about being hoisted by your own petard!

But no matter how mad we are at the court, most of us take for granted the idea that the court generally is acting within its constitutional power when it does these things (although that has probably rarely been more harshly questioned than after *Bush v. Gore*). Our idea of a solution isn't to strike at the heart of the court's authority, but simply to continue the long tradition of packing the court with judges we like better in order to get more of the rulings we want. Most of us, including those of us educated in the legal system, tend to think that even if we're mad about an entire era of court rulings that are unfavorable to our personal ideology, the solution is to make sure we elect a president who will make different appointments and a Congress who will confirm those appointments, so that our time will come. Not so Burns. His ire with the court goes much further – he's mad about nearly all of a 200-year history which is mostly dominated by rulings he feels have been bad for the country, and his proposed solution is far bolder.

Let's assume for the sake of discussion that Burns is right and *Marbury* really was wrongly decided. It's still really hard for me to accept the idea that the SCOTUS should have NO power to put an overreaching Congress or President in its place. Especially as we sit here in 2016, watching the parade of clowns that passes for American politics these days, and looking at a voting public that might put a man like Donald Trump in the White House, my faith in the electorate is even less than my faith in the judiciary. The idea of Trump in the White House, a Republican Congress in power, and a Supreme Court with no power to even review their acts terrifies me. Of course, Burns' unspoken thesis is that the idea of that scenario with a court holding the power of review and controlled by a five-justice conservative voting bloc should scare you even more. And when a 40-year professor of history and political science suggests something, I give it more than 30 seconds of thought. And honestly, part of me would just be fascinated to see what would happen if an aligned White House and Congress did buy into Burn's idea, denounce *Marbury*, and order the National Guard to go out and enforce laws the Court had ruled unconstitutional. Of course, it'll never happen because we're all of us, right up to the President, too steeped in our centuries-long acceptance of the court's power.

A lot of my review here focuses on Burns' radical solution, but to be fair, it really only comes up at the very end of the book. Burns hints at it in the very beginning, and the idea of the court's many failures to actually protect the American people during its history is a quiet but pervasive theme throughout the book, but if you're really just interested in the history, it's well worth reading. Just skip the epilogue.

PS: Burns died in 2014 at age 95, not long after publishing this book in 2009, so he only got to cover the briefest glimpse of Obama's presidency and didn't get to cover either of Obama's two appointments, Justice Sotomayor and Justice Kagan. I'd dearly love to be able to get his take on the current political furor over the vacancy left by Justice Scalia's recent death.

Lis Carey says

This is an intentionally opinionated history of the Supreme Court of the United States of America.

Burns brings his considerable historical knowledge and literary skill to bear on what has sometimes been the most respected institution in American government, and at other times derided as partisan and backward-looking. As he traces its development from the words in the Constitution and the brilliant, energetic, ambitious, and forward-thinking John Marshall, through to today's Roberts Court, it becomes clear that Burns considers the latter view to be correct for most of the Court's history.

Certain bad Court decisions, such as Dred Scott, are well known, and I have a strong interest in American history. Despite that, I found much of the surprisingly sordid history of Court decisions turning the meaning even of the 14th and 15th Amendments on their heads, inventing a distinction between state and national citizenship, and applying "due process" and other procedural and substantive rights almost entirely to property and the regulation of economic activity, and reducing civil rights of individuals to almost nothing, to be a revelation.

The interplay between politics and the Court, and the persistent conservatism of the Court over decades and generations, even in the face of true national crises like the Great Depression, is disturbing and disheartening. When he reaches the Warren Court, Burns is in some respects downright gleeful, but also aware that it is the flip side of the intransigent Court that opposed Franklin Roosevelt's efforts to create legislation and take action that would alleviate and reverse the Great Depression. In both eras, the personalities and political views of the Justices, rather than the myth of dispassionate, high-minded jurisprudence,

As we proceed forward from the Warren Court to the current Roberts Court, once again a conservative Court with an easy willingness to strike down as "unconstitutional" progressive legislation, Burns begins to lay out the polemical purpose of this book. He argues that the power of the Court to strike down legislation and to be the final arbiter of Constitutionality in all things, is unfounded in the Constitution or any supporting evidence of the intentions of the Founders, and that it has done more harm than good, threatening the foundations of democracy. His proposed solutions will sound radical to many, and certainly don't entirely agree with him myself. Nevertheless, even as a polemicist, Burns remains calm, rational, clear, and thoughtful, and this is an argument well worth reading and considering.

Recommended.

I borrowed this book from the library.

Peter says

An interesting look at the problem of the growing power of the Supreme Court, beyond the framework of the Constitution. Burns, an eminent historian, brings the reader right through the history of the Supreme Court, from its framing to the present. He is concerned about the growing power of the court, the one democratic element of the American government system, and its power to determine policy, law, and direction of the country. Clearly, the framers did not intend for such a powerful judicial institution, as Burns documents from the Constitutional Convention records. What is surprising is Burn, whose liberal bias is evident (though I had to wonder if the reader in this audio book gave the book a greater slant than the author intended, but Burn's words are his words alone) is greatly concerned by the power of the Court, but particularly under Republican or conservative guidance. FDR and Obama clearly deserve better than the lousy courts they had to deal with, according to Burns. If it wasn't for the reactionary conservative strain of the legal demigods, we would have had a sweeter, nicer, happier world. According to Burns, Obama is the only president to actually study the Constitution, after all he was a professor of Constitutional Law! (Actually, he was an adjunct faculty member, and by accounts of the full time faculty, he was lousy at that. And somehow as president of the Harvard Law Review, he seems not have written a singular scholarly article on the Constitution. Strange!!)

Though I disagree with Burn's biased interpretation of the history of the Court, I found myself readily agreeing with him that the impact of the Court's ruling, on policy, law, our economy, etc, needs to be curtailed. Their impact is way to large. They fail to understand how a singular court ruling, precedent, changes our entire culture. It is one thing to declare a law or policy as unconstitutional, it is another to realter the social landscape as they do. But, like Burns, I don't know if anyone has the best idea of how too do that.

Gerry Connolly says

Packing the Court is James MacGregor Burns' penetrating look at SCOTUS. For most of our history the Court has been a reactionary and unaccountable force in American life. Sound history.

Burns' treatise is grounded on John Marshall's breathtaking assertion of the court's role as final arbitrator of constitutional review. The fact that no such power exists in the Constitution seems not to bother "originalists" like Antonin Scalia. They just made it (the assertion of the power to overturn duly passed laws) up. The damage done by the court over much of the Republic's history (Dred Scott, Plessy, Korematsu, Bush v Gore, Heller) has been jaw dropping. It is time to assert balance and accountability to these nine justices. Term limits and cameras in the court at least.

John says

Founding Fathers were concerned about giving and taking power to the electorate when they wrote the Constitution. As patricians, they were fearful of mob rule so therefore included various checks and balances to power. Supreme Court license to overrule acts of Congress wasn't granted. That was left to an early decision by the Court itself to decide and probably a wise one if limited. But sometimes the historically

politically active conservative Court has overruled economic and social progress on a wholesale basis. Oh to have had this book available as I prepared for grad school exams in constitutional law many years ago. Although I passed, I think my answers could have been more incisive.

Brandon Forbes says

Burns hardly portends to objectivity in this book. It's more of a lefty screed against the general conservative trend of the Supreme Court. Of course, since I agree with most of his views, I didn't mind that much.

Outside of the historical overview of the court that takes up most of the book, he makes a political claim that the judicial review instituted in *Marbury v. Madison* should be challenged by a strong executive. Ironically, he rails against the Bush administration for promoting a strong executive at the expense of the rule of law and applauds the Supreme Court for standing against the administration in cases like *Hamdi v. Rumsfeld* or *Hamdan v. Rumsfeld*.

Stephen says

I don't agree with his premise that the Supreme Court's power to declare an act of Congress unconstitutional is not supported by the Constitution and solely a power grab by John Marshall in 1803's *Marbury v. Madison*. However, it is a nice history of how politics has influenced appointments and decisions throughout the years. And it makes me think even less of our current court, if such a low level is possible.

Amaury A. Reyes-Torres says

This book was better than I expected. My conclusion: just like Von Clausevitz once said "war is the continuance of politics by other means", I content judicial review is the continuance of politics by other means.

This book deeply explores the problems of when politics invade law and the other way around. It is interesting that one of the most respected institution in world, use judicial review for goals other than to make our constitutional democracy works, except in especifc times of the modern era. In fact, now days, the court becomes this unelected field for democratic discussions and might end up by striking a law as unconstitutional or upholding it.

It is clear that, to understand the present court (Roberts) we must understand Stone (during the FDR'S four justices: black, roberts, black and douglas), warren, burgers and rehnquist courts. To know what the future will be we must understand the past.

The ony thing I dont like about the book is the non-time sequencial of the author's writing. For awhile gets confusing to follow the timeline of the authors argumet. Thats why 4/5 is appropiate.

Another thing that called my atention is the author's proposal to make judicial review more democratic. An appealing and persuasive argument but frightening in a democratic way.

Love it!

Sandy says

An interesting historical review showing that the Supreme Court has always acted in a political and partisan fashion, and that the threatened court packing in FDR's time was nothing new. I had never realized that the Court had been expanded and contracted numerous times before then, to achieve political ends.

What I did not expect was that there was very little about "the coming crisis" - a few pages with a suggestion to curb the power of the Supremes.

Overall, though, I liked it and learned a fair amount - so, viewed as a history of the Supreme Court as a political player, it was well worth reading.

Al says

The first part of the book was very informative...a well written history of the evolution of Supreme Court. Starting at the Reagan years, however, it became increasingly partisan, culminating in a ridiculously biased viewpoint of the George W. Bush years. The culmination was when he complained in the chapter on Bush's appointments that the Justices were too eager to side with Bush, and then complains in the last chapter that the same Justices ignored the electoral "mandate" of Obama.... While the entire book is laced with liberal bias, it does not become too annoying until the last 2-4 chapters. The finale is a mini-dissertation on emasculating the judiciary and allowing the President and especially Congress to police themselves as to the Constitutionality of the law....so much for checks and balances!

Kcraybould says

Packing the Court, by James MacGregor Burns, is a frustrating book. On the one hand, it is a very readable, often fascinating history of the Justices of the Supreme Court, written from the perspective of a researcher interested in how the uneven time frame Justices get selected in affect the court and the other branches' response to the sometime out of touch Court. It has a great deal of interesting information about the Justices, the weird process that got them to the court, and the intricate relationship between the court, the Congress and the issues of the day. The discussions of Bush v. Gore, of the Roberts Court, and of Howard Taft and his full fronted assault on working Americans were particularly well done and interesting. Burns' history also does a very good job of demonstrating that there has never been anything other than an activist Court in our history. If that was all this book was about, then I would recommend it heartily. But that is not what Burns wants his book to be about. He wants his book to be a devastating attack on the very concept of judicial review and the Court's place in American politics. Unfortunately for Burns, he doesn't make that case with anything close to the skill with which he tells the history of the Court.

It is a very interesting look at the the history of the Court told well and from a point of view not often heard. It also has some good arguments and an interesting thesis. But those arguments aren't fully fleshed out and the thesis isn't proven so much as asserted. *Packing the Court* is a rare beast: a political polemic too heavy on the history and too light on the polemic.

Liam says

"If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition. But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas == that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution." (quoting Oliver Wendell Homes dissenting in Abrams, 130)

"Even if he were mediocre, there are a lot of mediocre judges and people and lawyers. They are entitled to a little representation, aren't they, and a little chance? We can't have all Brendeises and Frankfurters and Cardozos and stuff like that there." (quoting Roman Hruska on G. Harrold Carswell's nomination, 204)

Erin says

Nice history of the Court and its inherently political situation. Particularly good in showing how misleading and dishonest the political terms "activist judges" and "originalism" are as used by liberals and conservatives. Wish he would have expounded on his proposal at the end--he spends mere pages calling for a revolution, which was interesting but really needed several more chapters to properly unpack.

David Bales says

The liberal historian of the century, James MacGregor Burns, wrote this book when he was in his 90s, tracing the history of politics on the Supreme Court and the desire of presidents to "pack" the court with justices who saw the Constitution as they did; this is nothing new, and started in the days of the Federalists and the Jeffersonians in the eighteenth century. Great chapters on how the court seized the doctrine of "judicial review" in the Marbury vs. Madison case in 1803, (something never mentioned in the Constitution) and great profiles of the various chief justices and associates throughout history, like John Marshall, Roger Taney, Earl Warren and many others. Despite a few liberal eras, Burns is critical of the conservative phases of the court, showing how the Supreme Court has usually been a "chokepoint for progressive reform" in American history and usually has sided with the powerful over the powerless. He is especially gloomy about the court's conservative turn during the years of George W. Bush, (but didn't live to see the Obama administration's two additions). At the end he proposes huge reforms to the judiciary and a rejection of judicial review. A must read for historians.

Matt says

America is a nation of laws and litigants. We look, more than any other place it seems, to our courts to settle disputes. This harkens back to our Puritan forefathers, who thought courtrooms a better alternative than blasting away at each other with blunderbusses. Thus, instead of shooting your neighbor over a disputed

property line or a poorly constructed big-buckled hat, you could take him before a magistrate. Heavy reliance on the judicial system is the great cultural trait bequeathed to us by the Puritans, along with homicidal fixations and sexual repression. (For real: we are a nation that can happily consume 1,567 iterations of *CSI*, but collectively poop our pants during a Super Bowl halftime show when, for a millisecond, we were able to see a pasty-covered nipple. Thanks, Puritans!).

In my opinion, the judicial system is actually a good place to solve certain problems, especially when the alternatives are (a) responding to an injustice by dueling your opponent or (b) not seeking redress at all.

By and large, though, people hate the courts, and hate lawyers, right up to the point where they need a lawyer and the courts. One reason that the judicial process rankles is that, in any proceeding, there is only one winner and one loser. Fifty percent of the parties involved will go home thinking that the system has been rigged against them. Only the lawyers are assured of getting something out of the case, which is probably why they are so despised (for some reason, a large percentage of people believe that attorneys should be the only skilled profession in the world to receive no compensation for services rendered).

Of all the epithets hurled at the judicial system, perhaps the most familiar is the scourge of *judicial activism*. Loosely defined (loosely is the only way to define it), judicial activism refers to a judge who does not rule upon the law as written, but makes a decision for political or personal reasons in furtherance of some policy goal. Judicial activism has been the *bête noir* of conservatives since *Roe v. Wade*. During the second Bush Administration, we heard the phrase a lot, so much so that if you were playing an eight-year-long drinking game, you would probably be dead.

Strangely, conservatives haven't gone to the judicial activist well lately, and the phrase has gotten some much-needed rest. The reason, of course, is that conservatives have solid control of the Supreme Court. The silence comes despite the fact that, by any reasonable metric, these are among the most "activist" justices in recent memory (in terms of invalidating laws, and in terms of granting certiorari for cases they didn't need to hear, in order to change the law).

The lesson: judicial activism occurs whenever a judge rules against you.

The proof of this comes in the form of James MacGregor Burns' *Packing the Court*. Burns, a progressive historian, argues that the whole history of the Supreme Court (with the exception of the Warren Court) is one of conservative judicial activists torturing the Constitution and the law to benefit corporations and moneyed interests at the expense of individuals.

The title, which harkens back to Franklin D. Roosevelt's plan to increase the number of Supreme Court justices, actually refers (in this context) to the executive habit of elevating cronies and political operatives to the nation's highest court. Because justices serve for life, it is a crapshoot how many (if any) justices a president will nominate. Accordingly, the court's composition seldom reflects the current zeitgeist. The result, Burns argues, is a Supreme Court that is nonresponsive to the will of the people.

Packing the Court is a political book. It is a polemic, with a very definite ideological platform; however, unlike many polemics, it is well-researched, lucidly written and up until the last few pages, admirably non-hysterical and wild-eyed.

I want to avoid getting into a political discussion on Goodreads, since I already spend too much time defending my views of *Moby Dick*. At the risk of showing my own ideological hand, I will say this: conservatives will dislike this book because it is anathema to their beliefs; on the other hand, progressives

might find its relatively-brief discourse on Supreme Court history a quick, easily digestible way to learn about the High Court. (However, a far better progressive history of the Supreme Court can be found in *A People's History of the Supreme Court* by Peter Irons).

Me? I didn't fall into either of those two camps. Instead, I was utterly underwhelmed by *Packing the Court*. To put it another way, I was totally overwhelmed by its mundaneness. I don't expect a lot from polemics, but I do expect to be lifted from the torpor that generally comprises my life. That didn't happen here.

After setting the stage with a brief prologue, in which he lays out his thesis that Supreme Court Justices make the law based on their politics, Burns devotes the bulk of this slim volume (just 259 pages of text) to a vanilla retelling of 200-odd years of Supreme Court decisions. He starts with the earliest days, when Supreme Court Justices were mostly political flunkies who didn't last long in office, due to riding circuit, and ends with George W. Bush consolidating a solidly conservative Supreme Court with the additions of John Roberts and Samuel Alito.

Unless this is the first book you've ever read about the Supreme Court, there is very little to recommend. He skips quickly from John Marshall to Roger Taney, from William Howard Taft (he was more than just our fattest president!) to Franklin Roosevelt, and from Earl Warren to George W. Bush.

Burns is not an attorney; while this obviously does not disqualify him from writing about the Supreme Court, it really shows in his focus. While he spends a great deal of time on the personalities and machinations of the various presidents and justices, he devotes very little space to actually analyzing the specific opinions with which he disagrees. For example, Burns tells you that *Scott v. Sandford* (the Dred Scott decision) was morally wrong, which is obvious, but doesn't explore deeply enough why it was legally wrong.

This book putatively has an axe to grind. Burn, however, grinds it very politely. There is no fire and brimstone, no moral outrage at the 19th Century Supreme Court raping the 14th Amendment, no vim and verve in the writing. Sure, Burns is morally outraged, but he presents that outrage in the form of a decorous, thoroughly researched dissent. Now, I'm not demanding that Burns call Roger Taney a man-beating, liver-spotted old prick; still, it certainly would have captured my oft-waning attention.

Reading any history of the Supreme Court, or indeed, of America itself, is a little depressing, an ugly collision of high ideals and faulty execution. It's one David and Goliath story after another, except Goliath keeps winning. Of all the justices that have served on the high court, Burns only really likes two: John Marshall and Earl Warren. Marshall is an odd choice for Burns, since Marshall devised the concept of judicial review, which Burns hates. Warren, though, makes sense. Appointed by a Republican, Warren transformed into a liberal *éminence grise*. His Court gave us some of the most famous progressive decisions ever rendered: *Brown vs. Board of Education*, *Miranda v. Arizona*, etc. I love Earl Warren (I guess I'm showing my political hand a bit), but his was an activist court. For Burns, it's enough that Warren was activist for progressive causes; I, on the other hand, wanted a more rigorous discussion on this apparent discrepancy.

As I mentioned above, the book stays sane up until the last ten pages or so, when it takes a turn down Crazy Road. That's when Burns unveils his deeply thought-out plan for solving the Supreme Court crisis. His idea: the president should ignore the Supreme Court on the basis of the fact that the Constitution does not mention judicial review.

[Crickets chirping]

It was a bit enjoyable to see a distinguished historian suddenly turn into a Facebook-style grenade thrower (don't you love those Facebook friends, who make wildly provocative political statements, expecting everyone to agree with them?). Mostly, though, I was flabbergasted. *This is his great idea? Why not just break into the National Archives, Nicholas Cage style, and rewrite the Constitution with a black Sharpie?*

I mean, it's just awful. First, it's never going to happen. Second, if it ever did, it creates five times the Constitutional troubles it is meant to solve. Can you imagine the President – the Chief Executive, the top enforcer of the Law – disregarding the Supreme Court? What kind of respect for the law would that engender? What happens to the precious “separation of powers” that Burns claims to love? I have a dozen more hypothetical questions, but you get the point. Burns hates Andrew Jackson, yet takes a page straight out of Old Hickory's playbook. (Jackson refused to abide by the Court's decision in *Worcester v. Georgia*, leading to the apocryphal story in which Jackson allegedly quipped, “John Marshall has made his law; now let him enforce it”).

I wanted a little more life in *Packing the Court*. However, I did not want it to end with a feverish hallucination in which one branch of government declares open warfare on another. It seems that Burns could have come up with a better solution. Since he could not, I have come up with my own. To this end, I have eight little words I want you to dwell upon: **Robot judges I will build in my garage.**

If this doesn't pan out then, and only then, can we start considering Plan B, wherein the President closes his eyes, sticks his fingers in his ears, and starts screaming “I can't hear you” towards the Supreme Court Building.
