

The Supreme Court In American Politics New Institutional- alist Interpretations

[#Supreme Court](#) [#American politics](#) [#Institutionalism](#) [#Judicial review](#) [#Constitutional law](#)

Explore the profound impact of the Supreme Court on American politics through the lens of new institutionalist interpretations. This analysis delves into how the U.S. judiciary shapes constitutional law and political outcomes, examining the institutional frameworks that influence judicial review and the Court's evolving role within the broader landscape of American politics. Discover fresh perspectives on the highest court's power and decision-making.

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The Supreme Court in American Politics

For decades political scientists studying the Court have adopted behavioral approaches and focused on the relatively narrow question of how the justices' policy preferences influence their voting behavior. This emphasis has illuminated important aspects of Supreme Court politics, but it has also left unaddressed many other important questions about this unique and fascinating institution. Drawing on "the new institutionalism" in the social sciences, the distinguished contributors to this volume attempt to fill this gap by exploring a variety of topics, including the Court's institutional development and its relationship to broader political contexts such as party regimes, electoral systems, social movements, social change, legal precedents, political identities, and historically evolving economic structures. The book's initial chapters examine the nature of the Court's distinctive norms as well as the development of its institutional powers and practice. A second section relates the development of Supreme Court politics to the historical development of other political institutions and social movements. Concluding chapters explore how its decision making in particular areas of law or periods of time is influenced by—and influences—its socio-political milieu. These contributions offer provocative insights regarding the Court's role in maintaining or disrupting political and economic structures, as well as social structures and identities tied to ideology, class, race, gender, and sexual orientation. The Supreme Court in American Politics shows how we can develop an enriched understanding of this institution, and open up exciting new areas of research by placing it in the broader context of politics in the United States.

The Supreme Court in American Politics : New Institutional Interpretations

What influences decisions of the U.S. Supreme Court? For decades social scientists focused on the ideology of individual justices. Supreme Court Decision Making moves beyond this focus by exploring how justices are influenced by the distinctive features of courts as institutions and their place in the political system. Drawing on interpretive-historical institutionalism as well as rational

choice theory, a group of leading scholars consider such factors as the influence of jurisprudence, the unique characteristics of supreme courts, the dynamics of coalition building, and the effects of social movements. The volume's distinguished contributors and broad range make it essential reading for those interested either in the Supreme Court or the nature of institutional politics. Original essays contributed by Lawrence Baum, Paul Brace, Elizabeth Bussiere, Cornell Clayton, Sue Davis, Charles Epp, Lee Epstein, Howard Gillman, Melinda Gann Hall, Ronald Kahn, Jack Knight, Forrest Maltzman, David O'Brien, Jeffrey Segal, Charles Sheldon, James Spriggs II, and Paul Wahlbeck.

Supreme Court Decision-Making

The US Supreme Court is arguably the most controversial institution in the American political system. Decisions on such 'hot-button' issues as abortion, race equality, the death penalty and gay marriage have sharply divided the Court, politicians and public opinion. Some say that the Justices are merely politicians in judicial robes, while others insist that the Court simply does its best to interpret the Constitution for a society that differs drastically from the late eighteenth century when it was written. All those studying or simply interested in American politics must therefore get to grips with the nature, power and role of the Supreme Court in American politics. This book provides a comprehensive and balanced account, written and organised in an accessible style. It assumes no prior knowledge of the Court or constitutional law, and will help readers to gain a full appreciation of this much-criticised and important institution.

The United States Supreme Court

Lasser examines in detail four periods during which the Court was widely charged with overstepping its constitutional power: the late 1850s, with the Dred Scott case and its aftermath; the Reconstruction era; the New Deal era; and the years of the Warren and Burger Courts after 1954. His thorough analysis of the most controversial decisions convincingly demonstrates that the Court has much more power to withstand political reprisal than is commonly assumed. Originally published in 1988. A UNC Press Enduring Edition -- UNC Press Enduring Editions use the latest in digital technology to make available again books from our distinguished backlist that were previously out of print. These editions are published unaltered from the original, and are presented in affordable paperback formats, bringing readers both historical and cultural value.

The Limits of Judicial Power

Over the course of the past decade, the behavioral analysis of decisions by the Supreme Court has turned to game theory to gain new insights into this important institution in American politics. Game theory highlights the role of strategic interactions between the Court and other institutions in the decisions the Court makes as well as in the relations among the justices as they make their decisions. Rather than assume that the justices' votes reveal their sincere preferences, students of law and politics have come to examine how the strategic concerns of the justices lead to "sophisticated" behavior as they seek to maximize achievement of their goals when faced with constraints on their ability to do so. In *Institutional Games and the U.S. Supreme Court*, James Rogers, Roy Flemming, and Jon Bond gather various essays that use game theory to explain the Supreme Court's interactions with Congress, the states, and the lower courts. Offering new ways of understanding the complexity and consequences of these interactions, the volume joins a growing body of work that considers these influential interactions among various branches of the U.S. government. Contributors: Kenneth A. Shepsle, Andrew De Martin, James R. Rogers, Christopher Zorn, Georg Vanberg, Cliff Carrubba, Thomas Hammond, Christopher Bonneau, Reginald Sheehan, Charles Cameron, Lewis A. Kornhauser, Ethan Bueno de Mesquita, Matthew Stephenson, Stefanie A. Lindquist, Susan D. Haire, Lawrence Baum

Institutional Games and the U.S. Supreme Court

The Supreme Court's involvement in many hot political and personal conflicts makes crucial an understanding of its internal workings and evolution. This book gives students a firm historical and institutional base upon which to evaluate contemporary Supreme Court decisions and the impact of those decisions on the lives of ordinary citizens.

The Supreme Court in American Politics

Over the course of the past decade, the behavioral analysis of decisions by the Supreme Court has turned to game theory to gain new insights into this important institution in American politics. Game theory highlights the role of strategic interactions between the Court and other institutions in the decisions the Court makes as well as in the relations among the justices as they make their decisions. Rather than assume that the justices' votes reveal their sincere preferences, students of law and politics have come to examine how the strategic concerns of the justices lead to "sophisticated" behavior as they seek to maximize achievement of their goals when faced with constraints on their ability to do so. In *Institutional Games and the U.S. Supreme Court*, James Rogers, Roy Flemming, and Jon Bond gather various essays that use game theory to explain the Supreme Court's interactions with Congress, the states, and the lower courts. Offering new ways of understanding the complexity and consequences of these interactions, the volume joins a growing body of work that considers these influential interactions among various branches of the U.S. government. Contributors: Kenneth A. Shepsle, Andrew De Martin, James R. Rogers, Christopher Zorn, Georg Vanberg, Cliff Carrubba, Thomas Hammond, Christopher Bonneau, Reginald Sheehan, Charles Cameron, Lewis A. Kornhauser, Ethan Bueno de Mesquita, Matthew Stephenson, Stefanie A. Lindquist, Susan D. Haire, Lawrence Baum

Institutional Games and the U.S. Supreme Court

This book provides an accessible but thorough account of the US Supreme Court and its influence on American society and political life.

The Virginia Supreme Court

Richard Pacelle attempts to answer the question, "What is the proper role for a non-elected institution within a representative democracy?" He examines how non-elected judges should use their role of judicial review, and whether non-elected judges serve as protectors of the "insular minorities," i.e., those groups that lack access to political power.

The United States Supreme Court

An exploration of the institutional judicial activism of the US Supreme Court through the dramatic changes in its agenda, as it has evolved from 1933 to the present. Once dominated by economic issues, the agenda is now populated largely by cases involving individual rights and liberties.

The Role of the Supreme Court in American Politics

When conservatives took control of the federal judiciary in the 1980s, it was widely assumed that they would reverse the landmark rights-protecting precedents set by the Warren Court and replace them with a broad commitment to judicial restraint. Instead, the Supreme Court under Chief Justice William Rehnquist has reaffirmed most of those liberal decisions while creating its own brand of conservative judicial activism. Ranging from 1937 to the present, *The Most Activist Supreme Court in History* traces the legal and political forces that have shaped the modern Court. Thomas M. Keck argues that the tensions within modern conservatism have produced a court that exercises its own power quite actively, on behalf of both liberal and conservative ends. Despite the long-standing conservative commitment to restraint, the justices of the Rehnquist Court have stepped in to settle divisive political conflicts over abortion, affirmative action, gay rights, presidential elections, and much more. Keck focuses in particular on the role of Justices O'Connor and Kennedy, whose deciding votes have shaped this uncharacteristically activist Court.

The Transformation Of The Supreme Court's Agenda

This innovative volume explores the evolution of constitutional doctrine as elaborated by the Supreme Court. Moving beyond the traditional "law versus politics" perspective, the authors draw extensively on recent studies in American Political Development (APD) to present a much more complex and sophisticated view of the Court as both a legal and political entity. The contributors--including Pam Brandwein, Howard Gillman, Mark Graber, Ronald Kahn, Tom Keck, Ken Kersch, Wayne Moore, Carol Nackenoff, Julie Novkov, and Mark Tushnet--share an appreciation that the process of constitutional development involves a complex interplay between factors internal and external to the Court. They underscore the developmental nature of the Court, revealing how its decision-making and legal authority evolve in response to a variety of influences: not only laws and legal precedents, but also social and political movements, election returns and regime changes, advocacy group litigation, and

the interpretive community of scholars, journalists, and lawyers. Initial chapters reexamine standard approaches to the question of causation in judicial decision-making and the relationship between the Court and the ambient political order. Next, a selection of historical case studies exemplifies how the Court constructs its own authority as it defines individual rights and the powers of government. They show how interpretations of the Reconstruction amendments inform our understanding of racial discrimination, explain the undermining of affirmative action after *Bakke*, and consider why *Roe v. Wade* has yet to be overturned. They also tell how the Court has collaborated with political coalitions to produce the New Deal, Great Society, and Reagan Revolution, and why Native Americans have different citizenship rights than other Americans. These contributions encourage further debate about the nature and processes of constitutional change and invite APD scholars to think about law and the Court in more sophisticated ways.

The Most Activist Supreme Court in History

The issue of political participation has been central to American politics since the founding of the United States. *The Politics of Democratic Inclusion* addresses the ways traditionally underrepresented groups have and have not achieved political incorporation, representation, and influence—or "democratic inclusion"—in American politics. Each chapter provides a "state of the discipline" essay that addresses the politics of diversity from a range of perspectives and in a variety of institutional arenas. Taken together, the essays in *The Politics of Democratic Inclusion* evaluate and advance our understanding of the ways in which the structure, processes, rules, and context of the American political order encourage, mediate, and hamper the representation and incorporation of traditionally disadvantaged groups.

The Supreme Court and American Political Development

In *The Pioneers of Judicial Behavior*, prominent political scientists critically examine the contributions to the field of public law of the pioneering scholars of judicial behavior: C. Hermann Pritchett, Glendon Schubert, S. Sidney Ulmer, Harold J. Spaeth, Joseph Tanenhaus, Beverly Blair Cook, Walter F. Murphy, J. Woodward Howard, David J. Danelski, David Rohde, Edward S. Corwin, Alpheus Thomas Mason, Robert G. McCloskey, Robert A. Dahl, and Martin Shapiro. Unlike past studies that have traced the emergence and growth of the field of judicial studies, *The Pioneers of Judicial Behavior* accounts for the emergence and exploration of three current theoretical approaches to the study of judicial behavior—attitudinal, strategic, and historical-institutionalist—and shows how the research of these foundational scholars has contributed to contemporary debates about how to conceptualize judges as policy makers. Chapters utilize correspondence of and interviews with some early scholars, and provide a format to connect the concerns and controversies of the first political scientists of law and courts to contemporary challenges and methodological debates among today's judicial scholars. The volume's purpose in looking back is to look forward: to contribute to an ecumenical research agenda on judicial decision making, and, ultimately, to the generation of a unified, general theory of judicial behavior. *The Pioneers of Judicial Behavior* will be of interest to graduate students in the law and courts field, political scientists interested in the philosophy of social science and the history of the discipline, legal practitioners and researchers, and political commentators interested in academic theorizing about public policy making. Nancy L. Maveety is Associate Professor of Political Science, Tulane University.

Politics of Democratic Inclusion

What influences decisions of the U.S. Supreme Court? For decades social scientists focused on the ideology of individual justices. *Supreme Court Decision Making* moves beyond this focus by exploring how justices are influenced by the distinctive features of courts as institutions and their place in the political system. Drawing on interpretive-historical institutionalism as well as rational choice theory, a group of leading scholars consider such factors as the influence of jurisprudence, the unique characteristics of supreme courts, the dynamics of coalition building, and the effects of social movements. The volume's distinguished contributors and broad range make it essential reading for those interested either in the Supreme Court or the nature of institutional politics. Original essays contributed by Lawrence Baum, Paul Brace, Elizabeth Bussiere, Cornell Clayton, Sue Davis, Charles Epp, Lee Epstein, Howard Gillman, Melinda Gann Hall, Ronald Kahn, Jack Knight, Forrest Maltzman, David O'Brien, Jeffrey Segal, Charles Sheldon, James Spriggs II, and Paul Wahlbeck.

The Pioneers of Judicial Behavior

This book explains how the debate over originalism emerged from the interaction of constitutional theory, U.S. Supreme Court decisions, and American political development. Refuting the contention that originalism is a recent concoction of political conservatives like Robert Bork, Johnathan O'Neill asserts that recent appeals to the origin of the Constitution in Supreme Court decisions and commentary, especially by Justices Antonin Scalia and Clarence Thomas, continue an established pattern in American history. *Originalism in American Law and Politics* is distinguished by its historical approach to the topic. Drawing on constitutional commentary and treatises, Supreme Court and lower federal court opinions, congressional hearings, and scholarly monographs, O'Neill's work will be valuable to historians, academic lawyers, and political scientists.

Supreme Court Decision-Making

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.

Originalism in American Law and Politics

The Politics of Precedent on the U.S. Supreme Court offers an insightful and provocative analysis of the Supreme Court's most important task--shaping the law. Thomas Hansford and James Spriggs analyze a key aspect of legal change: the Court's interpretation or treatment of the precedents it has set in the past. Court decisions do not just resolve immediate disputes; they also set broader precedent. The meaning and scope of a precedent, however, can change significantly as the Court revisits it in future cases. The authors contend that these interpretations are driven by an interaction between policy goals and variations in the legal authoritativeness of precedent. From this premise, they build an explanation of the legal interpretation of precedent that yields novel predictions about the nature and timing of legal change. Hansford and Spriggs test their hypotheses by examining how the Court has interpreted the precedents it set between 1946 and 1999. This analysis provides compelling support for their argument, and demonstrates that the justices' ideological goals and the role of precedent are inextricably linked. The two prevailing, yet contradictory, views of precedent--that it acts either solely as a constraint, or as a "cloak" that never actually influences the Court--are incorrect. This book shows that while precedent can operate as a constraint on the justices' decisions, it also represents an opportunity to foster preferred societal outcomes.

The Hollow Hope

New Directions in American Politics introduces students not just to how the American political system works but also to how political science works. La Raja brings together top scholars to write original essays across the standard curriculum of American government and politics, capturing emerging research in the discipline in a way that is accessible for undergraduates. Each chapter combines substantive knowledge with the kind of skill-building and analytical inquiry that is being touted in higher education everywhere. Contributors to *New Directions* highlight why the questions they seek to answer are critical for understanding American politics, and situate them in the broader context of controversies in research. The teaching of American politics follows a well-worn path. Textbooks for introductory courses hew to a traditional set of chapters that describe the Founding, American institutions, the ways citizens participate in politics, and sometimes public policy. The material rarely engages students in the

kind of questions that animate scholarship on politics. One hurdle for instructors is finding material that reflects quality scholarship—and thus teaches students about why, not just what—and yet is accessible for undergraduates. Articles in scholarly journals are typically unsuited for undergraduate courses, particularly introductory courses. What is needed is a book that conveys exciting trends in scholarship across vital topics in American politics and illustrates analytical thinking. *New Directions in American Politics* is that book and will be an ideal companion to standard textbooks that focus mostly on nuts and bolts of politics. The book features: Contributions from a top-notch cast of active scholars and a highly regarded editor A focus on analytical thinking that addresses questions of causality Full coverage of the American politics curriculum Short interviews with each contributor on a companion website to help the research come alive and prompt critical thinking questions for students Work that draws on the highest quality research in political science but is written specifically for first year undergraduate students. There is simply no book like this available to the growing number of faculty who want their introductory American politics course to be a reflection of the political science discipline and not just the nuts and bolt facts of the American political system.

The Politics of Precedent on the U.S. Supreme Court

The study of law and politics is one of the foundation stones of the discipline of political science, and it has been one of the most productive areas of cross-fertilization between the various subfields of political science and between political science and other cognate disciplines. This Handbook provides a comprehensive survey of the field of law and politics in all its diversity, ranging from such traditional subjects as theories of jurisprudence, constitutionalism, judicial politics and law-and-society to such re-emerging subjects as comparative judicial politics, international law, and democratization. The *Oxford Handbook of Law and Politics* gathers together leading scholars in the field to assess key literatures shaping the discipline today and to help set the direction of research in the decade ahead.

New Directions in American Politics

Aims to bring together the work of leading scholars of Constitutionalism, Constitutional law, and politics in the United States to take stock of the field to chart its progress, and point the way for its future development.

The Oxford Handbook of Law and Politics

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.

Constitutional Politics in a Conservative Era

This volume, meant to be the first in a series of catalogues documenting the Barnes Foundation's entire holdings, is the first major survey of the Barnes Collection since *Great French Paintings from the Barnes Foundation: Impressionist, Post-Impressionist, and Early Modern* (CH, Oct'93, 31-0715). Wattenmaker, a former student and instructor at the Barnes Foundation and former director of the Archives of American Art, is more than qualified to complete such a scholarly work. Beginning the catalogue with an essay on Barnes himself, Wattenmaker apparently felt compelled to defend the reputation of this irascible and sometimes antagonistic individual by deploying extensive quotations (from hitherto inaccessible archival documentation) that shed light on Barnes's motives. Next are in-depth essays on William J. Glackens, Alfred Maurer, and others who have major works in the Barnes Foundation. The final section, "Additional Works by American Artists," is organized alphabetically. Each image is accompanied by extensive scholarly footnotes. The photographs are richly textured. The few photographs of the paintings hanging in situ provide a teasing glimpse into the experience of the visitor to Merion, Pennsylvania, the original home of this collection (soon to be closed to the public, in preparation for the museum's move to a new building in Philadelphia). Summing Up: Highly rec-

commended. Lower-level undergraduates through faculty/researchers. Lower-division Undergraduates; Upper-division Undergraduates; Graduate Students; Researchers/Faculty. Reviewed by K. Mason.

Reconsidering Roosevelt on Race

Traces the US Supreme Court's effect on federal government growth from the founding era forward. This book explores the US Supreme Court's impact on the constitutional development of the federal government from the founding era forward. The author's research is based on an original database of several hundred landmark decisions compiled from constitutional law casebooks and treatises published between 1822 and 2010. By rigorously and systematically interpreting these decisions, he determines the extent to which the court advanced and consolidated national governing authority. The result is a portrait of how the high court, regardless of constitutional issue and ideology, persistently expanded the reach and scope of the federal government. "Dichio takes a fairly unique approach to thinking about the relationship between the US Supreme Court and the development of the American state. Scholars interested in American political development and historical work on the law and the courts should grapple with the evidence on offer here." — Keith E. Whittington, coauthor of *American Constitutionalism*, Second Edition

21st Century Political Science: A Reference Handbook

The principle of content-neutrality is the cornerstone of freedom of expression jurisprudence, protecting the core values of freedom of speech set out in the first amendment, whilst also enabling the government to place reasonable restrictions on protected speech. *The Politics of Freedom of Expression* examines the US Supreme Court's decision-making in freedom of expression cases, from the Earl Warren Court in 1953 to the 2012 decisions of the John Roberts Court, assessing the extent to which the justices take into consideration their own political attitudes, jurisprudence and external factors such as federal government participation. In doing so, the book highlights the role of the civil rights movement in developing the content-neutrality jurisprudential regime. Establishing 'jurisprudential regime theory' as a framework for incorporating the various factors that can affect decision-making, the author draws on quantitative, qualitative and interpretive methods in order to analyse the justices' changing treatment of content-based and content-neutral cases over time. This unique theoretical approach allows the text to push beyond the traditional 'law versus politics' debate in order to critically evaluate the importance of content-neutrality to the Supreme Court's decision-making, and to compare decision-making in the US with Canada, Germany, Japan and the UK.

The US Supreme Court and the Centralization of Federal Authority

Each year, the Supreme Court of the United States announces new rulings with deep consequences for our lives. This third volume in Palgrave's SCOTUS series describes, explains, and contextualizes the landmark cases of the US Supreme Court in the term ending 2020. With a close look at cases involving key issues and debates in American politics and society, SCOTUS 2020 tackles the Court's rulings on LGBT discrimination, abortion regulation, subpoenas of the Trump administration, the Electoral College, DACA and presidential power, Native rights, cross-border rights, the Second Amendment, church and state, separation of powers, criminal justice, and more. Written by notable scholars in political science and law, the chapters in SCOTUS 2020 present the details of each ruling, its meaning for constitutional debate, and its impact on public policy or partisan politics. Finally, SCOTUS 2020 offers an analysis of the current state of ideological and interpretive divisions on the Court.

The Politics of Freedom of Expression

"Today's Supreme Court is unlike any other in American history. This is not just because of its jurisprudence. It is because today's Court is uniquely distanced from the democratic processes that buttress its legitimacy. For example, five of the nine justices took their seats after winning confirmation with the support of senators who won far fewer votes than their colleagues in opposition, and three of these five justices were also nominated by a president who lost the popular vote. In *A Supreme Court Unlike Any Other*, Kevin J. McMahon explains the broad historical developments that have brought us here. Drawing on historical and contemporary data and deep knowledge of Court battles during presidencies ranging from Franklin D. Roosevelt to Ronald Reagan to Donald Trump, he offers new insight into the shifting politics of nominating and confirming justices, the changing pool of nominees considered for the Supreme Court, and the increased salience of the Court in presidential and congressional elections. A

Supreme Court Unlike Any Other is an eye-opening account of today's Court within the context of US history and the broader structure of contemporary politics"--

SCOTUS 2020

This volume proposes a new way of understanding the policymaking process in the United States by examining the complex interactions among the three branches of government, executive, legislative, and judicial. Collectively across the chapters a central theme emerges, that the U.S. Constitution has created a policymaking process characterized by ongoing interaction among competing institutions with overlapping responsibilities and different constituencies, one in which no branch plays a single static part. At different times and under various conditions, all governing institutions have a distinct role in making policy, as well as in enforcing and legitimizing it. This concept overthrows the classic theories of the separation of powers and of policymaking and implementation (specifically the principal-agent theory, in which Congress and the presidency are the principals who create laws, and the bureaucracy and the courts are the agents who implement the laws, if they are constitutional). The book opens by introducing the concept of adversarial legalism, which proposes that the American mindset of frequent legal challenges to legislation by political opponents and special interests creates a policymaking process different from and more complicated than other parliamentary democracies. The chapters then examine in depth the dynamics among the branches, primarily at the national level but also considering state and local policymaking. Originally conceived of as a textbook, because no book exists that looks at the interplay of all three branches, it should also have significant impact on scholarship about national lawmaking, national politics, and constitutional law. Intro., conclusion, and Dodd's review all give good summaries.

A Supreme Court Unlike Any Other

Under its first chief justice, Arthur Chaskalson, the South African Constitutional Court built an unrivalled reputation in the comparative constitutional law community for technically accomplished and morally enlightened decision-making. At the same time, the Court proved remarkably effective in asserting its institutional role in post-apartheid politics. While each of these accomplishments is noteworthy in its own right, the Court's simultaneous success in legal and political terms demands separate investigation. Drawing on and synthesising various insights from judicial politics and legal theory, this study offers an interdisciplinary explanation for the Chaskalson Court's achievement. Rather than a purely political strategy of the kind modelled by rational choice theorists, the study argues that the Court's achievement is attributable to a series of adjudicative strategies in different areas of law. In combination, these strategies allowed the Court to satisfy institutional norms of public reason-giving while at the same time avoiding political attack.

Making Policy, Making Law

Constitutional considerations of protective laws for women were the analytical battlefield on which the legal community reworked the balance between private liberty and the state's authority to regulate. Julie Novkov focuses on the importance of gender as an analytical category for the legal system. During the Progressive Era and New Deal, courts often invalidated generalized protective legislation, but frequently upheld measures that limited women's terms and conditions of labor. The book explores the reasoning in such cases that were decided between 1873 and 1937. By analyzing all reported opinion on the state and federal level, as well as materials from the women's movement and briefs filed in the U.S. Supreme Court, the study demonstrates that considerations of cases involving women's measures ultimately came to drive the development of doctrine. The study combines historical institutionalism and feminism to address constitutional interpretation, showing that an analysis of conflict over the meaning of legal categories provides a deeper understanding of constitutional development. In doing so, it rejects purely political interpretations of the so-called *Lochner* era, in which the courts invalidated many legislative efforts to ameliorate the worst effects of capitalism. By addressing the dynamic interactions among interested laypersons, attorneys, and judges, it demonstrates that no individuals or institutions have complete control over the generation of constitutional meaning. Julie Novkov is Assistant Professor of Political Science, University of Oregon

The Politics of Principle

In this book, Christopher F. Zurn shows why a normative theory of deliberative democratic constitutionalism yields the best understanding of the legitimacy of constitutional review. He further argues that this

function should be institutionalized in a complex, multi-location structure including not only independent constitutional courts but also legislative and executive self-review that would enable interbranch constitutional dialogue and constitutional amendment through deliberative civic constitutional forums. Drawing on sustained critical analyses of diverse pluralist and deliberative democratic arguments concerning the legitimacy of judicial review, Zurn concludes that constitutional review is necessary to ensure the procedural requirements for legitimate democratic self-rule through deliberative cooperation. Claiming that pure normative theory is not sufficient to settle issues of institutional design, Zurn draws on empirical and comparative research to propose reformed institutions of constitutional review that encourage the development of fundamental law as an ongoing project of democratic deliberation and decision.

Constituting Workers, Protecting Women

The dramatic struggle over the outcome of the 2000 presidential election presented judges with an extraordinary political challenge, as well as a historic political temptation. In *The Votes That Counted* Howard Gillman offers a comprehensive yet critical assessment of how well courts coped with the competing expectations for impartial justice and favorable partisan results. Lively and authoritative, the book documents how the participants, the press, the academic community, and the public responded during these tension-filled thirty-six days. Gillman also provides a serious yet accessible overview of the legal strategies and debates—from briefs and oral arguments to final decisions. However, in explaining the behavior of courts, he moves beyond an analysis of law to also take into account the influences of partisanship, judicial ideology, and broader political and historical contexts. Appropriately, Gillman pays special attention to the judges whose behavior generated the most controversy—the battling justices of the Florida and United States Supreme Courts. After carefully reviewing the arguments for and against their decisions, he concludes that the five justices behind the *Bush v. Gore* decision acted outside what should be considered the acceptable boundaries of judicial power. Gillman ends with an analysis of why they chose such an unprecedented course of action and an assessment of whether their partisan intervention will have any lasting effect on the Supreme Court's reputation and authority.

Deliberative Democracy and the Institutions of Judicial Review

Why do unelected federal judges have so much power to make policy in the United States? Why were federal judges able to thwart apparent legislative victories won by labor organizations in the *Lochner* era? Most scholars who have addressed such questions assume that the answer lies in the judiciary's constitutionally guaranteed independence, and thus worry that insulated judges threaten democracy when they stray from baseline positions chosen by legislators. This book argues for a fundamental shift in the way scholars think about judicial policy-making. Scholars need to notice that legislators also empower judges to make policy as a means of escaping accountability. This study of legislative deference to the courts offers a dramatic reinterpretation of the history of twentieth-century labor law and shows how attention to legislative deferrals can help scholars to address vexing questions about the consequences of judicial power in a democracy.

The Votes That Counted

Provides a comparative analysis of the ideational dimension of judicial review and its potential contribution to democratic governance.

Legislative Deferrals

Since the mid-1970s, Congress has passed hundreds of overrides—laws that explicitly seek to reverse or modify judicial interpretations of statutes. Whether front-page news or not, overrides serve potentially vital functions in American policy-making. Federal statutes—and court cases interpreting them—often require revision. Some are ambiguous, some conflict, and others are obsolete. Under these circumstances, overrides promise Congress a means to repair flawed statutes, reconcile discordant court decisions, and reverse errant judicial interpretations. Overrides also allow dissatisfied litigants to revisit issues and raise concerns in Congress that courts have overlooked. Of course, promising is one thing and delivering is quite another. Accordingly, this book asks: Do overrides, in fact, effectively clarify the law, reverse objectionable judicial statutory interpretations, and broaden deliberation on contested issues? The answers provide new insights into the complex role of overrides in U.S. policy-making and in the politics of contemporary court-Congress relations.

The Politico-Legal Dynamics of Judicial Review

This book assesses the role of the federal judiciary in immigration and the institutional evolution of the Supreme Court and the US Courts of Appeals. Neither court has played a static role across time. By the turn of the century, a division of labor had developed between the two courts whereby the Courts of Appeals retained their original function as error-correction courts, while the Supreme Court was reserved for the most important policy and political questions. Law explores the consequences of this division for immigrant litigants, who are more likely to prevail in the Courts of Appeals because of advantageous institutional incentives that increase the likelihood of a favorable outcome. As this book proves, it is inaccurate to speak of an undifferentiated institution called 'the federal courts' or 'the courts', for such characterizations elide important differences in mission and function of the two highest courts in the federal judicial hierarchy.

Overruled?

Understanding approaches to liberalism through the study of the politics of gay and lesbian rights.

The Immigration Battle in American Courts

This book examines a pattern of conservative resurgence following several eras of reform in American history by pointing to the phenomenon of "recalibration". It demonstrates the difficulty of achieving substantive political change in American politics, as elements of the old political order tend to find ways to survive and reassert themselves after reform. By highlighting recalibration as a regular companion to reform, the book ultimately sheds light on the barriers to, and possibilities for, sweeping change in American politics.

Courts, Liberalism, and Rights

Recalibrating Reform