

power of judicial review over congressional enactments. Yet Whittington effectively demonstrates that the Court was relatively active during this period in evaluating the constitutionality of federal laws, pointing out that “the highlight reel is not the game itself.” Expecting these early cases to be mundane, I was delighted to find them surprisingly engaging. Dealing with issues such as counterfeit coinage, arms smuggling, and the seizure of schooners with names like *La Vengeance*, the chapter catalogs fascinating disputes in which the Court crafted judgments to consolidate the new republic and strengthen its central government. It also provides excellent background on the more famous cases such as *Marbury v. Madison* and *McCulloch v. Maryland*.

The chapter on Reconstruction sheds light on the dynamics of the relationship between the Court and Congress during a fraught period in US history. Whittington describes the Court’s caution in challenging the Radical Republicans in Congress, although it did not wholly embrace a lapdog role. Instead, it stayed out of the way of Reconstruction through strategic decision making and focused on the fine-tuning of the constitutional regime after the Civil War. In another chapter that pierces conventional wisdom, Whittington shows how the *Lochner* Court—widely viewed as activist—demonstrated considerable deference to Congress, ruling most often to uphold important federal policies, rather than to strike them down. This tale of deference is typically lost in our focus on the *Lochner* Court’s choice to advance Social Darwinism as a theory of constitutional interpretation in the context of state economic regulations.

Whittington’s treatment of two constitutional revolutions—the post–New Deal switch in time and the Warren Court’s civil liberties decisions—provides the most effective foil against which to understand the modern Court. Once the Court made its strategic retreat after FDR’s court-packing shot across the bow, Court deference to expansive congressional action under the Commerce Clause and via delegation to administrative agencies became the rule rather than the exception. In contrast, the Warren Court revolution was far more focused on civil rights and liberties as enforced against the states. Although the Roberts Court’s activism (to the extent it exists) is more often compared to the Warren Court’s activism, the true comparator for the modern Court’s jurisprudence is the post–New Deal Court: it is that Court’s willingness to *uphold* congressional power that provides the most interesting foil to the modern Court. Whittington does masterful work in elucidating the underlying dynamics in the Court’s switch in time that saved nine, and he places the Warren Court in proper perspective relative to interbranch conflict.

The penultimate chapter focuses on the conservative Court under Rehnquist and Roberts. Once again, Whittington challenges the conventional wisdom by

demonstrating that “the Court since the Warren era cannot simply be characterized as conservative when it comes to striking down federal laws” (p. 241). At the same time, this chapter makes some unusual observations. For example, Whittington notes that “Democrats might be consistently unhappy with the Roberts Court, but their unhappiness might be driven by cases in which the conservatives are upholding legislative action rather than striking it down” (p. 242). Perhaps that may be true in the future, but I am not sure that the evidence supports such a conjecture based on the current landscape and in the context of federal legislation. After all, the Roberts Court upheld the Affordable Care Act but struck down the Voting Rights Act and campaign finance reforms. I am not certain about which federal laws it has upheld—or is likely to uphold—that are repugnant to liberals. Nevertheless, this is a quibble. The chapter convincingly shows that the Roberts Court is, in the context of its review of federal legislation, far less activist than predecessor Courts under previous chief justices.

In his final chapter, Whittington tests the famous thesis by Robert Dahl that the Court largely shares the preferences and reinforces the policies of the dominant political coalition. Under this theory, the Court would be more likely to strike older rather than newer legislation. Relying on both quantitative and qualitative analyses of cases reviewing federal legislation through history, Whittington argues convincingly that Dahl’s thesis was, at best, time bound: there is no clear evidence that the Court tends to invalidate older legislation more than newer statutes. Nevertheless, Whittington does observe that the Court has more often operated “within dominant political coalitions than against them” (p. 278). He can draw these conclusions convincingly because of his thorough analysis of cases that uphold and those that strike federal legislation.

Repugnant Laws is suitable both for law school courses and graduate courses in political science. It will become the go-to reference book for observers of the Court who want to understand its interactions with a coordinate branch throughout US history and for those who seek to place the current Court’s activities into historical perspective. We will all be smarter after reading this book.

Conservative Thought and American Constitutionalism Since the New Deal. By Johnathan O’Neill. Baltimore: Johns Hopkins University Press, 2022. 398p. \$64.95 cloth.
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In *West Virginia v. the Environmental Protection Agency* (2022), the Supreme Court limited the regulatory authority of administrative agencies. The Court argued that the Constitution required a clear delegation on the

part of Congress when an agency was engaged in regulating a “major question.” Critics saw the opinion as a likely challenge to the administrative state, which Justice Neil Gorsuch has been pretty clear about. Defenders saw it as a constitutional restoration of Congressional authority and a much-needed limit on administrative law-making in a constitutional democracy. As such long-standing conservative ideas have begun to triumph on the Supreme Court, including questions about the constitutionality of the modern state that emerged from the New Deal, it is vitally important to understand the constitutional ideas that lie behind these political developments. Johnathan O’Neill’s *Conservative Thought and American Constitutionalism Since the New Deal* is a timely work that helps shed light on conservative constitutional thinking. Perhaps most importantly, O’Neill’s comprehensive, accessible, and engaging work offers a capacious vision of constitutional thought that extends far beyond a preoccupation with the constitutional jurisprudence of the Supreme Court.

Conservative Thought and American Constitutionalism Since the New Deal is in part an intellectual history of conservative constitutional thought that complements recent scholarship such as Ken Kersch’s (2019) *Conservatives and the Constitution*. While O’Neill is an historian, and the author of a sharp analysis of originalism that similarly situates it in historical and political terms (*Originalism in American Law and Politics*, 2005), his approach takes its bearing from American Political Development in reflecting on the relationship between “political order, institutions, and political change” (p. 3). Indeed, he seeks to illuminate how different groups of conservatives sought to meet the challenge of a New Deal order that, in important respects, represented a profound change in American constitutionalism, even while foundational elements of the pre-New Deal constitutional order persisted.

O’Neill’s book offers a richly documented and mostly compelling analysis of the different stands of conservative thought across four broad constitutional areas: the administrative state, federalism, the modern presidency, and modern judicial view. Conceptually, O’Neill groups conservative thinkers as Traditionalists, Libertarians, Straussians, and Neo-Conservatives, letting the diverse group of thinkers and political actors he takes up speak for themselves. While O’Neill is preoccupied by the thinking of these various conservatives, he also gives us a glimpse of the political and institutional changes that were central features of American political development in the wake of the New Deal.

One of the more intriguing features of the book is how it brings out the often-acute tensions and disagreements within conservatism. Indeed, more recent generations of scholars might be surprised to read about Leo Strauss’ student Herbert Storing’s constitutional defense of the administrative state. As Storing argued, drawing on the

founding, maintaining “those qualities of the bureaucracy that contribute knowledge and moderation to government and set an example of devotion to the public good is to defend an old position with a new institution” (p. 52). The Neoconservative scholar Edward Banfield similarly noted that “the centralization of authority in the national government had been ongoing and ‘inevitable’ in the United States since the founding” (p. 104). Yet this position has largely been eclipsed in conservative circles by the far more familiar libertarian and originalist critiques of the administrative state. Still, O’Neill’s work also reminds us that the late Justice Scalia was a powerful advocate of deference to administrative agencies, even while those on the Court who view him as a judicial icon to be emulated are much less sympathetic to his longstanding position. And traditionalist conservatives saw the “derailment” of “the original constitutional order” as rooted in Abraham Lincoln’s misinterpretation of equality, which had an open-ended and universal quality that “bore some responsibility for the ‘egalitarianism that characterized the modern, centralized, welfare state’” (p. 30).

The point is that conservatives themselves in the long post-New Deal period argued seriously about ideas and often had divergent understandings of American constitutionalism. The rise of the modern presidency was defended by originalists and Neoconservatives who had sympathy for the notion of a unitary executive, which was frequently linked to a more expensive foreign policy. Traditionalists rejected “an aggressive foreign policy” and the “conception of executive power used to pursue it,” insisting “the founders intended Congress to be the most powerful branch” (pp. 163-64). There were also debates between traditionalists who favored states’ rights and were skeptical of racial equality and West Coast Straussians who insisted on the primacy of natural rights and human equality. While many of these exchanges will be somewhat familiar to scholars, O’Neill’s book will enable historians and political scientists to better understand conservative thought and the growing divisions among conservatives in contemporary politics.

Yet O’Neill eschews writing about the present and avoids the seemingly profound transformation of conservative constitutional thought in recent years. Restoring a proper sense of Congress’s role in the constitutional scheme, against a powerful executive and judiciary, has deep roots in conservative thought. But so, too, does a rejection of racial equality, as does an insistence on ethnic and religious nationalism that rejects not just liberal pluralism but flirts with rejecting liberal constitutionalism altogether. The now fashionable post-liberal strands of conservatism that harken back to Traditionalists are powerfully at odds with the more abstract principles of American constitutionalism articulated by Straussian, Neoconservative, and (some) Libertarian thinkers enamored of Abraham Lincoln. How curiously odd, then, that

some West Coast Straussians have taken to sounding like Neo-Confederate Traditionalists, joining the call to overturn the American constitutional order by way of a vague insistence on “regime change.” Curious, too, that some Catholic conservatives are flirting with various forms of theocracy against a tradition of religious liberty, while some culture war conservatives want to use state power to enforce (their) political orthodoxy. This sober book, perhaps prudently, resists weighing in on such issues, even while it will help us better understand them.

Important on its own terms, *Conservative Thought and American Constitutionalism Since the New Deal* is of heightened interest precisely because it comes at a moment when many of the ideas it engages are triumphing in conservative politics and in the Supreme Court’s jurisprudence. Here I have to say that I found the section on Modern Judicial Power the least compelling section of the book as it was too prone to traffic in notions that the modern Court was a profound break from the past while many of the quarrels over judicial power have been with us from the beginning. This is true, too, of debates about the proper balance between Congress and the executive, just as it is regarding debates about the proper division of state and federal power in the constitutional scheme.

In conclusion, O’Neill insists that constitutional self-government “is tied to the fate of Congress” (p. 298). Calls for Congressional restoration, pervasive among both liberals and conservatives, might point to deeper flaws in our constitutional architecture. The proper balance between American political institutions within a scheme of constitutional self-government has been debated from the beginning. Understanding how to recover that balance might require us to move beyond the past, helpful as O’Neill is in fostering our understanding of it.

Fundraiser in Chief: Presidents and the Politics of Campaign Cash.

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Fundraiser in Chief, based on a comprehensive examination of presidential fundraising activities from the Carter to the Trump administrations, shows that, over the last generation, the ways that presidents raise money for themselves and others have changed in important ways. In particular, Brendan Doherty shows that presidents today campaign more for themselves and their parties than for individual legislators, thereby changing the president’s role in party leadership and service. The book is an important contribution to scholarship on the American presidency, the nationalization of US political parties, and the evolution of the US campaign finance system.

Brendan Doherty’s scholarly contribution derives largely from his painstaking archival research. The appendix, which should not be skipped when reading the book, describes the methodological challenges of counting presidential fundraisers, many of which are private events. He begins by explaining the decisions involved in operationalizing the concept of fundraiser: Does a “donor maintenance” event count? How should private meet-and-greets attached to larger fundraisers be counted? He then proceeds by describing the difficulties of identifying fundraisers, especially those events that were closed to the press, in presidential records. He clearly explains how he cross-checked press accounts of fundraisers with the public papers of the presidents and presidential schedules. This careful research will certainly aid other scholars to better understand the changing role of the president as “fundraiser in chief.” Political scientists who teach introductory courses on research methods should also consider assigning the appendix as an accessible description of key decisions about operationalization and measurement.

It is no secret that presidents spend a lot of time fundraising and that they raise a lot of money when they do so. The key finding of this book is that there has been major change over time in who benefits from presidential fundraising. Doherty shows that in the late 1970s and 1980s, when presidents benefited from public funding for presidential nominations and general elections, they spent their time fundraising for vulnerable congressional (especially Senate) incumbents and for state political parties. As party competition gave way to what Frances Lee (*Insecure Majorities: Congress and the Perpetual Campaign*, 2016) terms “insecure majorities,” and competition destroyed the incentives to accept public funding, presidents began to raise more money for themselves and for the national party, which crowded out their fundraising on behalf of specific candidates.

In chapter 2, Doherty helpfully catalogs the additional changes in law and the political environment that helped produce this shift in fundraising strategy, including the rise of Super PACs, the importance of the Supreme Court decision in *McCutcheon v. FEC*, and a congressional decision to require fundraising beneficiaries to pick up more of the costs of presidential travel. Together, these forces drove presidents to do more fundraising through consolidated joint fundraising committees and to rely more on extremely large donations from rich donors when doing so.

Chapters 3 and 4 document those changes in fundraising strategy. Doherty shows that modern presidents in their reelection cycles now spend the bulk of their efforts raising money for their own reelection campaign and national party. He also shows that in their other fundraising efforts, especially in midterm election cycles, presidents favor raising money for Senate campaign committees over House campaigns, as well as raising money for vulnerable seats held by the president’s party over pickup