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FOREWORD

KICKING OVER THE TRACES OF SELF-GOVERNMENT
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Is the academic criticism of judicial management of local institutions pointed in exactly the wrong direction? Professor Hirshman's Foreword suggests that more, not less, activism in the inculcation of public virtue is needed to address the problem of the permanent underclass and bring Chicago in particular and the nation in general into line with the constitutional guarantee of a republican form of government.

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GAUTREAUX AND INSTITUTIONAL LITIGATION *Alexander Polikoff* 451

What does the long-running *Gautreaux* case have to tell us about whether—and when—courts should enter remedial orders that, in effect, call for the reorganization of major government institutions? Alexander Polikoff, counsel for the *Gautreaux* plaintiffs, argues that the "right" answer is not to be found in generalizations about the institutional capacity of the judiciary but in the particulars of each case, including the policy issues presented and the consequences of refusing to address them.

SUCCESSFUL REFORM LITIGATION: THE *SHAKMAN* PATRONAGE CASE *C. Richard Johnson* 479

Mr. Johnson argues that well-constructed judicial relief can be exceptionally effective in remedying even long-standing and deeply ingrained governmental abuses, as evidenced by the success of the *Shakman* patronage litigation in invigorating local political competition in Chicago. On the other hand, he notes, federal courts that are reluctant to interfere with historic practice have an array of procedural reasons to avoid subjecting those practices to constitutional review.

KETCHUM V. BYRNE: THE HARD LESSONS OF DISCRIMINATORY REDISTRICTING IN CHICAGO — *Jeffrey D. Colman* 497
Michael T. Brody

Attorneys Jeffrey D. Colman and Michael T. Brody represented plaintiffs challenging the 1981 redistricting of the city of Chicago. In their article, they address the social and political consequences of that case, as well as the Seventh Circuit's analysis of the proper remedy for dilution of minority voting strength. They conclude that the Seventh Circuit's treatment of remedial issues was sidetracked by the failure of the district court to define correctly the scope of the voting rights violation. Applied to the violation found by the district court, the Seventh Circuit's remedy may have gone too far; applied to the violation actually committed by the City Council, however, the Seventh Circuit's remedy was correct.

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RIGHTS, REMEDIES AND RESTRAINT — *Peter M. Shane* 531

Professor Shane argues there is no necessary link between "judicial restraint" in the sense of appropriate judicial self-discipline and either the narrow interpretation of constitutional rights or the modest design of institutional remedies. In the interpretation of rights, a judge genuinely faithful to our historically dominant tradition of constitutional "aspirationalism" will remain faithful to principle, even when principle requires the judicial invalidation of the actions of nonjudicial policymakers. In the design of remedies, a judge faced with an uncooperative institutional defendant should intervene in nonjudicial policymaking to the extent necessary to promote justifiable confidence that the defendant will become responsive without future coercion to the plaintiffs' perceptions of their legally cognizable interests.

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Professor Tarlock argues that the *Gautreaux* litigation illustrates the limits of the use of institutional litigation to redistribute wealth. Courts cannot reform fundamentally flawed social programs such as public housing. More creative legislative and market responses are needed. Courts must be more like the old testament prophets, identifying but not completely remedying all social injustices in the community.

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Professor Strauss notes that the difficult legal issues raised by the *Shakman* litigation were never definitively resolved, even though the case lasted an exceptionally long time and apparently succeeded in dismantling much of the patronage system in Cook County. He suggests that the difficulty of providing a remedy in a complex lawsuit, combined with doctrinal developments intended to limit plaintiffs' "standing" to sue, have enabled federal courts to become decentralized bureaucratic actors with a degree of discretion that is difficult to square with the traditional conception of the rule of law.

A RESTRAINED PERSPECTIVE ON ACTIVISM — *Jules B. Gerard* 605

Professor Gerard argues that judicial activism is a much greater danger to "a government of the people, by the people, and for the people" than its proponents are ever willing to admit. He rejects, as contrary to almost everyone's understanding of how grants of power from the people to government officials should be construed, the claim that "changed understandings of an unchanged Constitution" is a legitimate concept.

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