



The
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JUDICIAL ACTIVISM ON THE RIGHT

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John Agresto



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The Struggle for Constitutional Justice in Post-Communist Europe Herman Schwartz, 2000 In the former Eastern Bloc countries one of the most difficult and important aspects of the transition to democracy has been the establishment of constitutional justice and the rule of law Herman Schwartz's wide ranging book backed with rich historical detail and a massive array of research is the first to chronicle and analyze the rise and troubles of constitutional courts in this changing region Those who are interested in understanding the behavior of constitutional courts in transitional regimes cannot afford to ignore this important book It is fecund with hypotheses of interest to political scientists and we are indebted to Professor Schwartz for his comprehensive analysis James L Gibson Law and Politics Book Review The Rehnquist Court Herman Schwartz, 2002 An analysis of recent Supreme Court decisions by some of the nation's most important judicial scholars explores the decisions handed down by the Rehnquist court *Measuring Judicial Activism* Stefanie Lindquist, Frank Cross, 2009-04-23 Measuring Judicial Activism supplies empirical analysis to the widely discussed concept of judicial activism at the United States Supreme Court The book seeks to move beyond more subjective debates by conceptualizing activism in non ideological terms *The Myth of Judicial Activism* Kermit Roosevelt, 2008-01-01 Constitutional scholar Kermit Roosevelt uses plain language and compelling examples to explain how the Constitution can be both a constant and an organic document and takes a balanced look at controversial decisions through a compelling new lens of constitutional interpretation

The Burger Court and the Rise of the Judicial Right Michael J. Graetz, Linda Greenhouse, 2017-06-06 The magnitude of the Burger Court has been underestimated by historians When Richard Nixon ran for president in 1968 Impeach Earl Warren billboards dotted the landscape especially in the South Nixon promised to transform the Supreme Court and with four appointments including a new chief justice he did This book tells the story of the Supreme Court that came in between the liberal Warren Court and the conservative Rehnquist and Roberts Courts the seventeen years 1969 to 1986 under Chief Justice Warren Burger It is a period largely written off as a transitional era at the Supreme Court when according to the common verdict nothing happened How wrong that judgment is The Burger Court had vitally important choices to make whether to push school desegregation across district lines how to respond to the sexual revolution and its new demands for women's equality whether to validate affirmative action on campuses and in the workplace whether to shift the balance of criminal law back toward the police and prosecutors what the First Amendment says about limits on money in politics The Burger Court forced a president out of office while at the same time enhancing presidential power It created a legacy that in many ways continues to shape how we live today Written with a keen sense of history and expert use of the justices' personal papers this book sheds new light on an important era in American political and legal history Adapted from dust jacket

David's Hammer Clint Bolick, 2007 Judicial activism is condemned by both right and left for good reason lawless courts are a threat to republican government But challenging conventional wisdom constitutional litigator Clint Bolick argues in

David's Hammer that far worse is a judiciary that allows the other branches of government to run roughshod over precious liberties That Bolick demonstrates is exactly the role the framers intended the courts to play envisioning a judiciary deferential to proper democratic governance but bold in defense of freedom But the historical record is painfully uneven During the Warren era **Supreme Court**, 1882 **Real Federalism** Michael S. Greve, 1999 Real federalism is a federalism that promotes citizen choice and competition among the states **The Supreme Court and Constitutional Democracy** John Agresto, 2016-10-15 In *The Supreme Court and Constitutional Democracy* John Agresto traces the development of American judicial power paying close attention to what he views as the very real threat of judicial supremacy Agresto examines the role of the judiciary in a democratic society and discusses the proper place of congressional power in constitutional issues Agresto argues that while the separation of congressional and judicial functions is a fundamental tenet of American government the present system is not effective in maintaining an appropriate balance of power He shows that continued judicial expansion especially into the realm of public policy might have severe consequences for America's national life and direction and offers practical recommendations for safeguarding against an increasingly powerful Supreme Court John Agresto's controversial argument set in the context of a historical and theoretical inquiry will be of great interest to scholars and students in political science and law especially American constitutional law and political theory [The Conservative Assault on the Constitution](#) Erwin Chemerinsky, 2010-09-28 Over the last few decades the Supreme Court and the federal appellate courts have undergone a dramatic shift to the right the result of a determined effort by right wing lawmakers and presidents to reinterpret the Constitution by reshaping the judiciary Conservative activist justices have narrowed the scope of the Constitution denying its protections to millions of Americans exactly as the lawmakers who appointed and confirmed these jurists intended Basic long standing principles of constitutional law have been overturned by the Rehnquist and Roberts courts As distinguished law professor and constitutional expert Erwin Chemerinsky demonstrates in this invaluable book these changes affect the lives of every American As a result of political pressure from conservatives and a series of Supreme Court decisions our public schools are increasingly separate and unequal to the great disadvantage of poor and minority students Right wing politicians and justices are dismantling the wall separating church and state allowing ever greater government support for religion With the blessing of the Supreme Court absurdly harsh sentences are being handed down to criminal defendants such as life sentences for shoplifting and other petty offenses Even in death penalty cases defendants are being denied the right to competent counsel at trial and as a result innocent people have been convicted and sentenced to death Right wing politicians complain that government is too big and intrusive while at the same time they are only too happy to insert the government into the most intimate aspects of the private lives of citizens when doing so conforms to conservative morality Conservative activist judges say that the Constitution gives people an inherent right to own firearms but not to make their own medical decisions In some states it is easier to buy an assault rifle than to

obtain an abortion Nowhere has the conservative assault on the Constitution been more visible or more successful than in redefining the role of the president From Richard Nixon to George W Bush conservatives have sought to significantly increase presidential power The result in recent years has been unprecedented abuses including indefinite detentions illegal surveillance and torture of innocent people Finally access to the courts is being restricted by new rulings that deny legal protections to ordinary Americans Fewer lawsuits alleging discrimination in employment are heard fewer people are able to sue corporations or governments for injuries they have suffered and even when these cases do go to trial new restrictions limit damages that plaintiffs can collect The first step in reclaiming the protections of the Constitution says Chemerinsky is to recognize that right wing justices are imposing their personal prejudices not making neutral decisions about the scope of the Constitution as they claim or following the original meaning of the Constitution Only then do we stand a chance of reclaiming our constitutional liberties from a rigid ideological campaign that has transformed our courts and our laws Only then can we return to a constitutional law that advances freedom and equality

Taming Regulation Robert T. Nakamura, Thomas W. Church, 2003-10-27 Despite three decades of vigorous efforts at deregulation across the government regulation remains ubiquitous It also continues to be unpopular because it forces individuals and businesses to do things frequently costly and unpleasant things that they don't want to do If regulatory programs are to survive and remain effective the challenge posed by their endemic unpopularity and political vulnerability must be met Unlike much of the existing literature on regulation **Taming Regulation** begins with the assumption that the government's capacity to utilize regulation as a policy tool is vital The book examines the questions of how to make the inherently coercive aspects of regulation more politically acceptable in the present antiregulatory environment and how the legal and administrative challenges of reform in ongoing regulatory programs might best be approached The authors explore these issues through a case study of administrative reform in the Superfund program Chartered with an ambitious mission to clean up the nation's hazardous waste sites Superfund was from its inception a uniquely aggressive and unpopular program Yet despite the election in 1994 of a Republican Congress committed to fundamental changes in environmental regulation the Superfund program weathered the storm and remains intact today The authors credit this political and programmatic success to a series of artfully designed and orchestrated internal reforms that softened Superfund's implementation thus increasing its political support while retaining its potent coercive tools **Taming Regulation** provides a cautionary discussion of both the necessity and the difficulty of regulatory reform It is essential reading for students of regulation and environmental policy for practitioners contemplating reform of ongoing regulatory programs and for those interested in the checkered history of Superfund

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. **ONE CASE AT A TIME - JUDICIAL MINIMALISM ON THE SUPREME COURT.** CASS R. SUNSTEIN, 2009

Closed Chambers Edward Lazarus, 2005-05-03 When *Closed Chambers* was first published it was met with a firestorm of controversy as well as a shower of praise for being the first book to break the code of silence about the inner workings of this country's most powerful court. In this eloquent trailblazing account with a new chapter covering *Bush v. Gore*, Guantanamo, and other recent controversial court decisions, Edward Lazarus, who served as a clerk to Justice Harry Blackmun, presents a searing indictment of a court at war with itself and often in neglect of its constitutional duties. Combining memoir, history, and legal analysis, Lazarus reveals in astonishing detail the realities of what takes place behind the closed doors of the U.S. Supreme Court, an institution that through its rulings holds the power to affect the life of every American. **Uncertain Justice** Laurence Tribe, Joshua Matz, 2014-06-03 An assessment of how the Supreme Court under Chief Justice John Roberts is significantly influencing the nation's laws and reinterpreting the Constitution includes in-depth analysis of recent rulings and their implications.

In Defense of a Political Court Terri Jennings Peretti, 2001 This text argues for an openly political role for the Supreme Court. The author asserts that politically motivated constitutional decision making is not only inevitable, it is legitimate and desirable as well.

Business and the Roberts Court Jonathan H. Adler, 2016 Is the Roberts Court pro-business? If so, what does this mean for the law and the American people? *Business and the Roberts Court* provides the first critical analysis of the Court's business-related jurisprudence, combining a series of empirical and doctrinal analyses of how the Roberts Court has treated business and business law. **Our Republican Constitution** Randy E. Barnett, 2016-04-19 A concise history of the long struggle between two fundamentally opposing constitutional traditions from one of the nation's leading constitutional scholars, a manifesto for renewing our constitutional republic. The Constitution of the United States begins with the words "We the People." But from the earliest days of the American republic, there have been two competing notions of the People, which lead to two very different visions of the Constitution. Those who view "We the People" collectively

think popular sovereignty resides in the people as a group which leads them to favor a democratic constitution that allows the will of the people to be expressed by majority rule In contrast those who think popular sovereignty resides in the people as individuals contend that a republican constitution is needed to secure the pre existing inalienable rights of We the People each and every one against abuses by the majority In Our Republican Constitution renowned legal scholar Randy E Barnett tells the fascinating story of how this debate arose shortly after the Revolution leading to the adoption of a new and innovative republican constitution and how the struggle over slavery led to its completion by a newly formed Republican Party Yet soon thereafter progressive academics and activists urged the courts to remake our Republican Constitution into a democratic one by ignoring key passages of its text Eventually the courts complied Drawing from his deep knowledge of constitutional law and history as well as his experience litigating on behalf of medical marijuana and against Obamacare Barnett explains why We the People would greatly benefit from the renewal of our Republican Constitution and how this can be accomplished in the courts and the political arena

The Hollow Hope Gerald N. Rosenberg, 2008-05-01 In follow up studies dozens of reviews and even a book of essays evaluating his conclusions Gerald Rosenberg's critics not to mention his supporters have spent nearly two decades debating the arguments he first put forward in *The Hollow Hope* With this substantially expanded second edition of his landmark work Rosenberg himself steps back into the fray responding to criticism and adding chapters on the same sex marriage battle that ask anew whether courts can spur political and social reform Finding that the answer is still a resounding no Rosenberg reaffirms his powerful contention that it's nearly impossible to generate significant reforms through litigation The reason American courts are ineffective and relatively weak far from the uniquely powerful sources for change they're often portrayed as Rosenberg supports this claim by documenting the direct and secondary effects of key court decisions particularly *Brown v Board of Education* and *Roe v Wade* He reveals for example that Congress the White House and a determined civil rights movement did far more than *Brown* to advance desegregation while pro choice activists invested too much in *Roe* at the expense of political mobilization Further illuminating these cases as well as the ongoing fight for same sex marriage rights Rosenberg also marshals impressive evidence to overturn the common assumption that even unsuccessful litigation can advance a cause by raising its profile Directly addressing its critics in a new conclusion *The Hollow Hope Second Edition* promises to reignite for a new generation the national debate it sparked seventeen years ago

Repugnant Laws Keith E. Whittington, 2019 The USA may want to believe that the Supreme Court is above politics in fact the Court is a political institution and operates in a political environment to advance controversial principles often with the aid of political leaders who sometimes encourage and generally tolerate the judicial nullification of federal laws because it serves their own interests to do so

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