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*Rethinking  
the*  
NEW  
DEAL  
COURT

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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

**Helena Alviar García, Günter  
Frankenberg**



## **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.

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