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THE STRUCTURE OF A  
CONSTITUTIONAL REVOLUTION

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BARRY CUSHMAN

# Rethinking The New Deal Court The Structure Of A Constitutional Revolution

**Kermit L. Hall, John J. Patrick**



## **Rethinking The New Deal Court The Structure Of A Constitutional Revolution:**

**Rethinking the New Deal Court** Barry Cushman, 1998-02-26 Rethinking the New Deal Court The Structure of a Constitutional Revolution challenges the prevailing account of the Supreme Court of the New Deal era which holds that in the spring of 1937 the Court suddenly abandoned jurisprudential positions it had staked out in such areas as substantive due process and commerce clause doctrine In this view the impetus for such a dramatic reversal was provided by external political pressures manifested in FDR's landslide victory in the 1936 election and by the subsequent Court packing crisis Author Barry Cushman by contrast discounts the role that political pressure played in securing this constitutional revolution Instead he reorients study of the New Deal Court by focusing attention on the internal dynamics of doctrinal development and the role of New Dealers in seizing opportunities presented by doctrinal change Recasting this central story in American constitutional development as a chapter in the history of ideas rather than simply an episode in the history of politics Cushman offers a thoroughly researched and carefully argued study that recharacterizes the mechanics by which laissez faire constitutionalism unraveled and finally collapsed during FDR's reign Identifying previously unseen connections between various lines of doctrine Cushman charts the manner in which *Nebbia v New York*'s abandonment of the distinction between public and private enterprise hastened the demise of the doctrinal structure in which that distinction had played a central role Fidelity & Constraint

Lawrence Lessig, 2019-04-03 The fundamental fact about our Constitution is that it is old the oldest written constitution in the world The fundamental challenge for interpreters of the Constitution is how to read that old document over time In Fidelity Constraint legal scholar Lawrence Lessig explains that one of the most basic approaches to interpreting the constitution is the process of translation Indeed some of the most significant shifts in constitutional doctrine are products of the evolution of the translation process over time In every new era judges understand their translations as instances of interpretive fidelity framed within each new temporal context Yet as Lessig also argues there is a repeatedly occurring countermove that upends the process of translation Throughout American history there has been a second fidelity in addition to interpretive fidelity what Lessig calls fidelity to role In each of the cycles of translation that he describes the role of the judge the ultimate translator has evolved too Old ways of interpreting the text now become illegitimate because they do not match up with the judge's perceived role And when that conflict occurs the practice of judges within our tradition has been to follow the guidance of a fidelity to role Ultimately Lessig not only shows us how important the concept of translation is to constitutional interpretation but also exposes the institutional limits on this practice The first work of both constitutional and foundational theory by one of America's leading legal minds Fidelity Constraint maps strategies that both help judges understand the fundamental conflict at the heart of interpretation whenever it arises and work around the limits it inevitably creates

**Rehabilitating Lochner** David E. Bernstein, 2011-05-01 In this timely reevaluation of an infamous Supreme Court decision David E. Bernstein provides a compelling survey of the history and background of *Lochner v New*

York This 1905 decision invalidated state laws limiting work hours and became the leading case contending that novel economic regulations were unconstitutional Sure to be controversial Rehabilitating Lochner argues that the decision was well grounded in precedent and that modern constitutional jurisprudence owes at least as much to the limited government ideas of Lochner proponents as to the more expansive vision of its Progressive opponents Tracing the influence of this decision through subsequent battles over segregation laws sex discrimination civil liberties and more Rehabilitating Lochner argues not only that the court acted reasonably in Lochner but that Lochner and like minded cases have been widely misunderstood and unfairly maligned ever since

**The Supreme Court** Peter Charles Hoffer, William James Hull Hoffer, N. E. H. Hull, 2018-08-28 For more than two centuries the U S Supreme Court has provided a battleground for nearly every controversial issue in our nation s history Now a veteran team of talented historians including the editors of the acclaimed Landmark Law Cases and American Society series have updated the most readable astute single volume history of this venerated institution with a new chapter on the Roberts Court The Supreme Court chronicles an institution that dramatically evolved from six men meeting in borrowed quarters to the most closely watched tribunal in the world Underscoring the close connection between law and politics the authors highlight essential issues cases and decisions within the context of the times in which the decisions were handed down Deftly combining doctrine and judicial biography with case law they demonstrate how the justices have shaped the law and how the law that the Court makes has shaped our nation with an emphasis on how the Court responded or failed to respond to the plight of the underdog Each chapter covers the Court s years under a specific Chief Justice focusing on cases that are the most reflective of the way the Court saw the law and the world and that had the most impact on the lives of ordinary Americans Throughout the authors reveal how in times of war class strife or moral revolution the Court sometimes voiced the conscience of the nation and sometimes seemed to lose its moral compass Their extensive quotes from the Court s opinions and dissents illuminate its inner workings as well as the personalities and beliefs of the justices and the often contentious relationships among them Fair minded and sharply insightful The Supreme Court portrays an institution defined by eloquent and pedestrian decisions and by justices ranging from brilliant and wise to slow witted and expedient An epic and essential story it illuminates the Court s role in our lives and its place in our history in a manner as engaging for general readers as it is rigorous for scholars

Authoritarian Constitutionalism Helena Alviar García, Günter Frankenberg, 2019 The contributions to this book analyse and submit to critique authoritarian constitutionalism as an important phenomenon in its own right not merely as a deviant of liberal constitutionalism Accordingly the fourteen studies cover a variety of authoritarian regimes from Hungary to Apartheid South Africa from China to Venezuela from Syria to Argentina and discuss the renaissance of authoritarian agendas and movements such as populism Trumpism nationalism and xenophobia From different theoretical perspectives the authors elucidate how authoritarian power is constituted exercised and transferred in the different configurations of popular participation economic imperatives and

imaginary community     Pragmatism, Politics, and Perversity Joseph L. Esposito, 2012-06-14 The political project of pragmatism has focused primarily on its defense of democracy as the best political system to maintain and improve human well being over lifetimes and generations Pragmatism Politics and Perversity Democracy and the American Party Battle describes this project of Peirce Dewey Hook and Rorty and combines it with Charles Beard's study of the party battle as the most determinative influence upon American democracy The book updates and confirms Beard's hypothesis that the history of the party battle is a chronicle of perverse schemes and self inflicted wounds the most salient to date being the American Civil War because it reflects a ceaselessly disruptive contest over the creation of two largely incompatible political states nation state and market state The book supports its thesis with detailed historical accounts of the formation of the Constitution and early federal judiciary the sedition trials and political schemes of the 1790s the frustration of market state Whigs to attract white working class voters by exploiting their religious identities the reckless machinations of Whig Republicans in precipitating a national crisis over a contrived threat of oligarchy and white slavery and the ideological oscillations of the Supreme Court from market state to nation state jurisprudence and back again To reduce perversity in political rhetoric and free up pragmatic democratic practices the book proposes a robust neo Madisonian view of free speech where political actors and their surrogates are not only free to speak and write but are also obligated to explain retract and revise what they have said and written     **Supreme Power** Jeff Shesol, 2011-03-14 A stunning work of history Doris Kearns Goodwin author of No Ordinary Time and Team of Rivals Beginning in 1935 the Supreme Court's conservative majority left much of FDR's agenda in ruins The pillars of the New Deal fell in short succession It was not just the New Deal but democracy itself that stood on trial In February 1937 Roosevelt struck back with an audacious plan to expand the Court to fifteen justices and to pack the new seats with liberals who shared his belief in a living Constitution     **The Pursuit of Justice** Kermit L. Hall, John J. Patrick, 2006-12 Reviews and discusses landmark cases heard by the United States Supreme court from 1803 through 2000     The Hughes Court Michael E. Parrish, 2002-07-11 An in depth analysis of the workings and legacy of the Supreme Court led by Charles Evans Hughes Charles Evans Hughes a man who it was said looks like God and talks like God became chief justice in 1930 a year when more than 1 000 banks closed their doors Today the Hughes Court is often remembered as a conservative bulwark against Franklin Roosevelt's New Deal But that view according to author Michael Parrish is not accurate In an era when Nazi Germany passed the Nuremberg Laws and extinguished freedom in much of Western Europe the Hughes Court put the stamp of constitutional approval on New Deal entitlements required state and local governments to bring their laws into conformity with the federal Bill of Rights and took the first steps toward developing a more uniform code of criminal justice     *Reconsidering Roosevelt on Race* Kevin J. McMahon, 2010-02-15 Many have questioned FDR's record on race suggesting that he had the opportunity but not the will to advance the civil rights of African Americans Kevin J McMahon challenges this view arguing instead that Roosevelt's administration played a crucial

role in the Supreme Court's increasing commitment to racial equality which culminated in its landmark decision in *Brown v Board of Education*. McMahon shows how FDR's attempt to strengthen the presidency and undermine the power of conservative Southern Democrats dovetailed with his efforts to seek racial equality through the federal courts. By appointing a majority of rights-based liberals deferential to presidential power, Roosevelt ensured that the Supreme Court would be receptive to civil rights claims especially when those claims had the support of the executive branch.

**Administrative Law and Judicial Deference** Matthew Lewans, 2016-01-28 In recent years the question whether judges should defer to administrative decisions has attracted considerable interest amongst public lawyers throughout the common law world. This book examines how the common law of judicial review has responded to the development of the administrative state in three different common law jurisdictions: the United Kingdom, the United States of America and Canada over the past 100 years. This comparison demonstrates that the idea of judicial deference is a valuable feature of modern administrative law because it gives lawyers and judges practical guidance on how to negotiate the constitutional tension between the democratic legitimacy of the administrative state and the judicial role in maintaining the rule of law.

*The Hughes Court* Mark V. Tushnet, 2021 This book describes the closing of one era in constitutional jurisprudence and the opening of another. This study of the Supreme Court from 1930 to 1941 when Charles Evans Hughes was Chief Justice shows how nearly all justices even the most conservative accepted the broad premises of a progressive theory of government and the Constitution. The progressive view gradually increased its hold throughout the decade but at its end interest group pluralism began to influence the law. By 1941 constitutional and public law was discernibly different from what it had been in 1930 but there was no sharp or instantaneous Constitutional Revolution in 1937 despite claims to the contrary. This study supports its conclusions by examining the Court's work in constitutional law, administrative law, the law of justiciability, civil rights and civil liberties and statutory interpretation.

*Courts in Federal Countries* Nicholas Theodore Aroney, John Kincaid, 2017-04-24 Courts are key players in the dynamics of federal countries since their rulings have a direct impact on the ability of governments to centralize and decentralize power. *Courts in Federal Countries* examines the role high courts play in thirteen countries including Australia, Brazil, Canada, Germany, India, Nigeria, Spain and the United States. The volume's contributors analyse the centralizing or decentralizing forces at play following a court's ruling on issues such as individual rights, economic affairs, social issues and other matters. The thirteen substantive chapters have been written to facilitate comparability between the countries. Each chapter outlines a country's federal system, explains the constitutional and institutional status of the court system and discusses the high court's jurisprudence in light of these features. *Courts in Federal Countries* offers insightful explanations of judicial behaviour in the world's leading federations.

*A Doubtful and Perilous Experiment* Mel A. Topf, 2011-09-23 In *A Doubtful and Perilous Experiment: Advisory Opinions, State Constitutions and Judicial Supremacy* author Mel A. Topf provides readers with a comprehensive treatment of the history, concept

jurisprudence and controversies relating to state Supreme Court advisory opinions *A Doubtful and Perilous Experiment* is the only comprehensive treatment of the history and controversies the law and theories about state supreme court advisory opinions This is a significant area of state constitutional law that has no parallel in federal law which bars advisory opinions from federal courts Though just ten states have adopted such advisory opinions many others have debated but rejected them they have been implicated in major issues regarding American judicial power The book explains the so far unexplained first appearance of advisory authority in 1780 and address the persistent aura of illegitimacy that has always shadowed this authority The frequent attacks on the legitimacy of advisory opinions have been triggered by their clash with basic doctrines of our legal system including separation of powers due process judicial review judicial independence and judicial supremacy *A Doubtful and Perilous Experiment* shows how law of state supreme court advisory opinions in fact arose in response to the attacks resulting in an elaborate jurisprudence of advisory opinions centering on a remarkable but not entirely successful attempt to justify when the justices will advise and when they will not The book tells the story of attempts to defend advisory authority including several attempts to amend the U S Constitution to require the Supreme Court to issues them It tells the story also of the uneasy relation between advisory opinions and judicial review as well as the expansion of judicial power

The Hughes Court: Volume 11 Mark V. Tushnet, 2022-02-03 The Hughes Court From Progressivism to Pluralism 1930 to 1941 describes the closing of one era in constitutional jurisprudence and the opening of another This comprehensive study of the Supreme Court from 1930 to 1941 when Charles Evans Hughes was Chief Justice shows how nearly all justices even the most conservative accepted the broad premises of a Progressive theory of government and the Constitution The Progressive view gradually increased its hold throughout the decade but at its end interest group pluralism began to influence the law By 1941 constitutional and public law was discernibly different from what it had been in 1930 but there was no sharp or instantaneous Constitutional Revolution in 1937 despite claims to the contrary This study supports its conclusions by examining the Court s work in constitutional law administrative law the law of justiciability civil rights and civil liberties and statutory interpretation The Pennsylvania Railroad Albert J. Churella, 2023-11-21 By 1933 the Pennsylvania Railroad had been in existence for nearly ninety years During this time it had grown from a small line struggling to build west from the state capital in Harrisburg to the dominant transportation company in the United States In Volume 2 of *The Pennsylvania Railroad* Albert J Churella continues his history of this giant of American transportation At the beginning of the twentieth century the Pennsylvania Railroad was the world s largest business corporation and the nation s most important railroad By 1917 the Pennsylvania Railroad like the nation itself was confronting a very different world The war that had consumed Europe since 1914 was about to engulf the United States Amid unprecedented demand for transportation the federal government undertook the management of the railroads while new labor policies and new regulatory initiatives coupled with a postwar recession would challenge the company like never before Only time would tell whether the years that followed

would signal a new beginning for the Pennsylvania Railroad or the beginning of the end The Pennsylvania Railroad The Age of Limits 1917 1933 represents an unparalleled look at the history the personalities and the technologies of this iconic American company in a period that marked the shift from building an empire to exploring the limits of their power *The Chief Justiceship of Charles Evans Hughes, 1930-1941* William G. Ross, 2007 During the 1930s the U S Supreme Court abandoned its longtime function as an arbiter of economic regulation and assumed its modern role as a guardian of personal liberties William G Ross analyzes this turbulent period of constitutional transition and the leadership of one of its central participants in *The Chief Justiceship of Charles Evans Hughes 1930 1941* Tapping into a broad array of primary and secondary sources Ross explores the complex interaction between the court and the political economic and cultural forces that transformed the nation during the Great Depression Written with an appreciation for both the legal and historical contexts this comprehensive volume explores how the Hughes Court removed constitutional impediments to the development of the administrative state by relaxing restrictions previously invoked to nullify federal and state economic regulatory legislation Ross maps the expansion of safeguards for freedoms of speech press and religion and the extension of rights of criminal defendants and racial minorities of African Americans helped to lay the legal foundations for the civil rights movement Throughout his study Ross emphasizes how Chief Justice Hughes brilliant administrative abilities and political acumen helped to preserve the Court s power and prestige during a period when the body s rulings were viewed as intensely controversial Ross concludes that on balance the Hughes Court s decisions were more evolutionary than revolutionary but that the court also reflected the influence of the social changes of the era especially after the appointment of justices who espoused the New Deal values of President Franklin Delano Roosevelt [A Companion to Post-1945 America](#) Jean-Christophe Agnew, Roy Rosenzweig, 2008-04-15 A Companion to Post 1945 America is an original collection of 34 essays by key scholars on the history and historiography of Post 1945 America Covers society and culture people and movements politics and foreign policy Surveys and evaluates the best scholarship on every important era and topic Includes book review section on essential readings [Corporations and American Democracy](#) Naomi R. Lamoreaux, William J. Novak, 2017-05-08 Recent Supreme Court decisions in *Citizens United* and other high profile cases have sparked disagreement about the role of corporations in American democracy Bringing together scholars of history law and political science *Corporations and American Democracy* provides essential grounding for today s policy debates [Encyclopedia of the United States Constitution](#) David Andrew Schultz, 2010-05-18 Covers the people court cases historical events and terms relating to one of the most studied political documents in schools across the country the United States Constitution



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